

Statement by David Mortlock

**Hearing on Assessing the Use of Sanctions in Addressing
U.S. National Security and Foreign Policy Challenges**

**Subcommittee on National Security, International Development, and Monetary Policy
Committee on Financial Services**

U.S. House of Representatives

May 15, 2019

Mr. Chairman, Ranking Member Stivers, and distinguished members of the Subcommittee, thank you for the opportunity to appear before you today. It is my privilege to address the use of economic sanctions as a critical tool of U.S. foreign policy and national security, and I am delighted that this Subcommittee is dedicating its time and energy to review this tool and learn lessons from our past and current efforts.

The United States has used sanctions to great success, and also with great futility. We have dramatically refined and improved the tool over the past few decades, yet appear determined to repeat our past mistakes. As the greatest economy in the world we have unprecedented ability to put pressure on our adversaries through the use of sanctions, but just as with our military or other tools of statecraft, the ways we use this tool will determine whether pressure will effectively change behavior, or whether we merely entrench hostile regimes.

As Director for International Economic Affairs for the National Security Council and former Deputy Coordinator for Sanctions Policy at the State Department, and current chair of the Global Trade & Investment Group at the law firm of Willkie Farr & Gallagher LLP, I have had the privilege of being part of numerous teams that developed and deployed sanctions and economic statecraft to address the most pressing national security and foreign policy issues faced by the United States and our allies.

The United States has turned to sanctions repeatedly in the past decades, and exponentially more so in the past few years, to address threats as disparate as Russian aggression, Iranian nuclear proliferation, and the deteriorating political situation in Venezuela. We have proven that sanctions can be an effective tool to help change behavior of the world's bad actors, such as pushing the Iranian regime to the negotiation table on the Joint Comprehensive Plan of Action ("JCPOA"), or encouraging the Burmese junta to take steps toward democratic rule.

Unfortunately, we also have proven that sanctions have their limitations. Sanctions themselves are a means to an end, and not a foreign policy. On recent occasions the Administration has demonstrated that sanctions cannot compensate for the absence of a broader U.S. strategy. Even where the Administration has developed a strong sanctions strategy – including for Russia, Venezuela, and North Korea – we have seen those efforts undermined by the absence of a broader strategy, a failure to build international credibility, and the absence of a clear plan for winding down sanctions. We must do better if we intend future sanctions regimes to have any bite, and not just a token, futile bark.

I. Sanctions Are an Attractive Tool

Sanctions are an attractive tool in foreign policy crises, giving us many options between words and war. They do not require the dramatic escalation, risk to lives, and financial costs of a military option. The strength of the U.S. financial system and the ubiquity of the U.S. dollar in the global financial marketplace make U.S. sanctions a powerful option, and there is no doubt the United States can visit significant economic harm on its adversaries

Moreover, the U.S. government has gotten significantly more sophisticated at using these tools over time, evolving from the blunt instrument of an embargo to more nuanced restrictions on certain business with unique bad actors around the world. The sectoral sanctions for Russia, the restrictions on Venezuelan debt, and sophisticated carve-outs through licensing have been a high-water mark for the Office of Foreign Assets Control (“OFAC”) imposing the most pointed economic pressure while trying to avoid unintended consequences.

The Trump administration has turned to sanctions frequently and has often touted that it has produced more sanctions actions than the Obama administration. Sanctions are at the forefront of the Administration’s foreign policy efforts. The Administration has repeatedly used sanctions to respond to Russia’s continued aggressions in Ukraine, as well as interference in U.S. elections, the attempted murder of Sergei Skripal, and other nefarious actions. They relied heavily on sanctions as a response to the crisis in Venezuela, targeting President Nicolás Maduro’s levers of financial power, including the end of imports of Venezuelan oil in April 2019. Human-rights abuses and corruption have been the focus of actions taken under the Global Magnitsky sanctions program, which have highlighted and condemned some of the worst actors around the world, including the murder of Jamal Khashoggi and ethnic cleansing by Burmese security forces.

II. Sanctions Are a Useful Tool, Not a Panacea

An effective sanctions program must start with a clear and articulated policy goal. Economic pain in itself is not a U.S. foreign policy interest. Instead, sanctions should be designed around a broader strategy to achieve a policy outcome.

For example, sanctions can pressure a party toward negotiations and behavioral change. At the same time, we must recognize that behavior change and deterrence are not always achievable goals. For example, sanctions will not change the behavior of terrorist organizations such as ISIS. Instead, sanctions can be used to isolate or name and shame bad actors. Most large, reputable banks around the world screen against US sanctions lists, and generally do not do business with or maintain accounts for designated persons, making their nefarious activities more difficult and expensive. Sanctions on terrorist groups aren’t likely to deter, therefore, but they are likely to make their operations and financing difficult and expensive. Similarly, sanctions on North Korea aren’t just about getting Kim Jung Un to the negotiating table, but also about

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making it more difficult for North Korea to obtain the technology and funding necessary to advance its nuclear weapons and missile programs.¹

Yet it is difficult to see how the Administration's approach to sanctions policy has ultimately been effective in achieving all of the actual foreign policy outcomes the Administration claims to seek. The Administration's repeated practice appears to be to deploy sanctions as the primary tool in a foreign policy strategy, and often in the face of overwhelming international opposition. The lack of consistent and implementable policy goals, as well as patient follow-through, has undermined the efficacy of sanctions under this President, even in areas where the administration has implemented tough measures. The ineffective use of sanctions creates threats to the utility of the tools themselves— more so than any overuse. Simply put, sanctions are an effective tool, but by themselves are not a panacea.

To use sanctions most effectively, Congress and the Administration should be guided by a few key principles.

A. Sanctions Must Be Imposed to Implement a Clear Policy

To have the desired impact, sanctions must be imposed in pursuit of a clear policy, with a consistent approach from the entire U.S. government and the use of other tools such as diplomacy and multilateral pressure. The Administration deserves credit for successfully corraling the world, especially the United Nations Security Council, to impose tough sanctions on North Korea. The maximum-pressure campaign convinced even China to take its UN sanctions obligations more seriously, and to cut off bilateral trade that was critical to North Korea. Multilateral implementation of the sanctions on North Korea strangled its funding and restricted access to technology for its nuclear weapons and missile programs, and causing the North Koreans to explore diplomatic engagement as an avenue for relief.

Even in this instance, though, the Administration has not followed-through on the policies beyond tough sanctions, which has eroded the international implementation of the sanctions, reducing their leverage and expanding North Korea's access to resources. Once the president announced the first summit with Kim in Singapore, China quickly eased its push for compliance. Subsequently, both summits between the leaders lacked measurable deliverables or new commitments from North Korea, and Trump's effusive praise for Kim—and his post-summit tweets maintaining that the North Korean threat was over—gave China, Russia, and South Korea, an excuse to further ease the pressure. Indeed, the President's recent reversal on OFAC's North Korea sanctions, by tweet no less, has dramatically diluted the North Koreans' expectation that we will follow through with any meaningful sanctions in response to their provocations.

¹ Laura Rosenberger and Richard Johnson, *Sanctions on North Korea Don't Just Punish North Korea. They Also Protect Us*, Wash. Post (Mar. 6, 2019), available at <https://www.washingtonpost.com/outlook/2019/03/06/sanctions-north-korea-dont-just-punish-north-korea-they-also-protect-us/>.

The United States has exited two summits with less leverage and isolation of North Korea than before.

Similarly, the Administration organized a multilateral effort to confront the Maduro regime in Venezuela and used sanctions as part of that strategy. Together with restrictions on the extension of credit to the Government of Venezuela and the designation of *Petróleos de Venezuela* (“PdVSA”), effectively prohibiting imports of Venezuelan oil, the United States took strong action to support a broader multilateral strategy toward Venezuela, including joining dozens of governments in recognizing the interim presidency of Juan Guaidó. In recent months, however, a steady drumbeat of U.S. sanctions, including on Maduro himself, has seemingly failed to put any additional pressure on Maduro to leave his post; as former Treasury Undersecretary and CIA Deputy Director David Cohen recently wrote, the costs of sanctions to a nation’s leader will always be bearable when the alternative is regime change.² Instead, the more realistic goal of these sanctions should be to pressure military leaders to throw their support behind Guaidó. Treasury has cleverly targeted a number of regime members, as well as lifted sanctions on one general who switched his loyalty to Guaidó, demonstrating the costs of clinging to Maduro. The Administration should ensure that the message to Maduro’s military supporters is not drowned out by a much louder effort to inflict economic pain on the country.

B. Sanctions Must Have an End-Game

If future targets of U.S. sanctions are to change their behavior under the threat of sanctions, it will be because they find those threats credible and because they believe they have a path to relief from the sanctions. We must therefore tie sanctions directly to an articulable, concrete, and realistic policy goal, after which sanctions will be eased. The Obama Administration deployed that strategy with Burma, gradually easing sanctions as the junta took steps toward democracy, while maintaining reporting requirements on new U.S. investments and keeping the worst actors on the List of Specially Designated Nationals and Blocked Persons to prompt further change. The Obama Administration similarly undertook sanctions relief for Iran after Iran took steps to dismantle its nuclear program, while maintaining other sanctions linked explicitly to terrorism and human rights abuses. These actions sent a message not only to Burma and Iran, but also to other governments, that there would be a clear path to sanctions relief – if only they take the steps expected by the United States and its multilateral partners.

President Trump’s Iran strategy has relied on a maximum pressure campaign to try to convince Tehran to not only renegotiate the JCPOA, but also to take an array of other actions on its regional meddling, support to Hezbollah, and human rights abuses, in one fowl swoop. Trump and his team are trying to replicate that pressure through unilateral escalation of sanctions. However, they are doing so without building the broad international consensus that existed on the threat of Iran’s nuclear program. Instead, the President is undertaking this campaign in the

² David Cohen and Zoe Weinberg, *Sanctions Can’t Spark Regime Change*, *Foreign Policy* (Apr. 29, 2019), available at <https://www.foreignaffairs.com/articles/united-states/2019-04-29/sanctions-cant-spark-regime-change>.

face of staunch opposition from almost all other governments—notably including all other parties to the JCPOA.

As a result, the Administration is unlikely to achieve pressure greater than that which existed in 2012 and led to the JCPOA. Indeed, the European Union (EU) has amended its blocking statute to prohibit European companies from complying with U.S. sanctions and announced its intent to create a special payment vehicle to avoid their impact. The EU measures reflect a striking effort to undermine U.S. policy and to demonstrate political unity with Iran in order to keep it in the nuclear deal. Iran will face economic hardship as a result of the reimposition of the sanctions, but it will not face the same level of diplomatic isolation this time around and an “all-or-nothing” demand from the United States. It is difficult to see how this reduced political leverage against Iran will help achieve a stronger deal with Iran than the one the Administration exited or reverse its entire world view in the face of unilateral sanctions pressure.

C. Sanctions Must Have Political Backing

The dissonance between sanctions implementation and policy perhaps is starkest with respect to Russia. Strong U.S. sanctions measures for Russia have been undermined by the absence of a coherent strategy and consistent message from the White House.

OFAC has imposed some of the most impactful sanctions in history on President Putin’s closest friends and Russia’s largest companies. Treasury Under Secretary Segal Mandelkar has rightfully touted the strength of Treasury’s actions.³ The Administration has sanctioned well over 200 Russian individuals and entities in relation to Russia’s aggressions, including adding dozens of companies to the list of entities subject to sectoral sanctions with restrictions on financing and support to Russia’s non-conventional oil projects. In April 2018, OFAC imposed sanctions on some of Putin’s most prominent supporters and those engaged in nefarious activities in Russia, including Oleg Deripaska and Viktor Vekselberg, as well as their prominent organizations, and the heads of state-owned companies such as Gazprom’s Alexei Miller, Gazprombank’s Andrey Akimov, and VTB Bank’s Andre Kostin. The Administration has implemented important provisions of the Countering America’s Adversaries Through Sanctions Act (“CAATSA”), passed overwhelmingly by Congress in 2017. For example, the State Department has published an extensive list of entities operating in Russia’s defense and intelligence sectors, and foreign companies now face the threat of U.S. sanctions for engaging in significant transactions with those entities. Taken together, these measures form the toughest sanctions imposed on Russia to date.

Nonetheless, the strongest sanctions policy cannot compensate for the absence of a broader cohesive strategy, and the sanctions on Russia appear unlikely by themselves to change Russia’s behavior in light of the Administration’s broader messages. The president has consistently undermined his Administration’s actions on Russia by being publicly subservient to Vladimir

³ See, e.g., Statement of Under Secretary Sigal Mandelker Before the U.S. Senate Committee on Banking, Housing, and Urban Affairs, Aug. 17, 2018, *available at* <https://home.treasury.gov/news/press-releases/sm465>.

Putin, and by siding with Putin's perfunctory denials regarding election interference and cyber-attacks over the consistent judgment of his intelligence and foreign policy communities.⁴ Sanctions on Russia are generally designed to serve as a deterrent against further aggression, but the sanctions are unlikely to compel a change in Russian behavior when that behavior is minimized and dismissed by the President. At best, the Administration is left with a mixed message that dilutes whatever pressure Treasury and State are able to muster through legal measures.

The Administration's mixed messages were illustrated recently by the removal of three companies formerly owned and controlled by Oleg Deripaska – Rusal, EN+, and EuroSibEnerg – from the List of Specially Designated Nationals and Blocked Persons ("SDN List"). Following the April 6, 2018 designation of Deripaska and of his companies for being owned or controlled by Deripaska, U.S. persons were faced with the prospect of terminating all business involving his companies, including Rusal, a major supplier to the international aluminum market. In December, Treasury announced that it had reached a negotiated deal with the companies for Deripaska to divest below majority ownership in the companies and relinquish many levers of control.⁵ The deal was complex. Deripaska would receive some benefits in the form of debt relief but would receive no cash payments and ultimately lose effective control of the companies that had defined his professional life for decades.

On one hand the development was a rousing success for U.S. sanctions on Russia. The sanctions and the impending threat to the Russian economy had forced Deripaska to relinquish control of these companies to get them out from under the sanctions. The action sent a strong message to other supporters and friends of President Putin: facilitate Putin's aggressions and corruption and you too could lose control of your corporate empire. In addition, the action creates an important blueprint for how sanctions can be lifted against individuals and companies that separate themselves from bad acts and bad actors. The Obama Administration had employed a similar effort in 2015 to delist cronies of the Burmese junta who demonstrated transparency and positive behavior toward reform.⁶ The Rusal delisting provided an even more sophisticated and, thanks to the requirements of CAATSA, more public and transparent process to pull companies away from designated bad actors.

Yet the impact of this deal with Deripaska's companies was undermined by the Administration's failure to clearly explain the link between the delisting and the steps taken to separate the companies from Putin's inner circle and nefarious activities, diminishing the message to other sanctioned actors or those contemplating their support to Putin. Possibly nervous about reinforcing the President's sympathetic statements toward Russia, Treasury notified Congress of

⁴ See, e.g., Transcript of Joint Press Conference between President Trump and President Putin, July 16, 2017, available at <https://www.vox.com/2018/7/16/17576956/transcript-putin-trump-russia-helsinki-press-conference>.

⁵ Letter from OFAC Director Andrea Gacki to Senate Majority Leader Mitch McConnell, Dec. 19, 2018, available at https://www.treasury.gov/resource-center/sanctions/OFAC-Enforcement/Documents/20181219_notification_removal.pdf.

⁶ *U.S. Offers Path to Redemption for Cronies*, Myanmar Times, Apr. 29, 2015, available at <https://www.mmmtimes.com/business/14179-us-offers-path-to-redemption-for-cronies.html>

the delisting on December 19, immediately before the holidays, and, as some reports suggest, provided limited briefings and responses to members' questions.

While the eight-page notification letter to Congress provided a helpful outline of the deal, limited public messaging led to significant confusion in the media whether sanctions were being lifted against Deripaska or his companies and why.⁷ Arguably a successful measure in isolation, the Administration's failure to fully explain the reasoning and embrace the congressional review required by CAATSA undermined the message for other members of Putin's inner circle looking to escape or avoid U.S. sanctions and, most importantly, the purpose of the sanctions as a rebuke and economic cost to Putin and his supporters.

III. Actions by Congress to Strengthen the Use of Sanctions

Congress has a number of ways it can help to improve the effectiveness of sanctions in achieving these critical foreign policy and national security goals.

A. Invest in the Tool

First, Congress should invest in the tool. The Obama Administration expanded the use of sanctions significantly beginning in 2008, but for many years, neither the Executive nor Legislative Branch made a corresponding investment in the required personnel or technological infrastructure. In 2018, the Trump administration took a necessary, and long-overdue, step by increasing the budget for OFAC's parent organization at Treasury. However, that investment has been offset, to some degree, by ongoing delays in the filling of positions at the State Department and the elimination of the office of the Sanctions Coordinator.

A lack of resources has resulted not only in limited capacity to implement new sanctions, but also difficulties implementing the sanctions already on the books. OFAC, inundated with requests to impose new designations and deal with the aftermath of major changes to sanctions policy, could use more resources to provide clarifying guidance regarding new prohibitions and to issue licenses to avoid unintended consequences.

OFAC's budget should continue to increase, and there should be a renewed push to fill the State Department's offices, including a senior official responsible for coordinating sanctions implementation and policy and liaising with senior Treasury and White House officials.

B. Implement Sanctions Already on the Books

Congress should prioritize the thorough implementation of CAATSA and other sanctions authorities when considering new sanctions measures for Russia. Statutory sanctions for Iran were and are effective in deterring private companies because the threat of secondary sanctions was credible. Even when the Obama Administration opposed certain Iran sanctions bills, it

⁷ See, e.g., *Trump-Loyal Senators Make Russian Oligarch's Day*, Rolling Stone, Jan. 16, 2019, available at <https://www.rollingstone.com/politics/politics-news/repUBLICAN-sanctions-russia-780221/>.

implemented final legislation with gusto, ultimately bringing Iran to the negotiating table. The statutory threats imposed for Russia, however, are perceived as more lenient. Section 228 of CAATSA, for example, requires the President to impose sanctions on any person who facilitates a significant transaction on behalf of a Russian SDN. Not a single person has been sanctioned under this authority, leaving companies to wonder whether or not they should engage in transactions involving SDNs. A patchwork of new sanctions threats will not put additional economic pressure on Russia if the threat of even the existing sanctions is questionable.

Congress should require a concrete set of guidelines for secondary sanctions with respect to Russia so that companies understand exactly what type of transactions are off-limits if they want to avoid U.S. sanctions. Congress also can expand on the oversight authorities in CAATSA, not to interfere with the work of knowledgeable technocrats at OFAC and State, but to ensure that the Administration is articulating a clear message and a consistent policy with respect to Russia and other policy priorities involving sanctions.

C. Develop a Policy First, Sanctions Second

Finally, Congress should demand that the Administration not use sanctions as a substitute for policy, only as part of a policy goal. Congress can do this by establishing clear policy statements, as it recently did in CAATSA with respect to Nordstream 2.

Congress also can develop new tools as a supplement to sanctions to achieve the same policy goals. For example, beneficial-ownership legislation and financial-transparency regulation would reduce opportunities for hidden and corrupt Russian money to flow into the United States—complementing U.S. sanctions targeting the personal assets of senior Russian officials.

In cases where naming and shaming bad actors and preventing their travel to the United States is a primary goal, the State Department should be able to publicize visa denials with a statement of the case.

Most importantly, diplomacy can build broad coalitions to impose sanctions, such as the Obama Administration's coalition with the EU and Group of Seven (G-7) on sanctions against Russia, or the Trump administration's initial push to impose maximum pressure on North Korea and Venezuela. Both were examples of successful cooperation with allies and partners that created conditions for success, even if successful end states remain elusive.

IV. Conclusion

Sanctions can be a useful, precise, and effective tool of U.S. foreign policy. Sanctions are a tool that can support a broader policy with clear goals, international legitimacy, and political follow-through. We should not confuse the economic pain of our adversary with the ultimate achievement of a U.S. foreign policy goal. By focusing on that goal, and using sanctions as one of many tools to achieve it, we can strengthen the effectiveness and credibility of the tool.

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Given its central role in shaping sanctions policy, Congress can contribute to these goals by ensuring that it is employing these lessons when drafting sanctions of its own into legislation. Specifically, Congress should: (1) design each measure to pursue a specific policy goal, be it leverage or isolation, rather than just visit economic pain; (2) ensure that sanctions can be eased or adjusted based on improved circumstances and other unforeseen developments; and (3) build political support across the two branches of government for a cohesive policy, sanctions and otherwise.