

The Biden Administration's Use, Implementation, and Enforcement of Sanctions

Written Statement of Rachel Alpert, Partner at Jenner & Block LLP, for the House Committee on Foreign Affairs Subcommittee on Oversight and Accountability hearing on "Examining U.S. Sanctions Policy, Implementation, and Enforcement," March 29, 2023

Chairman Mast, Ranking Member Crow, distinguished members of the House Foreign Affairs Oversight and Accountability Subcommittee, thank you for this opportunity to testify before you today on the Biden administration's use, implementation, and enforcement of sanctions. I am an attorney with fifteen years of experience working on issues related to sanctions, foreign assistance, international law, human rights, and national security. I currently co-chair Jenner & Block's National Security, Sanctions, & Export Controls and Human Rights & Global Strategy practice groups.

As I have observed throughout my legal career, sanctions are a critical tool in our foreign policy arsenal, but they are not a silver bullet. Sanctions alone do not end wars, topple dictators, or stop terrorist attacks. As Dr. Richard Haass [wrote](#) in a 1998 Brookings report, and history has supported, "[a]s a rule sanctions need to be less unilateral and more focused on the problem at hand." Specifically, sanctions are most effective when applied multilaterally, within a clear foreign policy and national security framework, and in conjunction with other foreign policy actions. They must be clearly articulated and specifically tailored to the challenge they seek to address, minimizing unintended consequences. And they must be flexible so that they can adjust quickly as behaviors change and challenges evolve.

Sanctions Use Framework

In 2021, the Treasury Department conducted a [sanctions review](#), which set forth a framework for the use of sanctions. It identified five clear objectives to strengthen and modernize US sanctions, echoing many of the themes that Dr. Haass espoused in his 1998 article:

1. Adopting a structured policy framework that links sanctions to a clear policy objective;
2. Incorporating multilateral coordination, where possible;
3. Calibrating sanctions to mitigate unintended economic, political, and humanitarian impact;
4. Ensuring sanctions are easily understood, enforceable, and adaptable; and
5. Investing in modernizing Treasury's sanctions technology, workforce, and infrastructure.

As the Biden administration's subsequent sanctions actions have evidenced, this framework has guided the execution and enforcement of sanctions implemented in response to a range of circumstances, from Burma to Belarus, Iran to Russia, human rights abusers to terrorists. Each of these situations is unique, requiring a different mix of foreign policy and national security tools.

Sanctions Implementation

1. Background: Tools of Foreign Policy and Sanctions

When assessing sanctions implementation, it is necessary to assess the overarching foreign policy goals and the range of foreign policy levers that have been applied to achieve those goals. These non-sanctions specific levers include, among others, diplomatic engagement and severing relations, negotiation, public diplomacy, the application or removal of trade preferences, the provision or restriction of foreign assistance, export controls, import restrictions, and the threat of force. Determining how to leverage and then explain the use of each of these tools, in conjunction with the targeting and application of sanctions, is key to an effective foreign policy.

Sanctions, too, come in a number of different forms, allowing for nuanced application to address a variety of situations. These include: (1) **Visa sanctions**, prohibiting designated persons from entering the United States, and sometimes providing for the “naming and shaming” of sanctioned persons; (2) **Non-blocking sanctions against specified individuals or entities**, which take a variety of forms, such as debt or equity restrictions, correspondent banking prohibitions, or limits on exports or export assistance, among other things; (3) **Sanctions designation policies** or so-called “secondary sanctions,” which the US applies to deter certain behaviors by non-US actors in third countries; (4) **Blocking Sanctions against specific individuals and entities**, which block the property and property interests of designated persons, as well as their 50% or more, directly or indirectly-owned subsidiaries; (5) **Designation as a Foreign Terrorist Organization**, which makes it unlawful for a person subject to US jurisdiction to knowingly provide “material support or resources” to the organization and also imposes visa limitations; and (6) **Territory-wide embargos**, as currently applied to Cuba, Iran, North Korea, Syria, Crimea, and the so-called Donetsk and Luhansk People’s Republics. The bluntest form of sanctions, embargos generally consist of prohibitions on imports, exports, services, and investments in prohibited territories.

2. Biden Administration Implementation

The Biden administration has applied a variety of these foreign policy and sanctions tools, often multilaterally, to address numerous international challenges since 2021. There is no set framework for assessing sanctions implementation. As a sanctions advisor and practitioner, however, I have observed the following elements to be important to how companies and organizations comply with sanctions and how sanctions may impact the trajectory of a situation: (1) the communications associated with sanctions actions; (2) how sanctions are situated in the suite of foreign policy tools in use; (3) how sanctions evolve as a situation progresses; (4) the degree of multilateral engagement and coordination to increase sanctions reach and efficacy; and (5) reactions to any unforeseen or unintended consequences of sanctions. This section assesses representative Biden administration sanctions responses with attention to these elements.

a. Burma Coup Response

Description: On February 11, 2021, in his administration’s first sanctions action, President Biden [announced](#) multilateral sanctions in response to the **coup in Burma**. With the sanctions, President Biden announced export controls, foreign assistance for the people of Burma, and assistance

restrictions on Burma's government. This announcement situated the sanctions actions among the various foreign policy tools in use, and multiple subsequent sanctions actions expanded the scope of sanctions and export controls to Burma's broader military-industrial complex. In conjunction with these actions, OFAC also issued general licenses to allow [official business of the US Government](#), including by US Government grantees and contractors, and [NGO activities](#) in support of humanitarian projects, democracy-building, education, non-commercial development, and environmental projects, to allow for the continuation of important work in these areas despite the increasingly restrictive operating environment. The Biden administration has now also issued two advisories – a general [Burma Business Advisory](#) in January 2022, and a recent alert on [Burma Jet Fuel](#), to provide further guidance to businesses about risks and compliance best practices.

Assessment: These Burma-related actions have not achieved the ultimate goal of promoting free and fair elections in Burma. They have, however, sent a clear message that the United States and broader international community will not sit idle in the face of such oppression. In addition, the Biden administration has situated these sanctions actions among a variety of foreign policy levers, including export controls and carrots and sticks of foreign assistance. Since the coup, the administration has also expanded the scope and application of sanctions to increase pressure on and remove sources of support from the military regime. Nor has the United States implemented these sanctions alone. The United States has coordinated with allies such as Canada and the UK to impose coordinated sanctions and has also engaged with ASEAN and in the UN Security Council, which passed [UNSCR 2669](#) in December 2022, demanding an end to violence in the country. Finally, the administration has issued sanctions authorizations necessary to allow for the continued implementation of targeted assistance – underscoring that barriers to assistance are not a result of sanctions, but rather a result of Burma's government-imposed impediments.

b. Russia Sanctions

Description: February 2022 marked the start of **Russia's illegal war on Ukraine**. President Biden, in close coordination with allies, responded with swift, strong sanctions and export control actions against Russian financial institutions, oligarchs and other supporters of the Russian government, and sources of support for Russia's military-industrial complex. Despite the flagrant violations of international law that this invasion represented, the only territory-wide sanctions that the administration imposed were on the occupied regions of Donetsk and Luhansk. This has enabled a considered, ratcheting up of sanctions as the war has continued and evolved, allowing the United States to purposefully expand sanctions on Russia and beyond to target those identified as supporting the war and its perpetrators. It has also allowed for the development of an unprecedented multilateral coalition of over 30 countries coordinating to impose sanctions and export controls on Russia.

At the outset of the war, it quickly became clear that the UN Security Council, which is the typical mechanism for global sanctions coordination, would not be an available avenue in light of Russia's veto on the council. Nonetheless, the international community – in part [led by the United States](#) – rallied in support of Ukraine, [passing](#) a [Uniting for Peace](#) resolution in the UN General Assembly by a vote of 141 in favor to 5 against (Belarus, DPRK, Eritrea, Russia, and Syria), with 35 abstentions. Among other things, this resolution provided an international legal basis on which countries could rely to justify their own sanctions actions against Russia, despite the lack of a UN

Security Council Resolution, which is a pre-requisite in some countries for the imposition of sanctions. This coordinated, multilateral sanctions effort has led to a much more effective implementation of sanctions against Russia than would be the case through unilateral sanctions actions, effectively removing avenues for diversion and sanctions evasion.

Clear articulation of what these sanctions against Russia do – and do not – prohibit has been a critical element of the overarching foreign policy response. As I witnessed first-hand during the 2022 UN Forum on Business and Human Rights, Russia takes every opportunity to spread disinformation about the war in general and the impact of sanctions in particular. The United States, among other countries, has [sought to debunk](#) this disinformation by publicly identifying and countering inaccurate narratives about sanctions and their impacts. The Biden administration has also sought to mitigate the unintended consequences of sanctions via a number of general licenses, such as [general license 6C](#), which allows for transactions related to agricultural commodities, medicine, medical devices and associated parts and software, the COVID-19 pandemic, and clinical trials.

Nor has the Biden administration implemented sanctions in a foreign policy vacuum. In conjunction with numerous and coordinated sanctions actions, the United States and international community have also supported Ukraine in its fight against Russia via billions of dollars in [military and security assistance](#), [humanitarian assistance](#), [loan guarantees](#), and [direct budget support](#). Non-governmental sources have also imposed pressures on Russia and those remaining in the country. Public reporting on companies in Russia through such avenues as the [Yale CELI List](#) of Companies Leaving and Staying in Russia have worked in combination with sanctions and export controls to impact business decisions to depart Russia. Russia has also received non-governmental sanctions from international sports federations, such as [FIFA](#) and the [International Olympic Committee](#), which have suspended Russia's participation in international competition or refused to recognize Russia-organized delegations.

The Biden administration has also taken action against those outside of Russia that support its war effort. These actions include significant, multilateral sanctions and export controls against Belarus for its support for Russia as well as sanctions [designations](#) of those associated with the supply of Iranian unmanned aerial vehicles (UAVs) to Russia.

Assessment: While history will ultimately judge the full impact of this suite of sanctions and foreign policy actions, it is evident that these efforts have impacted the trajectory of Russia's war and Ukraine's defense, although this has not come without significant cost. Clear articulation of sanctions, their targets, goals, and their reach, have been important to explaining the novel scope of these sanctions and to counter Russia's disinformation. The administration has applied sanctions with other foreign policy tools to counter Putin and disrupt the supply channels for Russia's military and its supporters while bolstering Ukraine. It has done so in a targeted way that is specifically designed to disrupt Putin and the war effort. This purposeful approach to sanctions in conjunction with persistent diplomatic efforts have created an unprecedented coalition of countries imposing sanctions outside of the framework of the United Nations Security Council. The degree and scope of these sanctions, however, as well as Russia's integration in the world economy, have also led to significant impacts on the world economy. While sanctions have been calibrated in part

to minimize these impacts, they are unavoidable when such significant sanctions actions occur against a connected member of the global economy and international supply chains.

c. Sanctions Carveouts and Authorizations

As noted above, effective sanctions implementation also requires clear line-drawing and authorizations to allow the continuation of activities that are in the US foreign policy interest. When authorizations are not clear or clearly communicated in heavily sanctioned environments, there is a chilling effect on desired activities – both by those carrying them out and by third party service providers and financial institutions needed to implement them. Examples of the importance of such authorizations during the Biden administration have arisen in the Russia sanctions context and the humanitarian assistance context.

In **Russia**, over the past year, the increasing number of sanctioned actors in the country and the increasing level of applicable export controls has meant that even a company’s decision to close out business operations comes with the potential for significant regulatory risk. The Biden administration has sought to help businesses navigate these risks by explicitly authorizing the wind down of transactions involving specified blocked entities (e.g., [GL 60](#)) and by excluding from the scope of service-related sanctions prohibitions “any service in connection with the wind down or divestiture of an entity located in the Russian Federation that is not owned or controlled, directly or indirectly, by a Russian person.” (See e.g., September 15, 2022, [Determination](#)). In other words, it is okay for US companies to provide IT or management consulting related services, among others, in the context of the divestiture of its Russia-based subsidiary. This does not mean that winding down a business in Russia is without challenges. Among the myriad issues inherent in closing business operations in Russia, a company must still navigate around sanctioned actors and must also consider the export control ramifications associated with transferring its inventory and software to a different end user. The Russian government, too, continues to add barriers to those seeking to leave through such actions as the imposition of exit taxes. It therefore remains important for US sanctions to continue to evolve and adjust as the situation in Russia changes. The more explicit, public guidance the administration can provide about what is and is not allowed in the context of a wind-down or divestiture, the easier it will be for businesses to comply with sanctions while making and implementing exit-related actions quickly amidst the challenging and evolving circumstances in Russia.

Implementation of the **Russia oil price cap** is another area in which the administration has provided guidance and reassurance to business in a way that might be replicated in other sanctions programs. Specifically, OFAC has [implemented](#) a “safe harbor” from enforcement for service providers that comply in good faith with a defined recordkeeping and attestation process intended to ensure that each party in the Russian oil or petroleum supply chain has purchased oil or petroleum at or below the cap. This “shield” from standard strict liability helps to avoid over-compliance by second or third tier service providers that could lead to a refusal to deal at all with Russian oil or petroleum and undermine the policy objective of continuing the supply of Russian oil but requiring that it remain at or below the cap. It also provides a useful explanation of OFAC’s due diligence expectations, thereby facilitating and increasing effective compliance practices.

The Biden administration's implementation of **humanitarian and associated general licenses** across sanctions programs represents another area of important communication and line-drawing. It has long been US Government policy – regardless of the administration – to authorize activities in furtherance of US government programs and specified NGO activities in sanctioned environments (see, e.g., [Yemen](#) (now revoked) and [Venezuela](#)). Such licenses allow for implementation of critical lifesaving and developmental activities that the US government assesses to be in its foreign policy interests, including disaster relief, democracy building, education, non-commercial development projects, and environmental protection. Previously, however, at times of crisis, such as when the Taliban assumed de facto control of the Afghanistan government, there was a delay prior to the US government's issuance of the standard NGO authorizations, leading to a period of uncertainty among humanitarian assistance providers seeking to provide life-saving and humanitarian activities. (See generally, "[Aligning Sanctions Laws with Humanitarian Principles: Pre-authorizing Aid in Afghanistan and Other Crises](#)," *Just Security* (Sept. 3, 2021)).

Applying lessons learned from Afghanistan and prior humanitarian crises, in December 2022, under US leadership, the United Nations issued [UN Security Council Resolution 2664](#), which provides for an exception from UN sanctions programs to allow for "the timely delivery of humanitarian assistance or to support other activities that support basic human needs..." OFAC subsequently implemented this resolution, consistent with OFAC's past practices, by issuing [authorizations](#) across sanctions programs to allow for: (1) the official business of the US government (including grantees and contractors); (2) the official business of certain international organizations and entities, such as the United Nations or the International Red Cross; (3) certain humanitarian transactions in support of nongovernmental organizations' activities; and (4) the provision of agricultural commodities, medicine, and medical devices (plus associated replacement parts and software updates) for personal, non-commercial use.

These authorizations will now allow for a more **orderly assistance response** the next time a sanctioned actor assumes de facto governmental control over an area experiencing humanitarian need. These general licenses enable organizations on the ground at such times to focus on supporting the safety and security of their employees, while also ensuring appropriate implementation of sanctions-related screening and due diligence, without worrying that the continued payment of rents and utility bills might cause them to run afoul of sanctions. The international implementation of analogous exemptions through UN Security Council Resolution 2664 will mean that other donor governments around the world will implement similar exceptions in their own sanctions laws, allowing for greater consistency and coordination, and facilitating compliance for those receiving funding from multiple jurisdictions.

The implementation of these clear humanitarian authorizations is also important to **counter anti-sanctions narratives**, as they underscore that United States economic sanctions do not prevent the provision of critical humanitarian and developmental assistance. Such clear communication turns the focus instead to actors who are preventing the flow of aid to their own countries because of barriers they create and corrupt practices. While some regulatory impediments to the delivery of assistance remain (see, e.g., "[Breaking Down Barriers to Emergency Earthquake Aid in Syria](#)," *Just Security* (March 16, 2023)), clarifying that US economic sanctions are not one of them creates an effective foil to counter disinformation from repressive leaders.

d. Legislative and Policy Proposals

As the foregoing discussion shows, **flexibility** is a critical component of effective sanctions calibration. It is therefore critical that the President has the power to impose and tailor sanctions to maximize their impacts, efficacy, and facilitate compliance. Such executive power derives from statutes that allow for both the targeting of sanctioned actors and the authorization of desired activities. While the [International Emergency Economic Powers Act](#) does provide such executive flexibilities, other sanctions-related authorities do not, thereby limiting the utility of sanctions as a tool of foreign policy. In particular, allowing for greater executive discretion in implementation of the Material Support Statute (18 USC 2339A and 2339B) and the statutes underpinning the Cuba Embargo, such as the [Cuban Liberty and Democratic Solidarity \(LIBERTAD\) Act](#), and the [Trade Sanctions Reform and Export Enhancement Act](#), would increase the ability of the United States to react more quickly, precisely, and effectively to the rapid evolution of foreign policy challenges when they arise.

The US government also needs **sufficient tools and resources** to address questions, provide guidance, and efficiently review licensing applications, to maximize the ability of businesses, organizations, and individuals to comply with quickly evolving sanctions. With sanctions come questions and gray areas, regardless of the level of associated communications. If businesses know that they can expect quick responses to their sanctions-related questions and license applications, they will be more likely to seek guidance and authorization when necessary, increasing their ability and incentive to comply with US sanctions actions. This means additional sanctions implementation resources for both the State and Treasury Departments, commensurate with the significant increases in the use of sanctions over recent years.

It is similarly important for our allies, some of whom are implementing sanctions programs under domestic authorities for the first time, to have the tools and resources necessary to address questions and issue authorizations within their own jurisdictions. The United States has a long history of implementing and enforcing sanctions under numerous, diverse sanctions programs. We now need to **continue expanding our sanctions diplomacy** and ensure that there is appropriate funding for the United States to provide technical assistance to other countries so that multilateral sanctions have maximum utility and efficacy. We need our allies to develop strong and effective sanctions regimes that encourage businesses operating in their jurisdictions to comply and to seek guidance and authorization when sanctions are unclear or prohibitive. This will lead to implementation of effective, multilateral sanctions regimes in a way that does not unnecessarily and negatively hinder operation of global business.

Finally, we must provide **resources towards sanctions compliance** for US government award recipients. When US government implementers operate in heavily sanctioned countries like Syria and Afghanistan, sanctions and export control compliance are a critical element of their program operations. It is important to ensure that there is funding for the costs associated with the implementation of a strong compliance program in the appropriations and awards issued for programming in any heavily sanctioned environment.

Sanctions Enforcement

As with sanctions implementation, the Biden administration's approach to sanctions enforcement has exhibited unprecedented levels of interagency and multilateral coordination. These coordination efforts and enforcement actions have been well-publicized, maximizing their impact.

At an interagency level, **Task Force KleptoCapture**, [announced](#) on March 2, 2022, enforces the sanctions and export controls that the United States has levied against Russia. Such interagency enforcement mechanisms are key elements of an effective sanctions strategy, and Deputy Attorney General Lisa Monaco's recent [announcement](#) of 25 new sanctions prosecutors demonstrates continuing attention to enforcement. Despite these new prosecutor positions, there will always be limitations on the availability of enforcement resources. It is therefore important to develop and implement a clear policy framework to drive and guide sanctions enforcement decisions – both with respect to Russia-related sanctions and beyond.

At a multilateral level, on March 17, 2022, the United States, Canada, Australia, the European Union, France, Germany, Italy, Japan, and the United Kingdom launched the **Russian Elites, Proxies, and Oligarchs (REPO) Task Force**. The REPO Task Force has now blocked or frozen [over \\$58 billion](#) in sanctioned Russians' assets and issued a [Global Advisory on Russian Sanctions Evasion](#). Such coordination among numerous countries around the world diminishes avenues for sanctions evasion and increases global enforcement efforts. The diplomatic challenge remains now to expand adoption of sanctions against Russia beyond these core allies to further remove avenues for avoidance, and to apply a similarly multilateral approach to the application and enforcement of sanctions in other sanctions programs.

Even with multilateral efforts, governments cannot enforce sanctions alone. It is important for sanctions authorities to partner with businesses, organizations, and financial institutions to ensure effective sanctions execution. This requires continuing to provide clear and context-specific guidance about expectations for sanctions compliance programs by continuing to develop and refine compliance guidance, business advisories, and in some circumstances, safe harbors. It also means engaging frequently and directly with businesses, organizations, and financial institutions, as Deputy Treasury Secretary Adeyemo has done by hosting sanctions roundtables, to understand the compliance challenges they face and flag areas of government and enforcement concern.

Conclusion

Ultimately, US sanctions are only as strong as our ability to define, explain, implement, and enforce them. By adhering to the sanctions review proposals, the Biden administration has developed an effective framework in which to consider and apply sanctions. With the breadth of global challenges ahead, it is more important than ever to define and situate sanctions decision-making and execution within a clear foreign policy context. This means explaining the specific goals of sanctions along with other tools of foreign policy to be used to address a given situation and identifying clear, incremental goals and metrics for success to evaluate the impact and efficacy of specific sanctions actions. Such a considered approach will allow for further development and refinement of sanctions as an effective tool of US foreign policy.