

Testimony of Deputy Assistant Secretary Jennifer L. Fowler
Hearing entitled
“A Legislative Proposal Entitled the ‘Bank Account Seizure of Terrorist Assets (BASTA) Act’”
House Subcommittee on Monetary Policy and Trade
House Committee on Financial Services
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INTRODUCTION

Chairman Campbell, Members of the Subcommittee, I appreciate the opportunity to appear before you today to discuss the proposed Bank Account Seizure of Terrorist Assets (BASTA) Amendment and its potential effects on Treasury’s implementation of the Foreign Narcotics Kingpin Designation Act, commonly known as the “Kingpin Act.” For nearly 15 years, the Treasury Department has robustly implemented the Kingpin Act to disrupt and dismantle narcotics trafficking organizations, such as the Revolutionary Armed Forces of Colombia, also known as the “FARC.” We have worked to undermine their financial and support networks to deprive them of the resources needed to carry out the violent activities that threaten U.S. and global security.

TREASURY IMPLEMENTATION OF THE KINGPIN ACT

On December 3, 1999, the President signed into law the Kingpin Act, which prohibits transactions with, and blocks all property and interests in property subject to U.S. jurisdiction of, foreign narcotics traffickers identified by the President. The Kingpin Act also provides authority for Treasury’s Office of Foreign Assets Control (OFAC) to designate foreign individuals and entities that are owned or controlled by, acting for or on behalf of, the designated kingpins, allowing OFAC to reach the kingpins’ networks of front companies, facilitators, and others who comprise the financial and support networks of drug trafficking organizations. The Kingpin Act is among the most powerful and effective tools we have available to attack the financial underpinnings of narcotics trafficking organizations and the threats they pose to the United States, U.S. interests abroad, and our allies around the world.

Drug traffickers fear the Kingpin Act because the sanctions work. These criminals rely on vast support networks, including money launderers, transportation, logistics, procurement, communications, security and other personnel, to support their nefarious activities. Kingpin Act sanctions enable us not only to protect the integrity of the financial system, but also to strike hard at the heart of the financial operations of illicit actors. Since June 2000, more than 1,600 individuals and entities have been named pursuant to the Kingpin Act for their role in international narcotics trafficking. These designations have resulted in the blocking, or freezing, of numerous assets under U.S. jurisdiction, most commonly bank accounts and wire transfers.

Causing behavioral change is an important goal of the Kingpin Act and the use of targeted sanctions has proven to influence narcotics traffickers’ activities. The effect of financial sanctions on drug traffickers in Colombia has been likened to a “civil death” by narcotics traffickers themselves, due to the inability of designated individuals to maintain their banking and commercial relationships, or to have unfettered access to any assets they hold subject to U.S.

jurisdiction. Persons designated under the Kingpin Act, or any OFAC-administered sanctions programs, appear on OFAC's Specially Designated Nationals and Blocked Persons List (SDN List) and all properties in U.S. jurisdiction in which designated persons have an interest are blocked, or "frozen," for as long as they remain designated. Blocking merely immobilizes assets; it does not change the fact that assets are legally the property of a designated person. This differs from forfeiture, in which the government, through civil or criminal processes, actually transfers the original ownership of the asset. Those who wish to regain access to their blocked assets must petition OFAC and demonstrate a change in the behavior that led to their designation in order to be removed from the SDN List.

Since 2000, 218 Kingpin Act designees have petitioned for removal. After thorough investigations, OFAC has agreed that 137 have demonstrated a credible change in behavior and should no longer be designated pursuant to the Kingpin Act, and it has therefore removed them from the SDN List. Examples of credible changes in behavior include instances in which designees have begun to cooperate with U.S. or foreign law enforcement agencies, have renounced their interests in foreign assets derived from narcotics trafficking, and have resigned and disassociated with front companies.

BANK ACCOUNT SEIZURE OF TERRORIST ASSETS (BASTA) AMENDMENT

The Terrorism Risk Insurance Act of 2002, commonly known as "TRIA," allows for a person who has obtained a judgment against a terrorist party to attach any blocked assets of that terrorist party, or blocked assets of any agencies or instrumentalities of that terrorist party, in aid of satisfying such judgment. Currently, the term "blocked assets," as defined by TRIA, refers only to assets frozen by the United States pursuant to the Trading With the Enemy Act, commonly referred to as "TWEA," or the International Emergency Economic Powers Act, commonly referred to as "IEEPA." IEEPA is the primary tool used by the Treasury Department to sanction terrorist organizations and their members, as well as state-sponsors of terrorism Iran, Sudan, and Syria. TWEA is the basis for sanctions targeting Cuba, also a state sponsor of terrorism.

The Kingpin Act, on the other hand, was specifically created to address the separate threat to our country and our national interests posed by the activities of international narcotics traffickers. Accordingly, persons designated pursuant to the Kingpin Act either play a significant role in international narcotics trafficking or support or act on behalf of those who do. Affiliation with terrorist parties is not part of the criteria for designation pursuant to the Kingpin Act.

Amending TRIA's definition of "blocked assets" to include property frozen pursuant to the Kingpin Act could have potentially negative effects. We expect that, as applied, this amendment could result in the attachment and depletion of blocked assets of non-terrorist-related narcotics traffickers, including those operating in Mexico, Central America and Colombia. This could limit Treasury's ability to use these blocked assets as leverage against dangerous groups such as the Sinaloa Cartel, Los Zetas, Los Cachiros, and Colombian criminal gangs, including Oficina de Envigado.

In closing, I want to emphasize Treasury's continued commitment to combatting narcotics trafficking organizations throughout the world, using all authorities at our disposal, including the Kingpin Act. The Treasury Department urges Congress to give careful consideration to the potential impact any amendment to TRIA may have on the targeting of drug trafficking organizations under the Kingpin Act. Thank you very much for the opportunity to be here today. I welcome any questions.