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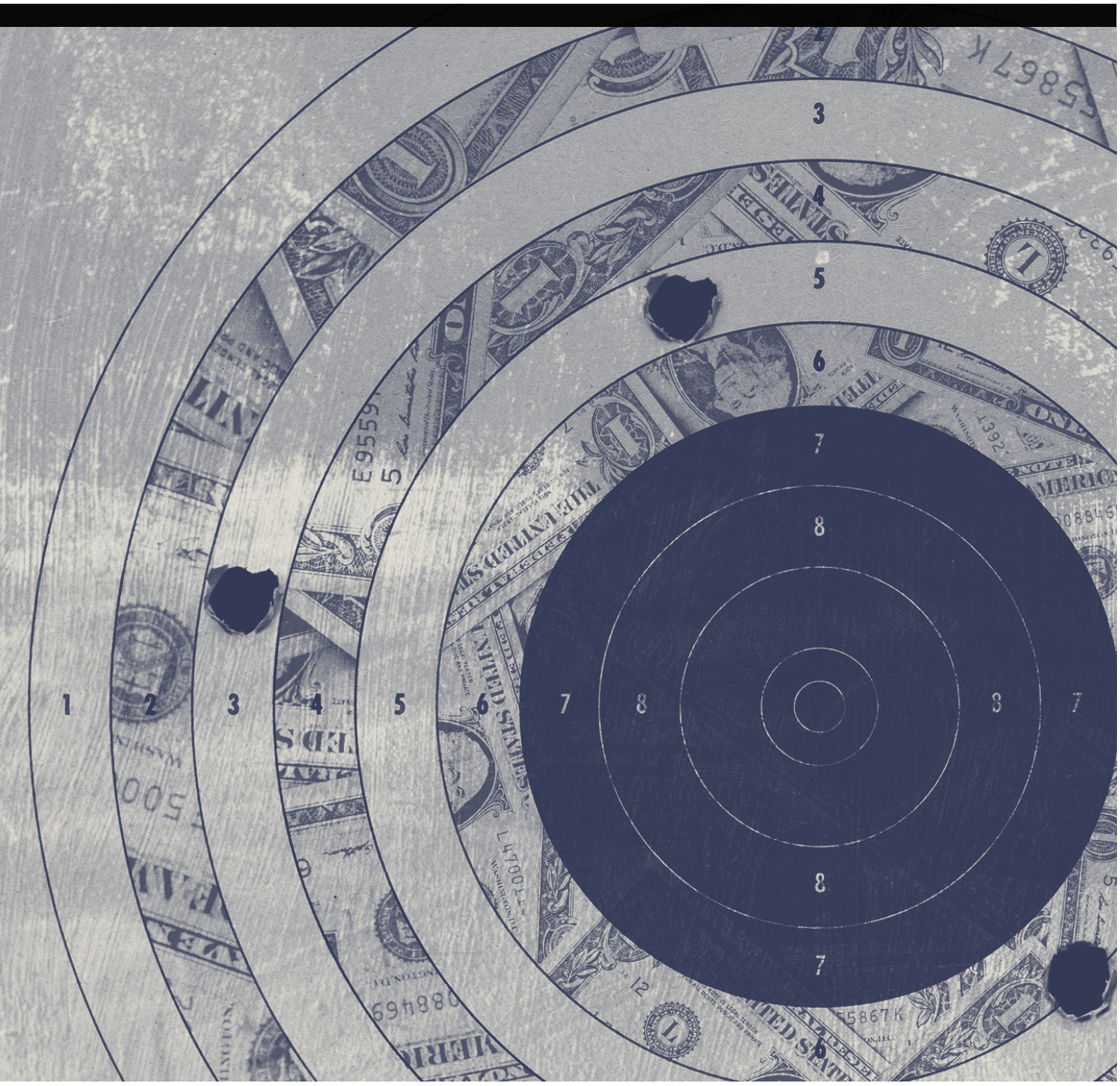
Strengthening the Economic Arsenal

Bolstering the Deterrent and Signaling Effects of Sanctions

Elizabeth Rosenberg and Jordan Tama
Foreword by David S. Cohen



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About the Energy, Economics & Security Program

The Energy, Economics, and Security Program analyzes the changing global energy and economic landscape and its national security implications. From the shifting geopolitics of energy to tools of economic statecraft, such as trade policy and sanctions, to security concerns tied to a changing natural environment, the program develops strategies to help policymakers understand, anticipate, and respond. The program draws from the diverse expertise and backgrounds of its team and leverages other CNAS experts' strengths in regional knowledge, defense, and foreign policy to inform conversations in the nexus of energy markets, industry, and U.S. national security and economic policy.

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STRENGTHENING THE ECONOMIC ARSENAL

Bolstering the Deterrent and Signaling Effects of Sanctions

Foreword

David S. Cohen

Sanctions occupy a strange place in U.S. national security. For many years, they were derided as mostly ineffective. The received wisdom was that sanctions generally did not work, and critics would point—with some justification—to the Cuba trade embargo as the perfect example of a failed sanctions policy. As result, for many years sanctions were used somewhat sparingly, albeit not sparingly enough for the critics.

But then things changed, and quite dramatically so. The advent of targeted financial sanctions, particularly focused on terrorist financing, led the way. These restrictions focused on severing the financial lifeline that terrorist groups required to plan, organize, and execute their attacks. Implemented aggressively after the al Qaeda terrorist attacks in September 2001, these sanctions have been credited—again, with some justification—for helping to prevent al Qaeda and other terrorist organizations from attacking again in the United States.

At the same, the United States, led by the Department of the Treasury, deployed targeted financial sanctions to manage an ever-broader array of security threats, perhaps most effectively to impede Iran's development of its nuclear program. Like the measures targeting terrorist financing, these had a particularly acute impact on international financial institutions, which quickly came to understand that it was in their best interest to prevent not only terrorist financiers, but also those supplying Iran's nuclear program, from making use of their services. When these targeted financial sanctions were paired with measures designed to isolate Iran from the international financial system and prevent Iran from monetizing its oil, the Iranian regime came to the table to negotiate on its nuclear program. Whether one believes that the Joint Comprehensive Plan of Action reached in 2015 was a good or bad deal (I, for one, believe it was a very good deal), almost everyone agrees that the combination of targeted and broad-based sanctions created crucial leverage in the negotiations.

And this led us to today's view of sanctions, which is an almost complete reversal from the received wisdom of a generation ago. As Elizabeth Rosenberg and Jordan Tama note in this timely and valuable paper, "economic sanctions have become the tool of choice for U.S. policymakers to influence international affairs." Far from being derided as ineffective, sanctions now seem to be viewed as capable of delivering success on national security problems as diverse as malicious cyber activity, election interference, trade in conflict diamonds, and bribery and corruption. Indeed, the repeated invocation by the Trump administration of "maximum pressure" to describe its sanctions strategy involving Iran, North Korea, and Venezuela suggests a view that more sanctions invariably yield more success.

But this view of sanctions—as a magic elixir that can cure any foreign policy ill, particularly if applied copiously—is as mistaken as the view that sanctions never work. Such measures are not a universally effective tool of foreign policy. They are never effective on their own, and for many of the national security problems we confront as a country, sanctions are not particularly well suited to the task.[1]

A realistic view of when sanctions are effective and, even more important, how to make them more effective, is sorely needed. This paper makes a significant contribution toward that effort.

Rosenberg and Tama highlight the importance of credibility and calibration in the application of sanctions, clear communication to the regulated community, and deterrence-based enforcement. In so doing, they provide a very useful and sensible roadmap for policymakers and sanctions administrators to follow when considering whether, and in what way, to use sanctions to advance U.S. foreign policy goals. If measures such as these are employed more sensibly, they will be more effective; and if they are more effective, sanctions ultimately may come to be viewed in their proper place in our national security tool box – as neither ineffectual nor omnipotent, but powerful complements to other tools when used in the right way against the right targets.

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Executive Summary

Economic sanctions have become the tool of choice for U.S. policymakers to influence international affairs. On issues ranging from nuclear nonproliferation to human rights, the United States typically imposes sanctions with the goal of inducing a government to change its behavior. Yet sanctions often have more potential to deter unwanted actions than to compel policy reversals, and the greatest impact of sanctions sometimes involves the signals they convey about likely future U.S. steps.

Maximizing the overall effectiveness of U.S. economic pressure therefore requires concerted efforts by policymakers in the executive branch and Congress to make sanctions more effective instruments of deterrence and signaling. Doing this will also have positive knock-on effects, helping to limit the unintentional escalation of international competition and preserve the utility of sanctions as a vehicle for addressing security challenges and protecting universal norms.

This report highlights several areas for action by U.S. policymakers:

Make U.S. sanctions-removal assurances more credible: U.S. offers to lift sanctions on a country if it makes certain concessions send an effective signal only if the United States has a track record of backing up its commitments. In recent years, this signal has been severely weakened by U.S. failures to follow through on some significant sanctions-removal agreements, notably with Iran and Cuba.

- Congress and the president should seek, to the greatest extent possible, to uphold diplomatic agreements that involve the lifting of U.S. sanctions in return for concessions by the target of the measures, providing the target has complied with the agreement.
- Treasury and State Department officials should more clearly delineate a credible path for delisting every sanctions designation, and should consult closely with congressional leaders when negotiating with a target for delisting.
- Congress should mandate analyses of the effects and effectiveness of sanctions, and should design pertinent legislation bearing in mind the results of those analyses and the credibility of U.S. threats and assurances.

Rethink the escalation ladder: During the Cold War, the threat of nuclear Armageddon shaped the development of deterrence theory and the notion of an "escalation ladder" detailing how policymakers could calibrate military coercion, from low-level threats to the conduct of nuclear war. This military-centered conception of an escalation ladder needs rethinking in an era when some types of economic pressure can be more devastating than some uses of conventional military force. Creating a common understanding of a whole-of-government escalation ladder would also clarify the signals sent by different types of military and non-military coercive action, thereby reducing the likelihood of dangerous misunderstandings that lead to unintentional conflict escalation.

- The National Security Council staff should coordinate an interagency effort that draws on independent expertise to develop a new whole-of-government escalation framework, should work with international allies to build common understanding of a new escalation framework, and should incorporate the new framework into U.S. national security planning.

In sanctions enforcement, spear big and small fish: The United States lacks the capacity to penalize every firm or other entity that violates U.S. sanctions policy. The goal of sanctions enforcement should therefore be to deter the greatest number of violations. The best way to do this is to impose penalties on a wide variety of private sector actors, so that firms of all kinds perceive a risk that they too could become penalized if they engage in violations.

- The Treasury Department should adopt an enforcement strategy that targets small and large firms, as well as corporations and other entities in a range of industries, based in and outside of the United States.

Recognize that information-sharing and transparency are necessities: For understandable reasons, the U.S. government often shrouds important aspects of sanctions enforcement in secrecy. But this lack of information and transparency frequently gives firms and other entities inaccurate perceptions of U.S. policy. Greater transparency about sanctions priorities and the legal and policy basis for designations would generate clearer signals to would-be violators about what actions will earn them a place on a U.S. sanctions list, while providing them with a clearer incentive to alter their behavior.

- The Treasury Department should publish its sanctions enforcement priorities, publicize extensively its major enforcement actions, and conduct more direct outreach to the private sector.

Introduction: Rethinking Coercion

Coercion is an essential element of contemporary international competition, used to address an array of security challenges, from violations of territorial integrity and interference in electoral processes, to acts of terrorism and the proliferation of weapons of mass destruction.[2] For the United States, coercion is a key feature of military and economic statecraft, and is considered a high-impact way to advance the national interest in circumstances where diplomacy is insufficient and the use of military force would be inappropriate or foolhardy.

Coercion can take two forms. In the words of Thomas Schelling, "There is typically a difference between a threat intended to make an adversary *do* something (or cease doing something), and a threat intended to keep him from starting something."[3] Schelling coined the term "compellence" to describe the former effort, while the term "deterrence" describes the latter effort. An example of compellence would be an effort to induce a country to dismantle a nuclear weapons program, while an example of deterrence would be an effort to dissuade a country from beginning a nuclear weapons program.

A related concept, "signaling," refers to the revealing of information about intent, resolve, or capabilities in an effort to influence the decisions of an adversary or other international actor.[4] In practice, this can involve public statements, the imposition of diplomatic or economic consequences, or even a show of military force. For instance, if the U.S. president criticizes a government or cancels a diplomatic visit after the government in question has taken an objectionable action, the president may be signaling that further such steps by that government will result in more substantial penalties.

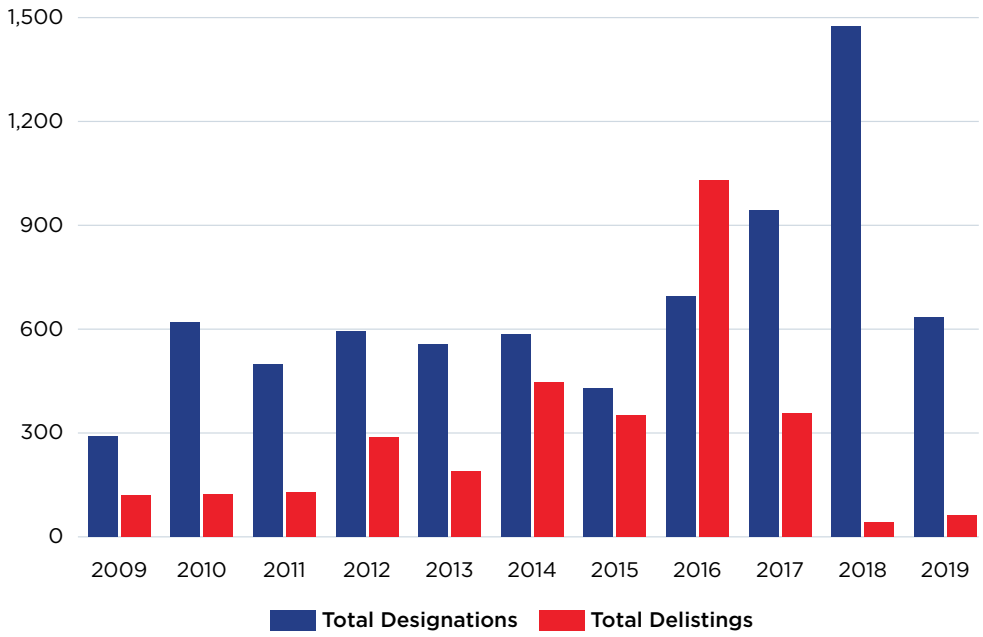
A rich and nuanced body of scholarship lays out a theory of military coercion in the nuclear era.[5] Developed during the Cold War, this thinking became the broad framework for U.S. leaders to contemplate escalation management, the use of force, and international leverage as they sought to safeguard the United States and prevent global calamity.

Global competition and the pursuit of security goals have taken on a strong economic character during the past decade. Economic tools of coercion have become mainstream, tools of first resort to assert U.S. power and advance core national security priorities. The year 2018 saw the largest single spike in sanctions designations, underscoring the Trump administration's commitment to maximum economic pressure campaigns on Iran and Venezuela, along with the maintenance of strong sanctions pressure on Russia and North Korea.[6] Sanctions are sometimes used in concert with military and diplomatic tools, but are often employed independently of other instruments of national power.

This use suggests that policymakers have ushered in a new era of coercive economic statecraft. Against this backdrop, they will be well served by adopting frameworks for economic coercion that parallel and complement existing frameworks for military coercion. Such frameworks can give policymakers general guidelines for maximizing the strategic impact of economic coercion, minimizing its unwanted effects, and managing both the escalation and de-escalation of economic warfare.

Some scholars have recently taken on the subject of how security strategies must shift in an era marked by emergent threats in new domains, from cyber to space,

TOTAL U.S. SANCTIONS DESIGNATIONS AND DELISTINGS BY YEAR, 2009–2019



While the number of designations and delistings is an imperfect measurement of the impact of sanctions, it is indicative of how much successive administrations have reached for them to pursue foreign policy and security goals. Data for designations and delistings are current as of November 20, 2019. (Source: U.S. Treasury Department's Office of Foreign Assets Control, compiled by CNAS and Adam M. Smith of Gibson, Dunn & Crutcher LLP)

as well as increasing challenges to U.S. dominance in traditional warfighting domains.[7] Separately, a large body of research has examined the effects and effectiveness of economic sanctions.[8] Integrating and distilling insights from these and other studies will be essential for current and future generations of national security leaders to safeguard and leverage U.S. economic power in service of core national interests, and to understand how best to balance economic coercion tools with other instruments of national power. Considering refinements to the signaling and deterrence features of economic coercion may be particularly important to this statecraft, to best preserve flexibility and limit the scope for unintended or undesirable escalation. Without such guard rails, and a related doctrine, U.S. policy leaders may be in danger of undermining the strength and availability of economic coercion tools, inadvertently making armed conflict more likely.

With a more comprehensive framework for their use, sanctions can serve more effectively as tools of deterrence and signaling to advance U.S. security interests.

Economic sanctions are often seen mainly as instruments of compellence (or, for some, punishment). Witness the longstanding U.S. embargo on Cuba or recent U.S. sanctions on Venezuela, imposed with the goal of forcing leaders to give up power. But sanctions rarely produce capitulation, even more rarely when the goal is regime change or they are used unilaterally and without other coordinated forms of statecraft.[9] However, sanctions can help prevent undesirable actions by other governments and convey important messages about U.S. intentions or resolve. With a more comprehensive framework for their use, sanctions can serve more effectively as tools of deterrence and signaling to advance U.S. security interests and protect universal rights.

An illustrative case: Russia/Ukraine sanctions

Consider the U.S. and European response to Russia's invasion of Ukraine and annexation of Crimea in 2014. Following those threatening and destabilizing Russian actions, the United States, the European Union, and other governments imposed a raft of coordinated sanctions on Russian energy, financial, and security institutions. If seen as instruments of compellence, these measures look ineffective. Although they significantly weakened its economy, they did not prompt Russia to give up control of Crimea or terminate its military and paramilitary activity in eastern Ukraine.

However, when viewed as instruments of deterrence and signaling, the sanctions may have been much more impactful. Most important, they signaled to Russian President Vladimir Putin that further aggression in Ukraine would be met with additional multilateral sanctions that would impose even greater costs on the Russian economy and the elites that may be politically close to Putin. This signal may have helped deter Putin from moving military forces deeper into Ukraine or attempting to annex more of the country.[10]

At the same time, the U.S. and European position that the sanctions would be removed if Russia fulfilled its commitments under the 2014 and 2015 Minsk agreements on resolving the conflict in eastern Ukraine signaled clearly to Russia that an off-ramp was available.[11] Although Russia did not avail itself of this opportunity, the clear U.S. and European position on sanctions removal gave Russia more of an incentive to consider making concessions. In addition, some individual Russian actors have decided to make concessions in the face of sanctions—changing their business dealings and associations in order to have these measures removed. Beyond Eastern Europe, the sanctions also sent an important signal to the international community that the United States and Europe would not stand by idly as a country violated the fundamental global principle of territorial integrity.

Why sanctions strategy matters

More generally, conceiving of sanctions in part as tools of deterrence and signaling, while limiting expectations for their use for compellence, carries several benefits. Such thinking will help public policymakers to: (1) fully avail themselves of sanctions' utility and situate them within a holistic foreign policy strategy; (2) manage the potential for unintentional escalation of economic competition; and (3) preserve the credibility and flexibility of U.S. foreign policy, which will be more effective at actually changing policies if the targets of sanctions perceive that the United States is willing to engage and provide rewards for improved behavior.[12] Indeed, coercing targets to change policy will remain a core goal of sanctions in many cases, so improvements in signaling and deterrence can make sanctions more effective overall.

In fact, the United States *has to* work on dialing up the signaling and deterrence characteristics of sanctions or else risk that they are too aggressive, blunt, or misunderstood, and thereby foreclose the opportunity for more subtle or constructive international engagement with competitors in the future. This is increasingly important in an era when the United States uses multiple forms of economic coercion simultaneously (including tariffs, sanctions, investment restrictions, and other trade controls), often against the same or closely related targets. Put another way, using these measures more often to signal and deter and less often to compel is necessary to preserve one of the most important tools of U.S. public policy in the conduct of contemporary international competition. This policy brief is intended to make a contribution to this body of work, equipping, in particular, U.S. policy leaders and analysts with ideas for how to enhance the deterrence and signaling effects of one of the most critical instruments of U.S. economic coercion.

An inability to adapt security signaling and deterrence to address economic coercion may mean that economic tools are less useful and available.

The United States needs to take several steps in order to maximize the deterrent and signaling value of sanctions, while preserving them as a strong and versatile instrument of foreign policy. Ultimately, doing this may help U.S. national security thinkers refashion thinking around an escalation (and de-escalation) ladder, and better position the United States for the new era of great power competition they are struggling to understand and conduct. An inability to adapt security signaling and deterrence to address economic coercion may mean that economic tools are less useful and available. As a result, U.S. leaders may need to more quickly resort to military options.

Make Sanctions-Removal Assurances Credible, or Expect More Conflict

Two kinds of credibility are essential for the effectiveness of sanctions. First, potential targets need to expect that a threat to impose them will be backed up by actual imposition if the target's behavior meets the threat's standard for imposition. Second, targets must expect that a promise to lift sanctions will be followed up by actual lifting if the target's behavior meets the promise's standard for lifting.

Although there are times when the United States does not back up sanctions threats, the bigger problem today involves the glaring U.S. failures to back up its promises to lift, or sustain the lifting of, sanctions on countries that have complied with U.S. demands.[13] One can see this in the rather steep decline of individual delistings under the Trump administration by comparison with previous years. In 2018, the Office of Foreign Assets Control (OFAC) delisted 52 entities or individuals, as compared with 388 in 2017 and 450 in 2014.[14] This precipitous drop in delistings only compounds the lack of confidence across much of the world that the United States will lift, and sustain the lifting of, economic pressure when circumstances dictate that sanctions should be removed.

For instance, on Iran and Cuba, the Trump administration reimposed sanctions that the Obama administration had lifted following extensive negotiations and diplomatic agreements with the target governments. Third party banks and companies are wary enough to enter a challenging business environment and reengage the subjects of sanctions in the aftermath of their delisting. But by rejecting the Iran nuclear deal and unilaterally reimposing sanctions on Iran and Cuba, the Trump administration deeply undermined the credibility of future U.S. assurances to not only those countries, but also others that might otherwise consider accommodating U.S. demands in return for the lifting of sanctions. Furthermore, these actions weakened the willingness of U.S. allies and partners to engage in joint political measures with the United States, by making them more concerned that the United States might again abandon the partnership and leave them with diminished standing and leverage.

It is a problem that extends well beyond the current administration. During the Obama administration, the ability of the United States to extract concessions from Iran and Cuba was also limited by the impossibility of achieving the congressional repeal of major sanctions laws targeting those countries.[15] In the absence of repeal of those laws, the administration could not offer Iran or

Cuba complete relief, which in turn limited the extent of the concessions that those governments were willing to make. And now, following the 2017 passage of the Countering America's Adversaries Through Sanctions Act (CAATSA), Congress has given itself new authorities to limit the scope of the president to offer any sanctions relief, which may mean that the president may not be able to offer any without broad congressional approval.

Similarly, the Obama administration could not compel the non-U.S. private sector to invest heavily in Iran and Cuba following the lifting of sanctions on them, resulting in a smaller economic boost to the countries than they anticipated.[16] When Congress and the private sector do not change laws and renew business following the lifting of sanctions by the U.S. administration, countries have less of an incentive to make the political and legal concessions needed to have sanctions removed.

The failure to provide credible assurances also generates other foreign policy problems. If U.S. promises cannot be trusted, sanctions targets will have more reason to turn to hostile means of resisting U.S. pressure. Witness the series of provocative actions this year attributed by the U.S. intelligence community to Iran, including attacks on tankers in the Persian Gulf, the delivery of a missile within a mile of the U.S. embassy in Baghdad, and the downing of a U.S. unmanned aerial vehicle.[17] These actions, in turn, prompted the Trump administration to further escalate U.S. pressure on Iran, almost leading to a U.S. military strike on the country.[18]

The Trump administration's reimposition of many of the sanctions lifted by the Obama administration as part of a tentative reopening to Cuba has undermined the credibility of the United States to offer its adversaries sanctions relief. The return to a tough strategy has included allowing lawsuits against companies that traffic in Cuban property expropriated by the Castro regime. Even cruise companies that call on ports in Cuba may be sued for doing business there. (Joe Raedle/Getty Images)

More generally, hostilities may be more likely if U.S. commitments in negotiations are not credible and countries cannot access an off-ramp from sanctions. An adversary may conclude that if there is no negotiating path out of significant economic pressure, they may escalate militarily, a dynamic that already seems to be in play with respect to Iran. A related critical lesson for the U.S. policy community is that beyond sticking to commitments, credibility in the use of sanctions involves U.S. leaders being willing to take yes for an answer and make concessions of its own when the target changes its behavior.

At the same time, U.S. failure, on the part of the executive or legislative branch, to live up to its commitments erodes trust in the United States among long-standing allies and partners. The Trump administration lost such trust with the European governments that had invested their own credibility in the Joint Comprehensive Plan of Action (JCPOA) with Iran. By walking away from those allies and partners, the United States has made them less inclined to privilege cooperation in the future.[19] A hybrid of this diplomatic problem is evident in the case of sanctions on Russia, where the United States, led in this instance by a bipartisan majority in Congress, stepped away from its commitment to coordinate with the Europeans on Russia sanctions and embraced a much more unilateral approach, enshrined pointedly in the 2017 passage of CAATSA.

Policy recommendations for building credibility around the U.S. use of sanctions follow.

The U.S. Congress and president should, to the greatest extent possible, uphold agreements that involve the lifting of U.S. sanctions in return for concessions by the target, so long as the target complies with the agreement. The confidence of other countries in U.S. commitments takes a severe hit when the United States withdraws from a major agreement or Congress blocks its implementation, with damaging effects that extend well beyond the issue at stake in the agreement. To avoid this outcome, Congress and future presidents should, on principle, refrain from scuttling a sanctions-removal agreement, unless the target reneges on its own commitments under the agreement. To the extent that members of Congress or future presidents have separate concerns about the target's behavior, they should seek to address those through means other than revoking the agreement.

Treasury and State Department officials should clearly delineate a credible path for delisting every sanctions designation. In every future instance of sanctions designation, the U.S. Treasury Department or State Department (depending on which agency is imposing the sanctions) should delineate an objective and steps for sanctions delisting. This should be made publicly available upon the listing of every new sanctions designation, emphasizing that any actions in pursuit of delisting need to be accompanied by credible evidence suggesting the target is unlikely to commit sanctionable actions in the future. These two departments should furthermore expand their work to provide information and consultations regarding delisting for the private sector by designating an individual or office with specific responsibility for shepherding delisting policy. This office or individual should also conduct a review of past sanctions designations, offer public guidance on how delisting may occur, and serve as a direct liaison for national governments and private lawyers, as well as the targets themselves, for the process of delisting. They should also oversee the publication of annual public reports about delisting.

> **In every future instance of sanctions designation, the U.S. Treasury or State Department should delineate an objective and steps for sanctions delisting.**

State and Treasury Department officials should closely, though discreetly, consult with congressional leaders when negotiating with a sanctions target for delisting. The administration officials negotiating with the target of sanctions regarding possible delisting should conduct high-level consultations with appropriate congressional leaders to clearly understand views from the legislative branch, enhance mutual understanding, and build a coalition of support for administration action. This would likely include agreement between administration and congressional leaders on at least general principles regarding the target's concessions and conditions for delisting, as well as the nature of executive and legislative branch communication about future targets. Administration officials should also use congressional concerns about the lifting of sanctions as a point of leverage vis-à-vis targets, making it clear that the administration can support lifting only if the targets make concessions sufficient to satisfy Congress.

Partisanship and constitutional power struggles can certainly stand in the way of this kind of coordination and communication, but the absence of such efforts may cause tremendous detriment to the credibility of the United States in the conduct of foreign policy and the ability to address security threats. Additionally, the absence of this coordination may result in serious harm with close allies, to the detriment of U.S. policy objectives and security interests in a variety of arenas.

U.S. leaders and officials at the National Security Council, State Department, Treasury Department, and all other agencies should threaten sanctions only if they are confident the government will actually impose sanctions if the target's behavior meets the threat's standard for imposition. The credibility of threats is the key flipside to the credibility of assurances. The effectiveness of warnings will be diminished if U.S. rhetoric is not consistently matched by action. Interagency communication is essential in this regard, to make sure that the White House and key agencies are on board with the threat that sanctions will be imposed if the target's policies call for them.

The U.S. Congress should mandate analyses of the effects and effectiveness of sanctions, and should design sanctions legislation that accounts for the results of those analyses and the credibility of U.S. threats and assurances. Ideally, Congress should establish an updated version of its former Office of Technology Assessment that would be capable of modeling and evaluating sanctions effects. Importantly, this modeling and evaluation effort should examine not only direct effects, such as the extent to which a set of sanctions causes a drop in a target's gross domestic product—but also potential compellence, deterrence, and signaling effects, such as whether a set of measures led a target to reverse an objectionable policy, refrain from taking an unwanted action, or come to the negotiating table. Further, Congress should charge the Government Accountability Office with producing an annual report on the modeling and analysis work undertaken prior to the legislation of new sanctions, including an evaluation of the maturation and institutionalization of this modeling and analytical capacity from year to year.

Congress should draw on the results of these modeling and evaluation efforts when drafting sanctions legislation to ensure that sanctions are designed to maximize their desired effects and minimize unintended and undesirable consequences. Congress should also incorporate into legislation features such as sunset clauses, conditionality

Congress could expand its effectiveness in developing new sanctions legislation if it required more regular and formal reporting on the effects of existing sanctions authorities in advancing U.S. foreign policy goals. Here, Senator Chris Van Hollen (D-MD) discusses legislation to impose sanctions on Turkey in response to its incursion into northern Syria. (Mark Wilson/Getty Images)

provisions, and waivers based in part on an understanding of how such provisions can contribute to the credibility of U.S. threats and assurances. For instance, if Congress wants to signal to a target that an off-ramp is available, legislation that includes a sunset provision—stipulating that the measures will remain in effect for a certain number of years only, unless Congress reauthorizes them—will signal this more effectively than legislation that mandates permanent sanctions. Similarly, conditionality provisions—under which sanctions imposition is tied to executive branch assessments of the target's behavior—can provide an incentive to accommodate U.S. concerns. On the other hand, waiver provisions, which allow the executive branch to waive the imposition of sanctions based on a determination that imposition is not in the U.S. national interest, may weaken the deterrent effect of sanctions authorities by leading some targets to doubt that the United States would ever actually apply the authorities. Greater awareness of such potential effects of design choices should facilitate more effective legislating on sanctions.

Rethink the Escalation Ladder

Deterrence theory, which has shaped generations of defense thinkers, has traditionally emphasized the importance of credible threats to use military force, while giving little attention to threats to use economic measures, such as sanctions. This heavy emphasis on military force is reflected, for instance, in Herman Kahn's controversial but often referenced "escalation ladder."[20] In Kahn's ladder, economic measures are both vague and potentially catastrophic, and appear only on two of the 44 rungs: the second rung groups together "political, economic and diplomatic gestures," while the 20th rung refers to a "worldwide embargo or blockade." The remaining rungs nearly all represent the threat or the actual use of different types of military force.

This Cold War–era conception of an escalation ladder needs rethinking at a time when many economic sanctions or other trade controls (along with cyberattacks and hostile actions in space) can be more devastating than some uses of military force. Recent research has examined cross-domain deterrence or considered the escalatory relationship between cyber, space, and more traditional military actions.[21] The U.S. military has also adopted its own posture to take into account the growing importance of space and cyberspace, which it now treats alongside land, sea, and air as principal warfighting domains. But considerations of cross-domain deterrence and escalation have given much less attention to economic coercion—which is particularly relevant at a time when the U.S. secretary of defense has included among his greatest concerns the economic power of another country (China).[22] This is not to suggest that economics should represent a new warfighting domain, but rather that it is an instrument of national power of profound significance, including to the defense community.

It is especially important now to integrate sanctions as well as other non-military tools into deterrence and escalation theory and practice, because today the United States and others are more likely to use non-military instruments to engage in intensified competition. To put it bluntly, the United States is flying this new airplane without a manual and with the world's economy and strategic stability at stake. This is a huge problem that policymakers cannot just admire. Policy leaders must act to craft a strategy around a very robust set of tactics already in use, before they inadvertently sabotage the control panel or the potential to keep on flying for the long haul.

In a world of forceful and highly effective non-military instruments of national power, creating a common understanding of an escalation ladder would also strengthen the signals the United States sends with its actions. For example, if it is unclear whether an airstrike against a military facility is higher or lower on the escalation ladder than financial sanctions targeting a country's most important economic sector, the target government may not understand the likely consequences of continuing to flout an international norm or U.S. demands. Clarifying the sequence of punishments likely to be imposed on a government engaged in unacceptable behavior can also help that government understand when the costs of misbehavior are likely to outweigh its benefits—and enable the government to adjust its behavior accordingly.[23]

An escalation ladder also recognizes implicitly that it is almost always preferable to employ threats before resorting to the actual imposition of sanctions. Imposition produces more unwanted side effects, creates clear opportunities for immediately creating work-arounds and evasion, makes it harder politically for targets to back down, and can trigger harmful retaliation.[24] Policy leaders must be extraordinarily careful about this issue in a world of rising nationalism and anti-Americanism. It is possible that those who might have seen fit in the past to find resolution with the United States will not see it as politically feasible now or in the future to negotiate with the United States, as a domestic matter with their electorate or crony patronage networks. Signs of such domestic constraints on cooperation with the United States are already evident even in Europe.

Thinking about climbing down the escalation ladder is just as important, for sanctions and for other steps. This has major implications for U.S. credibility, optionality, and room to maneuver with security policy. Just as the United States cannot expect other countries to address concerns about their behavior if the United States cannot credibly assure them about a commitment to lift sanctions at the appropriate time, the United States will not be able to walk back from the brink in crises if it lacks the ability to undo escalatory steps.

The following are policy recommendations for developing a new framework for escalation.

The National Security Council (NSC) staff should coordinate an interagency effort to develop a new escalation framework. The national security advisor and the secretaries of defense, homeland security, state, commerce, and treasury should designate officials to engage in an intensive, months-long review centered on thinking through the formulation of a whole-of-government security escalation framework that includes economic measures along with other military and non-military steps. This review group should also solicit input from outside experts who are knowledgeable about various dimensions of the issue. The group's work should include analysis that weighs the severity of various military and non-military actions based on the full range of their anticipated effects, rather than assuming that military actions represent an escalation from non-military actions. Based on such analysis and careful deliberations regarding the pros and cons of different options, the review group should make recommendations to NSC principals regarding a new escalation framework.

The National Security Council staff should work with independent experts and international allies to convene a group of established thinkers from a politically diverse set of countries to discuss an escalation ladder encompassing the full range of military and non-military tools of foreign policy, and to inform U.S. and alliance policy thinking on escalation. Although achieving universal agreement on a precise escalation ladder is unrealistic, the United States and its allies should be capable of developing a common understanding, even principles, for a whole-of-government escalation concept. Conversations along these lines could be somewhat exploratory and informal, and should occur, at a minimum, within existing security alliance structures and institutional frameworks, particularly NATO and the web of U.S.-led alliances in the Asia-Pacific region. In addition, the United States should publicly announce and discuss this new escalation framework so that competitors understand its logic and, if conflict occurs, receive signals as intended. The U.S. government should also support Track II Dialogue between the United States and both its allies and competitors, to encourage independent influencers and established thinkers to evaluate this topic.

The National Security Council staff should incorporate the new escalation framework into national security planning. NSC staff should ensure that future National Security Strategies reflect this new view toward escalating competition and its management. The NSC can offer a government-wide directive to clarify this posture and give guidance about its application in strategy documents and the crafting of policy options and execution plans. The national security advisor should also offer a major policy speech reflecting this new whole-of-government approach to escalation and set expectations within the U.S. government and beyond that this new approach to planning around escalation will be a priority and an ongoing feature of U.S. policymaking.

Proposing a Whole-of-Government Escalation Ladder

A new whole-of-government escalation ladder can guide U.S. national security leaders in how to conceive of, and operationalize, coordination among the array of tools of national power and among key agencies of the U.S. government. Sharing a refined version of this with international counterparts and competitors can also help to manage escalation of complex competition.

In a new ladder, the numbers one through seven could represent the first and last steps in escalation. The concept is offered only to provide a sense of what an updated ladder might look like in broad terms. It would be necessary to refine and flesh out the sketch by specifying the actions associated with each step in detail and by modeling the typical or likely effects of the different types of actions in various contexts. Given the complexity of escalation scenarios and dynamics, a fully refined model might also be better represented by a formulation involving more dimensions than a ladder, for example a grid or lattice.[25]

These considerations notwithstanding, a simple ladder metaphor is useful for sketching out an approximation of how different forms of contemporary sanctions might relate to other forms of coercion.

A whole-of-government escalation ladder might be drafted as follows:

7	**Catastrophic Actions**	Kinetic attack with high-yield nuclear weapons
6	**Devastating Actions**	Large-scale kinetic attack with conventional weapons, large-scale ground invasion, sanctions that cause a major contraction in the target's economic output, sanctions that sever all financial flows between the target and the global financial system, comprehensive trade embargo and blockade, cyberattacks that incapacitate entire critical infrastructure sectors, destruction of satellites on which critical societal functions depend
5	**Highly Damaging Actions**	Sustained air strikes on military targets, insertion of troops to assist a rebellion against a government, sanctions that cause a substantial contraction in the target's economic output, sanctions that restrict financial flows between the target and the global financial system, trade measures that restrict the export or import of sophisticated technology and other key goods, cyberattacks that incapacitate some critical infrastructure, destruction of satellites used for some societal or military functions
4	**Damaging Actions**	Limited set of air strikes on military targets, provision of arms to groups rebelling against a government, sanctions that restrict the output of an important economic sector, trade measures that restrict the export or import of sophisticated technology, cyberattacks that incapacitate government networks or disrupt critical infrastructure, jamming of satellites used for societal or military functions
3	**Harassing Actions**	Show of military force short of using force, provision of arms to neighboring rivals of target, targeted sanctions on government officials or government organs, trade restrictions that disrupt supply chains involving sophisticated technology, cyberattacks that disrupt a government network
2	**Public Threats**	High-visibility threats to impose military, economic, cyber or other costs on the target if it does not alter its behavior
1	**Private Threats**	Confidential notification of the intent to impose military, economic, cyber, or other costs on the target if it does not alter its behavior

Some of the actions on the top rungs of this ladder are difficult even to contemplate. But shared understanding of a framework such as this should make it less likely that the United States or other countries resort to such actions by reducing the prospects for misunderstandings and misperceptions that result in unintentional escalation. Given the stakes involved, careful and thorough deliberation is needed before the United States adopts a whole-of-government escalation framework that incorporates all contemporary forms of competition and conflict. This rough outline is intended to spur such discussions, including about the range of possible actions within each step on the ladder, and when different tools of national power are each appropriate. Greater attention to such questions should also enable the United States to better attune the readiness of its governmental capabilities—whether military, economic, cyber, diplomatic, or other—to the new era of international competition.

In Sanctions Enforcement, Spear Big and Small Fish

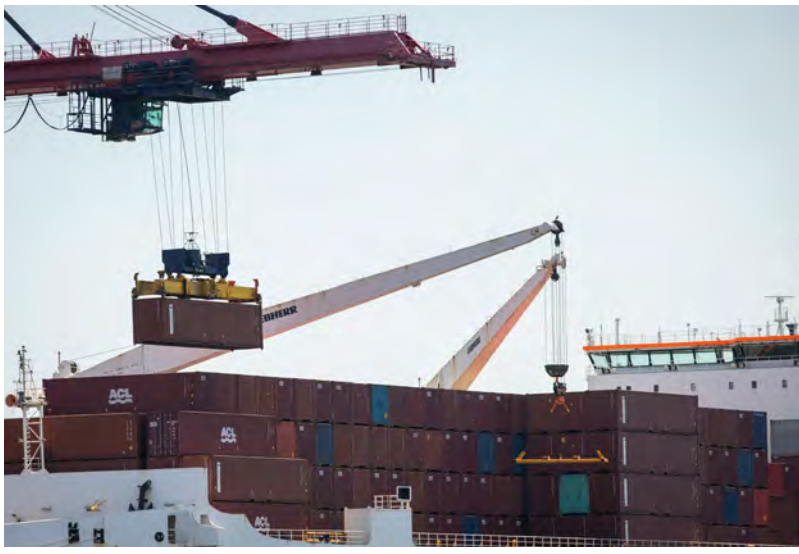
The U.S. approach to sanctions enforcement, which involves signaling primarily to the global private sector rather than to nation-states, has varied considerably over the past two decades. Enforcement can be understood as fines, criminal penalties, and other legal prohibitions imposed on companies and individuals for violating sanctions rules. During the George W. Bush administration, OFAC carried out many enforcement actions per year against sanctions-violating firms, each involving relatively small fines.[26] Under the Obama administration, OFAC conducted far fewer enforcement actions annually against corporations, but these actions typically involved large penalties. The Trump administration imposed a more modest number of enforcement actions in its first two years in office, but 2019 has seen a sharp increase in the number of such actions and the total fines.[27] The Trump administration has also continued a trend dating back to the Obama administration: shifting more of the focus of enforcement actions from U.S. firms to foreign entities, and imposing far larger fines on foreign entities than on U.S. corporations.[28]

The United States does not have the capacity to impose penalties on every violator of U.S. sanctions. The U.S. bureaucracy is not designed, nor should it be, to go after every offender. Even if the United States could do that, it would not be reasonable to bear all this responsibility—other jurisdictions have a role to play too.

Given these constraints, OFAC needs to maximize the deterrent effect of its enforcement actions, using them to signal to as many potential violators as possible that they too could become enforcement targets. The best way to do this is to impose penalties on a variety of private sector actors, including small and large firms, entities in different sectors, and companies based in the United States as well as overseas. This "flexible response" strategy will send a signal to firms of all stripes that they should perceive a risk that they too could become fined if they run afoul of U.S. sanctions policy, potentially giving all of them an incentive to refrain from committing violations.

Catching different kinds of fish can also amplify and extend the reach of publicity associated with enforcement actions. In addition to deterring future violations by large firms, spearing big fish, such as General Electric or BNP Paribas, generates more overall publicity about sanctions, which helps to inform other firms—both large and small—about their compliance obligations. By the same token, an enforcement action against a U.S. firm will tend to generate more publicity in the United States, whereas an enforcement action against a German or Chinese entity will tend to receive more attention in those countries.

Variation in the size of penalties can also enhance the deterrent effect of sanctions enforcement. In many cases, small fines are sufficient to deter violations. This is particularly true for firms that lack the capital or cash needed to pay relatively modest fines, but small fines can even deter violations by firms with ample resources, because they can generate major reputation costs by tarnishing a company's image. Since these reputation costs



OFAC enforcement actions against financial institutions, energy companies, shippers (like the owner of the vessel pictured), manufacturers, and myriad private sector actors are an important cornerstone of U.S. sanctions strategy. (Drew Angerer/Getty Images)

can far exceed the amount of fines, the deterrent effect of modest fines can be quite powerful.

Some enforcement targets, however, may consider small fines to be manageable and see them more as a cost of doing business than as a catalyst for behavior change. In addition, for some firms or other entities—particularly ones that conduct little business in the United States—the reputation costs of violating U.S. sanctions policy can be relatively small. Large fines are sometimes therefore necessary to make some targets fearful that a penalty could be very damaging to them, giving them a strong enough incentive to bolster their compliance. Indeed, as a result of a series of major, high-profile fines, U.S. and European financial institutions now almost universally try to fulfill their sanctions obligations. In fact, many global firms appear to go far beyond what is strictly required under the law, staying very far away from any line of business that could cause unacceptable risk.[29] The corporate desire to avoid such fines should also lead more firms to self-disclose unintentional violations voluntarily.[30]

The following are policy recommendations for sanctions enforcement.

OFAC should adopt a sanctions enforcement strategy that targets violators and violations of various types, typically with modest fines but occasionally with large fines. Enforcing sanctions against firms and other entities of various sizes and in various sectors, as well as against different kinds of violations, will clarify that a broad range of industries and activities are subject to sanctions obligations. It will also signal that no entity is exempt from enforcement, thereby expanding the deterrent power of enforcement actions.

Modest fines will often be sufficient to generate these signaling and deterrence effects. However, large fines are sometimes necessary to deter violations by entities that can tolerate a smaller penalty and are more insulated from the reputation costs associated with violations of U.S. sanctions policy. Of course, more severe violations should also trigger larger fines.

OFAC's enforcement strategy should seek to give parallel attention to violations by U.S.-based corporations and those by foreign corporations. Elevating enforcement against foreign versus U.S. violators sends a signal that U.S. firms are less of a focus of sanctions busting than their foreign counterparts. It also feeds the narrative among U.S. allies that sanctions are a back-door tool of advancing American companies over their foreign commercial competitors. OFAC should seek to address and deter violations both inside and outside of the United States. To the extent that an imbalance may be due to U.S. firms being several steps ahead on compliance practices than many foreign counterparts, OFAC can underscore its attention to U.S. firms through public statements or other guidance. Sustained attention to violations globally will maximize the deterrent effect of enforcement actions, while making it less likely that other countries perceive bias in the U.S. enforcement approach.

Recognize That Information-Sharing and Transparency Are Necessities

For two understandable reasons, the U.S. government often shrouds in secrecy important aspects of sanctions policy. First, government officials often want to preserve the element of surprise when investigating possible violations, and therefore do not publicize sanctions priorities. If targets are taken by surprise, they do not have time to move their money or shield their assets and networks from exposure to sanctions. Second, decisionmakers often rely on classified information when making sanctions designations, and therefore are constrained in their ability to describe much of the basis for such designations. As a result of this lack of information and transparency, sanctions targets are often unaware that they might be designated, and firms and individuals develop inaccurate perceptions of the types of behavior that are likely to trigger an enforcement action.

Greater transparency about sanctions priorities and the legal and policy basis for designations would generate clearer signals to would-be violators about what actions will earn them a place on a U.S. sanctions list, while providing them with a clearer incentive to alter their behavior. This information would also make it clearer to designated entities what they must do in order to see sanctions lifted. While OFAC does publish a good deal of information about its sanctions programs and designations, more transparency about the underlying rationale for its actions would strengthen the deterrence and signaling effects of its work.

To the same end, OFAC should increase and institutionalize its outreach to industry.[31] While public communications and private conversations can be very valuable to both OFAC and regulated entities, more sustained, direct outreach to the private sector, particularly companies far from Washington, D.C., can help firms further improve their understanding of sanctions programs and priorities. In addition to making it less likely that firms will violate obligations willfully, this outreach will help reduce the number of unintentional transgressions.

More transparency will also help prevent the signals sent by sanctions designations from being stronger than intended. In October 2015, OFAC designated Banco Continental S.A., a Honduran bank, and certain businesses and individuals connected to the bank, for playing a significant role in international narcotics trafficking and money laundering.[32] This action had an outsized economic impact on Honduras. Just three days after the designation, that government began liquidating Banco Continental's assets, which were estimated at $500 million. The designation also caused many observers to fear that additional designations by OFAC of Honduran individuals and institutions were forthcoming. To alleviate the emerging sense of panic in the country, OFAC made additional announcements designed to communicate more clearly the limits of the sanctions designations—for instance, explaining that Hondurans would not themselves be designated by OFAC if they engaged in transactions to liquidate Banco Continental.[33] Accompanying clarifications, at the time of designation, with more information about their rationale, would help ensure that enforcement actions are not misconstrued. To make sanctions more transparent, the following changes in policy are recommended.

The Treasury Department should publish its sanctions enforcement priorities. The Treasury Department, in coordination with the State Department, should use a new companion to the Federal Register process, agency advisories, and formalized advisory committees to annually publicize new sanctions priorities and enforcement methodologies and targets. This will provide clear warning signals to potential targets, including new industries and types of targets.[34]

The U.S. Treasury Department's communication of its priorities to other governments and the global private sector is a determining factor in the effectiveness of any strategy involving sanctions. While the Treasury Department currently devotes some resources along these lines, its efforts could be drastically scaled up. (Win McNamee/Getty Images)

The Treasury Department should publicize its major sanctions enforcement actions extensively. The Treasury and State Departments should coordinate to compile an annual circular on major U.S. sanctions enforcement actions to be distributed to local government leaders and the business sector by U.S. embassies abroad. Enforcement actions serve to deter future violations only if other potential violators hear about them. While major multinational corporations monitor enforcement actions closely, many smaller firms, particularly in other countries, are unable to keep close tabs on OFAC's actions. Publicizing enforcement actions through as many channels as possible will expand the deterrent effect of the actions, thereby reducing the number of future violations.

The Treasury Department should conduct more direct outreach to the private sector to raise awareness of sanctions obligations and prevent unintentional violations. The Treasury and State Departments, through direct counterpart engagement, technical assistance, public diplomacy, and training grants to nongovernmental implementing agencies, should enhance their support for educational outreach on sanctions to the private sector. Just as many firms are unable to track OFAC's enforcement actions, many also lack basic knowledge of their sanctions obligations. Outreach to the private sector should include expanded technical training to bolster corporate compliance with obligations, particularly in foreign jurisdictions where enforcement capacity is weaker.[35]

Conclusion

The United States has increasingly turned to sanctions as a foreign policy instrument of choice over the past two decades, and the instrument is likely to remain front and center in the foreign policy tool box for the foreseeable future. Yet the use of sanctions could be improved in a number of ways. While the United States excels at imposing sanctions, it often fails to fulfill its own commitments to lift them, giving other countries less incentive to accommodate U.S. demands. At the same time, the escalatory relationship between sanctions and other types of coercive action, such as the use of force, is unclear. Additional challenges exist in sanctions enforcement, where the United States must make the best use of limited resources and overcome a widespread tendency to limit information disclosure and transparency. This brief's recommendations are designed to strengthen the deterrent and signaling effects of U.S. sanctions by addressing these and other shortcomings and challenges in a variety of ways.

To be sure, sanctions should not be only tools of deterrence and signaling. The United States should also sometimes use them, in conjunction with other instruments of national power and in cooperation with allies and partners, to expose a government that is violating international norms and try to compel it to change its behavior. But sanctions often have less potential to compel changes than they do to deter unwanted future actions or to signal U.S. intent or resolve. The United States would therefore benefit from focusing more attention on bolstering the effectiveness of sanctions for these particular purposes, as the recommendations in this brief aim to do.

That said, the United States must resist the temptation to think that any set of reforms can turn the measures discussed here into a perfect instrument of deterrence or signaling. Even when employed skillfully, sanctions will sometimes fail to deter a country from taking an unwanted action, or they may be perceived in ways that the United States did not intend. As noted, sanctions can also result in an array of negative and unintended effects. A hefty dose of caution and careful deliberation are therefore called for before any use of sanctions, regardless of their purpose.

While the United States excels at imposing sanctions, it often fails to fulfill its own commitments to lift them, giving other countries less incentive to accommodate U.S. demands.

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