



Maintaining America's Coercive Economic Strength

Five Trends to Watch in U.S. Sanctions: A Report from Select
Members of the CNAS Task Force on the Future of U.S. Sanctions

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About the CNAS Task Force on the Future of U.S. Sanctions

In June 2017, the Center for a New American Security (CNAS) launched its Task Force on the Future of U.S. Sanctions, consisting of former senior U.S. officials, corporate representatives, and academic and nonprofit experts. It examined developments in specific sanctions programs, such as those targeting North Korea, Venezuela, and Iran; emerging cross-cutting themes, such as the impact of technological changes on U.S. sanctions; congressional-executive branch relations regarding sanctions; and trans-Atlantic cooperation on these measures. During 2017 and 2018, the task force hosted a range of high-level government officials and distinguished thought leaders.¹

Task force members analyzed key trends in U.S. sanctions and global developments that could potentially affect U.S. sanctions and other coercive economic measures in the future. This brief describes the five most important of those trends and offers concise summaries of issues that sanctions and national security policymakers should consider.

The below members of the task force have publicly signed on to the findings and recommendations of the report. They do so in their individual capacity; they do not speak for any institutions with which they are affiliated:

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Cover Photo

This photo illustration shows a detail view of the Buy-Sell board in a Bureau de Change on April 17, 2007 in London. The British Pound has hit the two dollar mark today in trading for the first time since September 1992 as well as trading at a 27-month low against the euro. (Bruno Vincent/Getty Images)

Key Takeaways

- This brief by members of the CNAS Task Force on the Future of U.S. Sanctions describes five high-impact recent developments in America's use of sanctions and the implications of these developments for the future of U.S. sanctions.
- The five developments are:
 - 1 A shift toward more aggressive use of U.S. unilateral sanctions, including secondary sanctions;
 - 2 Congress's growing role in sanctions implementations and management;
 - 3 An increase in unintended consequences;
 - 4 Growing foreign government efforts to circumvent the U.S. financial system and U.S. sanctions; and
 - 5 Increasingly important role of technology.
- The brief also recommends a set of steps U.S. policymakers should take to maintain the power of U.S. sanctions in the future. These include promoting new financial technology and addressing the unintended consequences of the intensive use of unilateral sanctions.
- The brief concludes that policymakers must dedicate much more substantial economic, legal, and technological resources to tracking and assessing trends relevant to the development and use of sanctions. The authors hope this brief will serve to directly contribute to the strengthening of the U.S. economy and national security.

Introduction

U.S. foreign policy officials have embraced economic sanctions as a tool of choice for American foreign policy. Decisionmakers have deployed sanctions against strategic adversaries and national security threats ranging from Russia to non-state actors such as terrorist groups, drug cartels, and businesspeople who engage in corrupt activities. The appeal to both policy leaders and key constituent groups of the potent economic impacts of sanctions in several recent high-profile cases, particularly those of Iran, Russia, North Korea, and Venezuela, combined with broad bipartisan support for aggressive use of U.S. sanctions, suggests that the United States will favor this policy tool and be an active practitioner in the years ahead.

This brief describes five of the most prominent and influential trends that could affect U.S. sanctions and other coercive economic measures in the future. The five trends are: (1) a shift toward more aggressive use of U.S. unilateral sanctions; (2) the growing role of Congress in enacting sanctions and managing their implementation; (3) an increased potential for unintended consequences as a result of growing complexity in sanctions; (4) accelerating efforts of foreign governments to insulate trade and payment channels from U.S. sanctions; and (5) new technological developments that may have the potential to both enhance and weaken the impact of U.S. sanctions in the years ahead.

This brief represents solely the views of the authors, who have contributed to this report in their personal capacities. It does not necessarily reflect the views of other members of the task force or of any institutions with which the authors are affiliated.

Trend 1: Shift Toward More Aggressive Use of U.S. Unilateral Sanctions, Including Secondary Sanctions

U.S. sanctions policymakers have long contemplated or imposed sanctions unilaterally, such as the longstanding U.S. embargo on Cuba or the U.S. sanctions on Iran and Libya enacted in the 1990s. However, over the past several decades, American officials have generally striven to act multilaterally, either by obtaining U.N. Security Council sanctions, such as those imposed in 2016 and 2017 on North Korea, or by developing coalitions of like-minded states to impose multilateral sanctions, such as the joint U.S.-E.U. sanctions imposed on Russia in 2014.

During this period policymakers have typically seen unilateral sanctions as a last-resort option. This was in part because of the potentially more limited financial impact but also because sanctions are designed to isolate their target. That diplomatic impact can be eroded when sanctions can be more easily framed as an unwarranted aggression by a single hostile country.

In the last several years, however, the United States has shown a renewed willingness to deploy unilateral sanctions both aggressively and quickly. The United States has not obtained any significant multilateral support for the sweeping round of Russia sanctions that Congress passed in 2017. No major country has joined the Donald Trump administration in reimposing sanctions on Iran after the U.S. withdrawal from the Joint Comprehensive Plan of Action (JCPOA), also known as the Iran nuclear deal, in May 2018.

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The United States has also become increasingly willing to impose unilateral sanctions to combat political repression and human rights abuses. The U.S. government has used its broad human rights sanctioning authority, the Global Magnitsky Act, to designate officials and businesspeople in countries as diverse as Honduras, Israel, Democratic Republic of Congo, and Saudi Arabia. The administration has also significantly intensified sanctions on the authoritarian Venezuelan government of Nicolás Maduro. The United States has recently used sanctions against treaty allies, targeting two Turkish officials over Turkey's detention of an American pastor. The Trump administration also acted against ally Saudi Arabia in imposing sanctions on Saudi Arabian officials involved in the murder in Turkey of journalist Jamal Khashoggi.

Perhaps the most striking aspect of the shift over the past several years is that U.S. unilateral sanctions increasingly not only restrict business activities by U.S. companies or people, but are intended to target third-country companies and people as well—also known as secondary sanctions. In imposing sanctions on Iran both during the 2010–2015 period and following President Trump's withdrawal from the JCPOA in May 2018, for example, the United States aggressively deployed the threat of secondary sanctions against European, Chinese,

and other companies that could conduct business with Iran. The policy intent was to ensure that companies withdrew from Iran even if their governments continued to allow trade with Iran and opposed U.S. policy toward Iran. Another relevant example is the array of U.S. secondary sanctions on Russia, which deter foreign companies from engaging in certain business with the Russian defense, energy, and financial sectors even where the businesses remain legal under domestic law in the jurisdictions in which they operate.

Recent cases of unilateral U.S. secondary sanctions targeting Russia and Iran have shown that such sanctions can have significant economic effects. Iran's economy, for example, is already showing signs of strain, while sanctions imposed against Russian oligarch Oleg Deripaska and his companies in April 2018 have had significant business and market impacts. However, unilateral U.S. sanctions also trigger strong political opposition abroad, as foreign governments generally see such sanctions as an illegitimate, extraterritorial application of U.S. law. Several governments, including a number of European governments strongly opposed to the Trump administration's policy toward Iran, are actively developing tools to circumvent U.S. sanctions. These tools will be difficult to develop in the short term, but growing global political opposition to U.S. unilateral sanctions could have longer-term economic and diplomatic repercussions.

Trend 2: Congress's Growing Role in Sanctions Implementation and Management

Congress's current dispute with the Trump administration over whether and how to increase U.S. sanctions on Russia is simply the latest in a long line of disagreements between Congress and the executive branch over the exercise of economic sanctions. In 1986, for example, a supermajority in Congress enacted sanctions against the apartheid government of South Africa over President Ronald Reagan's veto. In 1998, many members of Congress were sharply critical of President Bill Clinton's decision to waive provisions of the Iran and Libya Sanctions Act that had targeted foreign companies investing in oil and gas projects in Iran. Clinton vetoed a new Iran sanctions bill that Congress passed shortly after he issued the waivers. President Barack Obama regularly disagreed with Congress over Iran sanctions between 2010 and 2015, and Congress passed a number of Iran sanctions laws accommodating some but disregarding other concerns of the Obama administration. Indeed,

a study of 104 sanctions bills introduced in Congress between 1983 and 2014 found that the executive branch expressed at least some opposition to at least 76 of them.²

This longstanding tension between Congress and the executive branch about sanctions reflects a natural friction, given that the Constitution splits authority over foreign policy between the two. Over the years, Congress has been instrumental in enacting sanctions that serve policies with widespread public support, such as the sanctions on apartheid South Africa, the sanctions on Iran's oil exports in late 2011, and the 2017 U.S. sanctions on Russia. But a too-tight congressional straightjacket on the executive branch in order to constrain approach to the implementation of sanctions bears the risk of turning one of America's few tools of coercive diplomacy into a poor tool to induce change by target countries. The executive branch has long been charged with negotiating with foreign governments on behalf of the United States and then submitting overall agreements to Congress, rather than having to subject every individual piece of foreign policy to Congress for approval. Heavy-handed congressional oversight of sanctions could severely undermine the ability to reward policy change by, for example, Russia, Venezuela, or North Korea with a reduction or removal of sanctions and could thereby undermine the power of sanctions to incentivize behavioral change.

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This risk may be heightened by Congress's recent effort to play an expanded role in overseeing ongoing implementation of sanctions. This trend was epitomized by provisions in the aggressive 2017 Countering America's Adversaries Through Sanctions Act (CAATSA) that require the president to submit any significant reduction in U.S. sanctions on Russia, including simply removing an individual person or company from U.S. Russia sanctions lists, to Congress for review before the administration can implement the proposed action. Congress also gave itself a new level of involvement in imposing sanctions in the 2016 Global Magnitsky Act. The statute targets corruption and human rights abuses and essentially lets congressional committees nominate specific individuals and companies for sanctions. This development raises important questions about the appropriate role for Congress in identifying specific



The role of Congress in managing sanctions is not a recent development, but has expanded greatly in recent years, leading to stark disagreements with presidents of both parties on implementation. (Win McNamee/Getty Images)

sanctions targets, as opposed to setting general policy and parameters.

Going forward, Congress should be restrained in its attempts to manage sanctions implementation. The executive branch requires flexibility and discretion in implementing sanctions to ensure that it can adapt to changing circumstances, such as when the government or a political figure targeted by sanctions changes its policy. Put another way: the executive branch also requires a degree of flexibility in the lifting of sanctions to ensure that sanctions can be used as a carrot in diplomatic negotiations. Traditional congressional oversight of the executive branch's sanctions implementation through hearings, the nominations process, and other tools is always appropriate. However, Congress should move cautiously in further expanding its role in the implementation of sanctions. Instead, it should focus on its longstanding role in helping establish when and where the United States deploys sanctions, and whether such decisions advance U.S. national interests.

Trend 3: An Increase in Unintended Consequences

The last several years have seen an expansion in the type and complexity of U.S. sanctions. In 2014 the United States established a new kind of sanctions designation by imposing sanctions on Russia, the targets of which are compiled in the Sectoral Sanctions Identification List

(SSI List). This new designation prohibits only certain types of financial activity with sanctioned companies, rather than imposing a general restriction on all business. In 2017, the U.S. administration expanded this transaction-specific type of sanction to Venezuela's government. The United States has also created other new and innovative sanctions designations in recent years, including the 2018 Section 231 sanctions targeting Russian defense-sector companies and the State Department's Cuba Restricted List. In addition to developing these new forms of financial sanctions, the United States has issued increasingly complex sanctions executive orders, licenses, and regulations to target, along with the traditional asset freeze and travel ban, a more diverse range of global industries. U.S. sanctions regulators have also increased their direct engagement with and focus on non-U.S. non-financial companies, such as energy and high-tech companies.

The expanding complexity of U.S. sanctions statecraft has allowed the U.S. government to more precisely target financial measures at criminal actors and security threats, and to narrowly target large global companies and enterprises where more sweeping sanctions could have yielded unacceptable collateral costs. Invariably, the greater pliability and subtlety of new sanctions authorities serves the U.S. policy interest, allowing for calibrated economic effects. However, this development has also raised a growing number of complex new challenges for the corporate compliance community. It has accelerated a new era of significant increases in compliance costs

across many businesses and has prompted many companies to weigh extremely carefully the risks of operating in jurisdictions that are "semi-sanctioned," where sanctions risk is elevated but of uncertain and changing scope.

America's growing use of sanctions and its greater willingness to deploy them against economically significant targets have also triggered growing numbers of unintended consequences. For example, the April 2018 sanctions against Russian oligarch Deripaska and the companies he controls, including aluminum giant RUSAL, caused global aluminum prices to soar by more than 20 percent. Subsequently, the Treasury Department issued licenses allowing continued business with RUSAL and, in late 2018, announced plans to de-sanction RUSAL and other Deripaska-linked companies after Deripaska divested a portion of his shareholdings and ceded operational control of the companies. Similarly, Trump administration announcements in mid-2018 suggesting that Iran's oil customers would need to reduce their purchases of Iranian oil to zero by late 2018 briefly caused oil prices to spike before the administration softened its message, signaling preparedness to moderate the rate of decline through the granting of significant reduction exemptions.

Policymakers should invest greater resources in creating a dedicated and permanent sophisticated analytic capacity to estimate and weigh the intended and unintended impacts of sanctions.

Continued intensive use of the diverse U.S. sanctions authorities in the future is likely to increase the challenges of complexity for U.S. companies and the risks of unintended consequences for companies, foreign partners, and U.S. policymakers. For example, several current proposals to increase sanctions on the Russian energy sector, if not carefully targeted, could cause increases in global energy prices and have significant adverse impacts on major U.S. and European firms. Similarly, increased U.S. use of economic statecraft measures against China, whether due to disagreements over Iran or North Korea or to growing direct U.S.-Chinese tensions, could have significant implications for global financial markets and supply chains.

If the United States is going to continue using sanctions as a preminent foreign policy tool, both executive



The imposition of sanctions on Russian oligarch Oleg Deripaska (right) and his corporations played havoc with global aluminum markets, underscoring how disruptive U.S. sanctions can be. (Wang Zhao-Pool/Getty Images)

branch and congressional policymakers should invest greater resources in creating a dedicated and permanent sophisticated analytic capacity to estimate and weigh the intended and unintended impacts of sanctions before their implementation. The executive branch should also consider developing greater subject matter expertise in non-financial sectors, particularly energy and technology, given the increasing impacts of U.S. sanctions on those areas of business. Greater U.S. government subject matter expertise will enable policymakers both to better target sanctions toward achieving desired outcomes and to avoid unintended collateral impacts. Finally, the U.S. Treasury Department, the primary sanctions implementation agency, should consider creating a more structured forum for engagement with the private sector, such as a formal advisory committee, to improve dialogue with the private sector regarding compliance matters and sanctions effects.

Trend 4: Growing Foreign Government Efforts to Circumvent the U.S. Financial System and U.S. Sanctions

Foreign entities and individuals have long sought to evade American sanctions by keeping transactions outside of U.S. jurisdiction and conducting transactions through currencies other than the dollar. Foreign political leaders have complained about the U.S. dollar's dominance since its early days as the unrivaled global currency. It was in the 1960s that then-French Finance Minister Valéry Giscard d'Estaing coined the phrase "exorbitant privilege" while French President Charles de Gaulle complained about dollar dominance and withdrew France's U.S. dollar reserves in gold and repatriated them to France. Despite these periodic complaints, however, the dollar remains dominant by most measures: it accounts for roughly 60 percent of global sovereign reserves, approximately 40 percent of cross-border payments, and likely over half of total global debt.

In addition to dollar dominance, U.S. financial institutions and the U.S. branches of foreign financial institutions play an outsized role in the global financial system. As a result, foreign banks are generally loath to risk their access to the U.S. financial system, even if only a small share of their business is denominated in dollars or directly touches the United States.

The twin dominance of the dollar and the U.S. financial system reflects the numerous advantages the U.S. dollar and financial system offer companies around the



The Trump administration's withdrawal from the Iran nuclear deal, and the ensuing reimposition of the full suite of U.S. sanctions on Iran, imperils European, Chinese, and other countries' companies doing business in the country. (Chip Somodevilla/Getty Images)

world that engage in global trade and finance. These include liquidity, stability, convertibility, and ease of use. However, the last several years have seen a substantial increase in foreign government initiatives to develop payment channels and other financial networks that do not touch the United States. Russia, for example, has established a financial messaging system that it bills as an alternative to the Belgium-based, globally dominant payment messaging system Society for Worldwide Interbank Financial Telecommunication (SWIFT), seeking participation by non-Russian companies in its new payment system. China is also investing in establishing cross-border payments systems and in increasing the role of the renminbi in international trade. In one example, China launched a renminbi-denominated crude contract in 2017 to broaden use of its currency for this crucial economic input. The European Union has also announced the development of a special purpose vehicle (SPV) to allow payments related to trade with Iran despite U.S. sanctions.

All of these initiatives will face substantial challenges in achieving scale, primarily because at present they offer inferior alternatives to a broadly accepted and stable financial architecture and there is no overwhelming economic demand (as opposed to political demand) for their development. The renminbi has been the currency of only about 2 percent of total global trade in recent years, despite China's stated interest in internationalizing the currency for certain purposes. The European

Union is finding that few, if any, large European companies want to use its SPV if doing so will expose them to U.S. sanctions. Where small European companies do manage to maintain limited economic activity with Iran, they already have banking relationships or netting arrangements and have no meaningful incentive to switch to the SPV.

Alternatives to the dollar or U.S.-dominated cross-border payments system do not need to displace the dollar to begin undermining U.S. coercive economic leverage.

But despite the challenges these efforts face, U.S. policymakers should monitor the progress of such financial initiatives and should not underestimate the potential risks, particularly over the longer term. China's rapid expansion of its Belt and Road Initiative and its recent move toward paying for some oil imports in renminbi could help the country accelerate international adoption of its currency. Sustained political and economic investments by European states and other governments in developing alternative payment channels or regional currency trading blocks that do not depend on the dollar may succeed in the long term. In a world of secondary sanctions, the real question is whether third-country companies and banks, in India for example, can divorce themselves from the dollar and dependence on the U.S. financial system so that they will be inclined to participate in these alternatives—and many will be reluctant to do so. But ultimately, alternatives to the dollar or U.S.-dominated cross-border payments system do not need to displace the dollar to begin undermining U.S. coercive economic leverage. Rather, they need only to reach a significant enough scale that smaller and mid-size economies that tend to be targets of U.S. sanctions, such as Iran and North Korea, can conduct sufficient trade using alternatives to blunt the impact of such sanctions.

Trend 5: Increasingly Important Role of Technology

Finally, rapidly moving technological changes are likely to affect the strength and utility of U.S. sanctions in the coming years.

Several technological developments have the potential to enhance sanctions enforcement efforts. For example,

the rapid expansion of publicly available satellite imaging capabilities over the past five years has already facilitated improved tracking of Iranian oil shipments and detection of illicit North Korean imports of oil and exports of coal and other natural resources regulated by U.N. sanctions. Additionally, banks are able to use new software to better integrate financial data and public, non-financial data relevant to customers or transaction patterns. New, sophisticated analytic tools, such as artificial intelligence and machine learning, are beginning to make it easier for banks and other large companies to identify and stop suspicious financial patterns linked to money laundering and sanctions evasion.

These analytic tools are also being deployed to create greater publicly available information about the front companies that sanctioned actors use and to improve reporting of types of evasion that both government enforcement officials and private sector companies should watch. The nonprofit research group Center for Advanced Defense Studies (C4ADS), for example, has applied analytic tools to scour public corporate records databases and integrate them with other sources of public information to identify and publish reports on North Korean sanctions evasion techniques as well as networks that have helped sanctioned entities continue to do business. Further advances in technology will strengthen these analytical tools, particularly if government officials are able to break down current barriers to information sharing by the private sector, among both banks inside the United States and those in the United States and foreign jurisdictions.

Other technological changes, however, have the potential to facilitate sanctions evasion. Some of the potential evasion techniques are essentially modern-day versions of tried-and-true criminal tactics. North Korea has long engaged in counterfeiting, drug running, and other criminal activities as a way of raising revenue for its dictatorial regime and it has smuggled bulk cash to evade sanctions. Today, North Korea is engaging in cyberattacks to steal cryptocurrencies as well as traditional fiat currencies. It is also using cryptocurrencies to evade sanctions. The uneven nature and sometimes very loose regulation of cryptocurrencies will likely continue to make them attractive to sanctioned actors. For now, however, there is a limit to the scale of their use by sanctions evaders. The volatility of most cryptocurrencies and the challenge and expense involved in anonymously converting them into hard assets or goods may limit the overall scale of cryptocurrency utility in sanctions evasion absent a dramatic expansion in their overall use.

Over the longer term, however, the bigger risk may be technological changes that alter the global financial architecture in ways that have more systemic impacts on U.S. sanctions. For example, over the last several decades the United States has derived significant coercive economic leverage from the primary role that U.S. financial institutions play in clearing global financial transactions. As recent criminal indictments of North Korean entities trying to access the U.S. financial system have shown, it is difficult to engage in trade—even trade that does not involve a U.S. party or U.S. origin goods—without touching the U.S. financial system. Should blockchain-based clearing mechanisms or other new technologies emerge at a scale that can allow transactions to avoid touching U.S. institutions or currency, the United States may find that unilateral financial sanctions lose some of their bite. As a consequence, U.S. sanctions policymakers have a strong interest in ensuring that the United States and U.S. companies lead the development of such new technologies as a way of retaining leverage over the global financial system even if traditional dollar clearing becomes less dominant.

U.S. sanctions policymakers have a strong interest in ensuring that the United States and U.S. companies lead the development of new financial technologies.

Conclusion

The trends highlighted in this report represent powerful determining factors in the future use of sanctions and the likely reach of sanctions as a tool of U.S. statecraft. This report offers insights on when sanctions may confer leverage, and when they may not, going forward. It also sheds light on some of the exogenous factors that will influence the strength and availability of sanctions. These findings should be viewed as lessons for decisionmakers and analysts, and weighed carefully to ensure that the United States preserves an effective tool for confronting some of the most profound threats challenging it and its allies today.

Several recent public articles and reports have raised concerns that the intensive use, or overuse, of sanctions is hastening the demise of this tool of state. Furthermore, several commentators have argued that the aggressive use of sanctions may fundamentally undermine U.S. economic strength, bringing about an array of economic harms far beyond a loss of leverage to exercise sanctions. It is important to carefully consider these issues while also recognizing the enduring economic and financial strengths of the United States. The authors of this report believe that sanctions should and can continue to be a very strong and effective instrument of national power for many years to come. The authors urge a careful and measured approach in the use of sanctions, bearing these competing concerns in mind.

This report should strongly encourage policymakers to dedicate much more substantial economic, legal, and technological resources to tracking and assessing trends relevant to the development and use of sanctions. Its authors also see an important responsibility for the public to hold policy leaders accountable and to contribute to the thinking on this critical policy area as well. The authors hope that the analysis in this brief will help to spur both policymaker and independent analysis on sanctions, and will serve to directly contribute to the strengthening of the U.S. economy and national security.

Endnotes

1. Among others, the task force met with U.S. Treasury Under Secretary for Terrorism and Financial Intelligence Sigal P. Mandelker, former Secretary of the Treasury Jacob J. Lew, Secretary General of the Organization of American States Luis Almagro, House Foreign Affairs Committee Chairman Edward Royce, French Ambassador to the United States Gérard Araud, former German Ambassador to the United States Peter Wittig, and HSBC Chief Legal Officer and former Under Secretary for Terrorism and Financial Intelligence Stuart Levey.
2. Jordan Tama, "So Congress is challenging the president about sanctions? That has a long history," *The Washington Post*, June 16, 2017, https://www.washingtonpost.com/news/monkey-cage/wp/2017/06/16/so-congress-is-challenging-the-president-about-sanctions-that-has-a-long-history/?noredirect=on&utm_term=.5af95d2cb1f0.

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CNAS is located in Washington, and was established in February 2007 by co-founders Kurt M. Campbell and Michèle A. Flournoy.

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