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Sanctions Primer: How the United States Uses Restrictive Mechanisms to Advance Foreign Policy or National Security Objectives

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Sanctions Primer: How the United States Uses Restrictive Mechanisms to Advance Foreign Policy or National Security Objectives

Congress and the executive branch may impose coercive measures—largely using economic restrictions—against a foreign government or specific individuals and entities to deter or altogether change objectionable behavior of that government, individual, or entity. Such measures are commonly referred to as sanctions. The power to impose economic sanctions is derived through legislation, including the laws establishing emergency authorities given to the President, as well as legislation authorizing or requiring sanctions related to specific U.S. foreign policy or national security objectives.

Analysts disagree on whether the term *sanctions* should include certain restrictions; however, for the purposes of this report, the term sanctions broadly includes the following coercive economic and political restrictions used by the United States to achieve foreign policy objectives:

- **Economic and Financial Restrictions:** blocking/freezing property under U.S. jurisdiction of designated persons; prohibiting transactions between U.S. persons and designated persons or countries; blocking access by designated persons or countries to the U.S. financial system; restricting terms and duration of investments and loans with designated persons, governments, or within certain countries; or designating a foreign central bank or a country's banking system as a money laundering concern.
- **Restrictions on Entry into the United States:** denying or revoking visas of foreign nationals seeking entry into the United States.
- **Import/Export Restrictions:** regulating the export of goods and technology, particularly those with defense applications; regulating the export of foreign-made goods and technology manufactured using U.S. goods, technology, or software; prohibiting most exports altogether; or imposing financial restrictions that effectively block most exports. Imports into the United States may also be blocked or taxed.
- **Foreign Assistance Restrictions:** restricting foreign assistance, Peace Corps programs, or support in the international financial institutions.
- **Restrictions on Diplomatic Relations:** withdrawing U.S. diplomats or expelling foreign diplomats as part of the United States' response to objectionable behavior or perceived threats to national security; or recognizing or refusing to recognize governments of foreign countries.

In the executive branch, the responsibility to implement or administer sanctions resides throughout agencies and departments, but primarily with the Departments of State, the Treasury, and Commerce:

- the State Department manages arms sales, diplomatic relations, visa issuance, military aid, and foreign aid;
- the Department of the Treasury regulates transactions, access to U.S.-based assets, use of the U.S. dollar and U.S. banking system, and the U.S. voice and vote in the international financial institutions; and
- the Commerce Department oversees export licensing and implements controls coordinated with partner countries.

Other agencies involved in the implementation of U.S. sanctions include the Department of Justice, which oversees functions such as the prosecution of sanctions violations; the Department of Homeland security, which oversees restrictions on importation through the Bureau of Customs and Border Protection; and the Department of Energy, which oversees obligations under international nuclear agreements.

Congress may exercise its role in the application of U.S. sanctions by authorizing or requiring sanctions through legislation, by engaging in oversight over the executive agencies implementing and enforcing sanctions, and by appropriating funds to the agencies implementing U.S. sanctions.

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Background

Congress and the executive branch may impose coercive measures against another country, government, or specific individuals and entities to deter or alter objectionable behaviors or policies in the furtherance of U.S. national security or foreign policy objectives.¹ Such measures are often referred to as “sanctions,” though there is no single, overarching statutory definition of the term. Sanctions most frequently restrict economic engagement,² but they may also restrict diplomatic ties,³ military aid,⁴ or educational or cultural exchanges.⁵ By some measures, the United States has increasingly used sanctions as a tool in achieving foreign policy objectives over the last two decades.⁶ As of October 2021, for example, the Department of the Treasury reports that the United States maintained sanctions on over 9,400 persons⁷—an increase of over 900% since 2000—and in relation to more than 20 countries.⁸

Some analysts disagree whether the coercive use of certain restrictions—such as those on export controls or foreign assistance—should be included within the definition of the term “sanctions.”⁹ However, because such restrictions may be used in a manner similar to the use of economic or diplomatic sanction (i.e., to change or deter certain behaviors in furtherance of foreign policy or national security objectives), those actions are included in this report.

¹ For the purposes of this report, “objectionable behaviors or policies” is defined as actions or policies perpetrated by foreign actors that are harmful to U.S. foreign policy or national security interests. The United States may also impose sanctions as part of participation in multilateral United Nations sanctions, under its obligations pursuant to Section 5 of the United Nations Participation Act of 1945 (UNPA; P.L. 79-264 as amended, 22 U.S.C. §287c). Legislatively enacted sanctions include, for example: the Countering America’s Adversaries through Sanctions Act (CAATSA, P.L. 115-44), and the Burma Unified through Rigorous Military Accountability Act of 2022 (BURMA Act, P.L. 117-70, Division E, Title LV, Subtitle E, §§5567-5579). Sanctions imposed through executive action by invoking emergency authorities include, for example: sanctions targeting transnational criminal organizations pursuant to Executive Order 13581 of July 24, 2011, “Blocking Property of Transnational Criminal Organizations,” 76 *Federal Register* 44757, and Executive Order 13863 of March 15, 2019, “Taking Additional Steps to Address the National Emergency With Respect to Significant Transnational Criminal Organizations,” 84 *Federal Register* 10255; or Mali-related sanctions imposed pursuant to Executive Order 13882 of July 26, 2019, “Blocking Property and Suspending Entry of Certain Persons Contributing to the Situation in Mali,” 84 *Federal Register* 37055.

² See “Restricting Economic Transactions and Use of Financial Services,” “Restricting Exports,” “Restricting Imports,” and “Curtailing Foreign Assistance,” below.

³ See “Reducing or Severing Diplomatic Relations,” below.

⁴ See “Curtailing Foreign Assistance,” below.

⁵ See “Other Restrictions,” below.

⁶ U.S. Department of the Treasury, 2021 Sanctions Review, October, 2021, at <https://home.treasury.gov/system/files/136/Treasury-2021-sanctions-review.pdf>; U.S. Government Accountability Office, *Economic Sanctions: Treasury and State Have Received Increased Resources for Sanctions Implementation but Face Hiring Challenges*, GAO-20-324, March 2020.

⁷ The term “persons” as used within the context of legislation or executive action authorizing sanctions includes both individuals and entities.

⁸ According to Treasury’s 2021 Sanctions Review, at the end of 2000, the Specially Designated Nationals list included 912 individuals and entities, compared with 9,421 at the time of the report’s release; see <https://home.treasury.gov/system/files/136/Treasury-2021-sanctions-review.pdf> and U.S. Department of the Treasury, Office of Foreign Assets Control, “Sanctions Programs and Country Information,” at <https://home.treasury.gov/policy-issues/financial-sanctions/sanctions-programs-and-country-information>.

⁹ Jesse Helms, “What Sanctions Epidemic? U.S. Business’ Curious Crusade,” *Foreign Affairs* 78, no. 1 (January-February 1999): pp. 2–8, at <https://doi.org/10.2307/20020234>.

Statutory Authorization to Impose Sanctions¹⁰

The Constitution grants Congress the power to regulate international commerce.¹¹ U.S. sanctions programs and other coercive economic restrictions are based on statutes that assign to the President or another officer in the executive branch the authority to limit or prohibit international economic transactions, imports and exports, or entry into the United States. The most commonly cited statutes used by the President to impose sanctions are discussed in brief below.

- **The International Emergency Economic Powers Act (IEEPA)** is the statute at the center of most U.S. sanctions programs.¹² IEEPA authorizes the President to regulate economic transactions in order to “deal with an unusual and extraordinary threat, which has its source in whole or substantial part outside the United States, to the national security, foreign policy, or economy of the United States, if the President declares a national emergency with respect to such threat.” The authority to declare a national emergency is provided to the President pursuant to the National Emergencies Act.¹³
- **The Trading With the Enemy Act (TWEA)**, like IEEPA, authorizes the President to regulate most international economic transactions.¹⁴ It also provides a variety of additional powers, including the power to seize the property of enemy aliens.¹⁵ However, in 1977, Congress amended TWEA so that it may only be used “[d]uring [a] time of war.”¹⁶ In enacting IEEPA, Congress provided that “authorities conferred upon the President by section 5(b) of [TWEA], which were being exercised with respect to a country on July 1, 1977 as a result of a national emergency declared by the President before such a date, may continue to be exercised with respect to such country.”¹⁷ TWEA is used to maintain the Cuban Assets Control Regulations.¹⁸
- **The Export Control Reform Act (ECRA)** authorizes the President to control the export of dual-use goods.¹⁹ Dual-use goods are commodities, software, or technologies that have “civilian applications and military, terrorism, weapons of

¹⁰ Christopher A. Casey, CRS Analyst in International Trade and Finance, contributed to this section of this report.

¹¹ U.S. Constitution, Article I, Section 8, clause 3.

¹² International Emergency Economic Powers Act (IEEPA), Title II of P.L. 95-223, 50 U.S.C. §1701 et seq. For further information on IEEPA and its relationship to the National Emergencies Act (P.L. 94-412, codified as amended at 50 U.S.C. §1601 et seq.), see CRS Report R45618, *The International Emergency Economic Powers Act: Origins, Evolution, and Use*.

¹³ National Emergencies Act (NEA), P.L. 94-412 (September 14, 1976), 50 U.S.C. §§1601 et seq. See, particularly, Section 201 (50 U.S.C. 1621).

¹⁴ TWEA, 50 U.S.C. §4305(b).

¹⁵ TWEA, 50 U.S.C. §4307(c).

¹⁶ Title I, §101(b) of P.L. 95-223, December 28, 1977, 50 U.S.C. §4305 note.

¹⁷ Ibid. For more information on TWEA and the National Emergencies Act, see CRS Report R45618, *The International Emergency Economic Powers Act: Origins, Evolution, and Use*.

¹⁸ Presidential Determination 2022-22 of September 2, 2022, “Continuation of the Exercise of Certain Authorities Under the Trading With the Enemy Act,” 87 *Federal Register* 54859, September 8, 2022.

¹⁹ Export Control Reform Act of 2018 (ECRA), Title XVII, Subtitle B of P.L. 115-232, 50 U.S.C. §4801 et seq. Further references to ECRA will be to the *U.S. Code*. Reference is made here to the ECRA, which includes the Export Controls Act of 2018 (ECA), Title XVII, Subtitle B, Part I of P.L. 115-232. For more information on ECRA, see CRS Report R46814, *The U.S. Export Control System and the Export Control Reform Act of 2018*.

mass destruction, or law-enforcement-related applications.”²⁰ ECRA also authorizes the President to control the export, reexport, and in-country transfer of items subject to the jurisdiction of the United States in order to prevent their use in activities that include the proliferation of weapons of mass destruction or conventional weapons, acts of terrorism, or military programs that could pose a threat to the security of the United States or its allies.

- **The Immigration and Nationality Act (INA)**—particularly the provisions included in Section 212—authorizes the President to “suspend the entry of all aliens or any class of aliens as immigrants or nonimmigrants, or impose on the entry of aliens any restrictions he may deem to be appropriate.”²¹ The INA also authorizes the Secretary of State, in consultation with the Secretary of the Treasury and the Attorney General, to designate an entity as a Foreign Terrorist Organization (FTO).²²
- **The Foreign Assistance Act of 1961 (FAA)** authorizes the President to withhold aid from foreign countries if he or she determines that the government of that country is engaged in certain objectionable behavior.²³
- **Article II of the U.S. Constitution** has been interpreted as granting the President the power to recognize foreign governments,²⁴ nominate U.S. ambassadors to foreign countries,²⁵ and receive foreign ambassadors into the United States.²⁶

Congress also takes an active role in enacting legislation that establishes sanctions authorities with respect to specific geopolitical events and situations, countries or regions, or harmful behaviors perpetrated internationally.

United States Participation in U.N. Sanctions

The United States implements multilateral sanctions imposed by the United Nations Security Council. Under Chapter VII, Article 41, of the United Nations (U.N.) Charter, the U.N. Security Council “may decide what measures not involving the use of armed force are to be employed to give effect to its decisions, and it may call upon the Members of the United Nations to apply such measures.” The Security Council has established 31 sanctions regimes since 1966, with 15 of those programs currently active.²⁷ As a permanent member of the Security Council, the United States carries influence in the formulation of U.N. sanctions programs through its involvement in administering Security Council resolutions. As a U.N. member state, the United States is also called on to carry out the decisions of the Security Council, including those related to sanctions programs. The President authorizes U.S. participation in U.N. sanctions programs pursuant to Section 5 of the United Nations Participation Act of 1945 (UNPA).²⁸ U.S. sanctions programs often exceed the requirements of Security Council sanctions

²⁰ ECRA, 50 U.S.C. §4801(2).

²¹ Section 212(f) of the Immigration and Nationality Act, as amended (INA; P.L. 82-414 8 U.S.C. §1182). For more information on actions taken under Section 212(f), see CRS Legal Sidebar LSB10458, *Presidential Actions to Exclude Aliens Under INA § 212(f)*.

²² INA, Section 219; 8 U.S.C. §1189.

²³ The Foreign Assistance Act of 1961, P.L. 87-195, §§116, 134, 489-490, 502B, 620, 620A, 620G-620M, 22 U.S.C. §§2151n, 2152d, 2291h, 2291j, 2304, 2370, 2371, 2377, 2378, 2378a-2378d.

²⁴ *Zivotofsky v. Kerry*, 576 U.S. 1, 7-9 (2015). For more information, see CRS Report R43773, *Zivotofsky v. Kerry: The Jerusalem Passport Case and Its Potential Implications for Congress’s Foreign Affairs Powers*.

²⁵ U.S. Constitution, Article II, Section 2.

²⁶ U.S. Constitution, Article II, Section 3.

²⁷ United Nations Security Council, Sanctions, at <https://www.un.org/securitycouncil/sanctions/information>.

²⁸ P.L. 79-264; 22 U.S.C. 287c.

resolutions.²⁹ In issuing executive orders directing the implementation of sanctions programs, the President therefore also frequently invokes the authority of emergency powers such as the National Emergencies Act and International Emergency Economic Powers Act, providing flexibility to target those persons identified by U.N. sanctions committees, as well as persons the United States targets in furtherance of its own foreign policy or national security interests.

In addition to its role in the creation of U.N. Security Council sanctions programs, the United States has reportedly taken an active role in the creation of Security Council policies establishing humanitarian exemptions to sanctions. For example, in December 2022, the United States and Ireland co-led the development of UNSC Resolution 2664 establishing a standing humanitarian carveout to sanctions measures imposed by the Security Council.³⁰ The Security Council adopted UNSC Resolution 2664 (2022) on December 9, 2022.³¹

Key Forms of Sanctions

Sanctions may take many forms, depending on the nature of the target, the bilateral relationship between the United States and the targeted foreign government, and the foreign policy or national security objective under consideration.

Restricting Economic Transactions and Use of Financial Services

The President is authorized to impose a variety of economic and financial restrictions pursuant to enacted statute directing the imposition of sanctions, such as under IEEPA during a declared national emergency and under TWEA during a time of war.³² The Department of the Treasury's Office of Foreign Assets Control (OFAC) oversees such restrictions, often in coordination and consultation with other departments, as directed by the President through executive order. Restrictions often include

- blocking access to and prohibiting transactions related to property within the jurisdiction of the United States of designated persons;
- prohibiting transactions between persons subject to U.S. jurisdiction and designated individuals; and
- blocking access by designated individuals to the U.S. financial system.³³

²⁹ For example, the U.N. Security Council sanctions program with respect to Iraq currently lists 77 individuals and entities; see United Nations Security Council, 1518 Sanctions Committee (Iraq), Sanctions Lists Materials, "Narrative Summaries of Reasons for Listing," at <https://www.un.org/securitycouncil/sanctions/1518/materials/summaries>. By comparison, the U.S. Department of the Treasury's Office of Foreign Assets Control (OFAC) identifies 207 individuals and entities for U.S. sanctions related to Iraq (program tags [IRAQ2] and [IRAQ3]); see Office of Foreign Assets Control, "Sanctions Programs and Country Information," at <https://home.treasury.gov/policy-issues/financial-sanctions/sanctions-programs-and-country-information>.

³⁰ U.S. Department of the Treasury, press release, "Treasury Implements Historic Humanitarian Sanctions Exceptions," December 20, 2022.

³¹ U.N. Security Council Resolution 2664 (2022), December 9, 2022, at <https://documents-dds-ny.un.org/doc/UNDOC/GEN/N22/736/72/PDF/N2273672.pdf>.

³² IEEPA §203, 50 U.S.C. §1702; TWEA §5(b), 50 U.S.C. §4305(b).

³³ IEEPA, 50 U.S.C. §1702(a)(1).

The executive branch or Congress may also prohibit or restrict investment by U.S. persons in foreign assets,³⁴ or prohibit or restrict U.S. financial institutions from making loans or providing credits to designated persons.³⁵

In addition, the executive branch may designate a foreign jurisdiction, financial institution, class of transaction, or type of account as a “primary money laundering concern” and impose a range of reporting requirements or restrictions (special measures) in relation to such a designation.³⁶ These measures may include a requirement that U.S. financial institutions keep records or retain information regarding transactions related to designations of primary money laundering concern, or a prohibition on U.S. financial institutions maintaining correspondent or payable-through accounts with jurisdictions of primary money laundering concern.

Restricting Entry into the United States

The Immigration and Nationality Act authorizes the President, the Attorney General, the Secretary of State, the Secretary of Homeland Security, and the Secretary of Health and Human Services to restrict or prohibit the entry into the United States of foreign persons based on a variety of criteria and foreign policy or national security interests.³⁷ In 2011, President Barack Obama expanded entry restrictions pursuant to Section 212(f) of the INA to apply to all persons designated for sanctions under the authorities of IEEPA or the United Nations Participation Act of 1945 (UNPA).³⁸

Designations restricting entry into the United States are generally not publicly released, though some sanctions authorities—such as a recurring provision in the annual Department of State, Foreign Operations, and Related Programs (SFOPS) Appropriations Act targeting those who commit gross violations of human rights or acts of kleptocracy—allow for or require their public listing.³⁹

³⁴ For example, pursuant to Executive Order 14032 of June 3, 2021, “Addressing the Threat From Securities Investments That Finance Certain Companies of the People’s Republic of China,” 86 *Federal Register* 30145, June 7, 2021, U.S. persons are prohibited from engaging in the purchase or sale of the publicly traded securities of designated Chinese companies determined to be part of the Peoples’ Republic of China’s military-industrial complex.

³⁵ For example, pursuant to the restrictions provided in Section 235 of the Countering Russian Influence in Europe and Eurasia Act of 2017, as amended (CRIIEA; Title II of the Countering America’s Adversaries Through Sanctions Act [CAATSA]; 22 U.S.C. 9529), the President may prohibit any U.S. financial institution from making loans or providing credits to persons totaling more than \$10,000,000 in any 12-month period. See also Executive Order 13849 of September 20, 2018, “Authorizing the Implementation of Certain Sanctions Set Forth in the Countering America’s Adversaries Through Sanctions Act,” 83 *Federal Register* 48195, June 7, 2021.

³⁶ Section 311 of the Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism (USA PATRIOT) Act (P.L. 107-56, 31 U.S.C. §5318A).

³⁷ INA, 8 U.S.C. §1181 et seq.

³⁸ INA, Section 212(f); 8 U.S.C. §1182(f); Presidential Proclamation 8693 of July 24, 2011, “Suspension of Entry of Aliens Subject to United Nations Security Council Travel Bans and International Emergency Economic Powers Act Sanctions,” 76 *Federal Register* 44751, July 27, 2011; United Nations Participation Act of 1945, P.L. 79-264; 22 U.S.C. 287c.

³⁹ For FY2023, the provision is located at Section 7031(c) of Department of State, Foreign Operations, and Related Programs Appropriations Act, 2023 (Division K of the Consolidated Appropriations Act, 2023; P.L. 117-328; 8 U.S.C. 1182 note).

Restricting Exports⁴⁰

The President and the Secretaries of Commerce, State, the Treasury, and Energy are authorized, to varying degrees, to limit or altogether block U.S. exports to a named end-user or foreign country in furtherance of foreign policy or national security objectives.⁴¹ Common restrictions include

- regulating the export of goods with defense applications;⁴²
- regulating the export of goods in order to meet treaty obligations;⁴³
- regulating the export of foreign-made goods manufactured using U.S. technology or software;⁴⁴
- prohibiting exports altogether; and⁴⁵
- prohibiting transactions with categories of foreign persons that has the effect of blocking exports.⁴⁶

Restricting Imports

The United States government may restrict imports of certain goods for foreign policy purposes.⁴⁷ In the past, such restrictions, imposed through legislative or executive action, have taken the form of import prohibitions or additional tariffs placed either on certain categories of goods or on goods produced in countries or regions engaged in certain practices of concern.⁴⁸

⁴⁰ Christopher A. Casey, CRS Analyst in International Trade and Finance, contributed to this section of this report.

⁴¹ ECRA; Arms Export Control Act of 1976, P.L. 94-329, codified as amended at 22 U.S.C. §2751 et seq.; Nuclear Non-Proliferation Act of 1978, P.L. 95-242, codified as amended at 22 U.S.C. §3201 et seq.; Chemical and Biological Weapons Control and Warfare Elimination Act of 1991, as amended, P.L. 102-182, 22 U.S.C. §5601 et seq.; IEEPA; Atomic Energy Act of 1954, as amended, §54 P.L. 83-703, 42 U.S.C. §2073 et seq.

⁴² See ECRA and the Export Administration Regulations (EAR), at 15 C.F.R. Parts 730-780.

⁴³ See 15 C.F.R. Parts 710-729, for example, relating to obligations under the Convention on the Prohibition of the Development, Production, Stockpiling and Use of Chemical Weapons and on Their Destruction (Chemical Weapons Convention) and the Chemical Weapons Convention Implementation Act of 1998 (Division I of P.L. 105-277; 22 U.S.C. 6701 et seq.).

⁴⁴ Also referred to as the “foreign-direct product (FDP) rule,” which places restrictions pursuant to the EAR when foreign-produced items located outside the United States are produced by using certain U.S.-origin technology or software; see the Department of Commerce, Bureau of Industry and Security, “§734.9 Foreign-Direct Product (FDP) Rules,” 15 C.F.R. Part 734 §734.9.

⁴⁵ IEEPA, 50 U.S.C. §1702.

⁴⁶ Prohibitions on transactions that have the effect of blocking exports may take the form of a ban on conducting transactions with all persons who could effectuate trade of a certain item, thereby effectively blocking trade in that item without directly blocking its export or import. A variety of statutes provide the underlying authority for these actions, including IEEPA, TWEA, and ECRA.

⁴⁷ Such import restrictions may be challenged as inconsistent with U.S. treaty obligations. See CRS Legal Sidebar LSB10223, *The “National Security Exception” and the World Trade Organization*.

⁴⁸ For examples of increasing tariffs on a specific country or countries, see Suspending Normal Trade Relations with Russia and Belarus Act, P.L. 117-110, April 8, 2022, and Proclamation 10420 of June 27, 2022, “Increasing Duties on Certain Articles From the Russian Federation,” 87 *Federal Register* 38875, June 30, 2022. For an example of increasing tariffs on countries engaged in certain practices of concern, see Trade Act of 1974, P.L. 93-618 §402, January 3, 1975, codified as amended at 19 U.S.C. 2432(a). For an example of banning categories of products from a specific country, see Executive Order 14066 of March 8, 2022, “Prohibiting Certain Imports and New Investments With Respect to Continued Russian Federation Efforts To Undermine the Sovereignty and Territorial Integrity of Ukraine,” 87 *Federal Register* 13625, March 10, 2022. For an example of banning products produced using certain objectionable practices, see Tariff Act of 1930, P.L. 71-361 §307, March 13, 1930, 19 U.S.C. §1307. The Uyghur Forced Labor Protection Act (UFLPA) effectively imposes an import restriction on goods made in China’s Xinjiang (continued...)

Curtailing Foreign Assistance

The United States government may restrict assistance to a foreign government on the basis of objectionable behavior described in statute. Such behavior has included, but is not limited to, a foreign government sponsoring acts of international terrorism, engaging in illicit narcotics production or trafficking, arming a foreign government that sponsors acts of international terrorism, or engaging in gross violations of internationally recognized human rights.⁴⁹ Under other statutory authorities, the United States government may also withhold assistance to countries whose duly elected head of government is deposed by a military coup d'état, fails to adhere to international law regarding human trafficking, or engages in violations of religious freedom.⁵⁰ Certain actions or policies of foreign governments can require restrictions on development assistance, security assistance, support in international financial institutions,⁵¹ U.S. participation in multilateral assistance, and nonemergency food aid. Humanitarian assistance, however, is generally exempt from such restrictions.⁵²

Reducing or Severing Diplomatic Relations

The United States has restricted diplomatic relations with foreign countries based on foreign policy or national security priorities. In response to the objectionable actions or policies of a foreign government, the executive branch may withdraw U.S. diplomats or expel foreign diplomats as part of its response to objectionable behavior or perceived threats to national security.⁵³

In some instances, the decision to recognize or refuse to recognize the legitimacy of a foreign government may be used as a means to deter or alter objectionable behaviors or policies. The

region by establishing a rebuttable presumption that goods made in Xinjiang, or by specifically identified entities with ties to the region, were made with forced labor and are thus ineligible for entry into the United States; see “To ensure that goods made with forced labor in the Xinjiang Uyghur Autonomous Region of the People’s Republic of China do not enter the United States market, and for other purposes,” P.L. 117-78, December 23, 2021, 22 U.S.C. §6901 note.

⁴⁹ The Foreign Assistance Act of 1961, P.L. 87-195, §§116, 134, 489-490, 502B, 620, 620A, 620G-620M, September 4, 1961, codified as amended at 22 U.S.C. 22 U.S.C. §§2151n, 2152d, 2291h, 2291j, 2304, 2370, 2371, 2377, 2378, 2378a-2378d.

⁵⁰ Department of State, Foreign Operations, and Related Programs Appropriations Act of 2023 (Division K of the Consolidated Appropriations Act, 2023; P.L. 117-328, §7008); Trafficking Victims Protection Act of 2000, P.L. 106-386 §110; 22 U.S.C. 7107; International Religious Freedom Act of 1998 (IRFA), P.L. 105-292, §421-423, 22 U.S.C. 2151n(c), 22 U.S.C. 262d, 22 U.S.C. 6461.

⁵¹ Restrictions on U.S. support for funding in international financial institutions are described in Section 701 of the International Financial Institutions Act as amended (P.L. 95-118; 22 U.S.C. 262d). The International Financial Institutions Act requires that the U.S. voice vote in international financial institutions be used to channel assistance toward countries other than those whose governments engage in a pattern of gross violations of human rights or provide refuge to individuals committing acts of international terrorism by hijacking aircraft.

⁵² Generally, most sanctions programs established through legislation or emergency authority include exemptions for humanitarian assistance; see “Sanctions Exemptions.” In December, 2022 the Department of the Treasury also announced expanded sanctions exemptions, including humanitarian exemptions, as part of broader policy on sanctions implementation. See U.S. Department of the Treasury, Office of Foreign Assets Control, Recent Actions, “Publication of Humanitarian-related Regulatory Amendments and Associated Frequently Asked Questions,” December 20, 2022, <https://ofac.treasury.gov/recent-actions/20221220>.

⁵³ Article II, Section 3, of the U.S. Constitution empowers the President to “receive Ambassadors and other public Ministers.” Other laws provide the authority for the President to downgrade or sever diplomatic relations on the basis of certain harmful actions or policies by foreign governments. For example, Section 307 of the Chemical and Biological Weapons Control and Warfare Elimination Act of 1991, as amended, P.L. 102-182, 22 USC §5605, authorizes the President to downgrade or suspend diplomatic relations between the United States and a foreign government that has used chemical or biological weapons in contravention of international law.

U.S. Supreme Court has interpreted the U.S. Constitution as granting the President exclusive power to recognize the official government of a foreign state.⁵⁴

Other Restrictions

The United States may, in furtherance of foreign policy or national security objectives, restrict other elements of bilateral relations with foreign countries. Such restrictions may include curtailing educational, scientific, sports, or cultural exchanges;⁵⁵ limiting landing or flyover rights of foreign airlines;⁵⁶ and opposing a foreign country's participation in international organizations and fora.⁵⁷

The Efficacy of Sanctions

Whether or not sanctions work remains a contested issue. Analysts continue to debate both whether sanctions are effectively achieving their objectives and what those objectives are or should be.

When assessing the effects that sanctions have, it may be useful to consider the distinction between “efficacy” and “impact.” In general, many experts view sanctions as effective when they achieve the desired foreign policy objective or when they deter future instances of behaviors or policies considered harmful to U.S. foreign policy or national security interests.⁵⁸ However, this effectiveness is not necessarily synonymous with the sanctions’ “impact”—that is, the scope of the negative economic or political influence the sanctions exert on their targets. Sanctions may have a significant economic impact but fail to achieve the foreign policy or national security objectives by which they may be judged to be effective. Large-scale studies of the efficacy of sanctions offer differing conclusions regarding their rate of success.⁵⁹

⁵⁴ *Zivotofsky v. Kerry*, 576 U.S. 1, 17 (2015).

⁵⁵ For example, the United States boycotted the 1980 Olympic Games in Moscow in protest of the Soviet Union's 1979 invasion of Afghanistan. See U.S. Department of State, Archive, “The Olympic Boycott, 1980,” <https://2001-2009.state.gov/r/pa/ho/time/qfp/104481.htm>. As another example, the United States terminated cultural exchanges funded by the People's Republic of China due to allegations those programs advanced Chinese Communist Party propaganda. See, for example, U.S. Department of State, Press Statement, “Termination of PRC-Funded Propaganda Programs,” Michael R. Pompeo, December 4, 2020, at <https://2017-2021.state.gov/termination-of-prc-funded-propaganda-programs/>.

⁵⁶ For example, the United States placed restrictions on the use of U.S. airspace by Russian civil aircraft operators. See U.S. Department of Transportation, Order 2022-3-2, “Notification, Order Disapproving Schedules, and Order Suspending the Authority of Russian Foreign Civil Aircraft Operators to Navigate in the United States,” March 2, 2022, at <https://www.transportation.gov/sites/dot.gov/files/2022-03/Russia%20Part%2020213%20Order%202022-3-2.pdf>. The authority to regulate navigation of foreign civil aircraft in U.S. airspace is provided through “To revise, codify, and enact without substantive change certain general and permanent laws, related to transportation, as subtitles II, III, and V-X of title 49, United States Code, ‘Transportation’, and to make other technical improvements in the Code,” as amended, P.L. 103-272 §41703, 49 U.S.C. §41703.

⁵⁷ The President may direct U.S. representatives in international organizations to exercise their voting power to exclude certain foreign countries from participating in those organizations or their subsidiary bodies, and/or to voice support for such actions. For example, in April 2022 the United Nations General Assembly adopted a resolution calling for Russia to be suspended from the Human Rights Council. The United States voted in favor of the resolution, and Ambassador Linda Thomas-Greenfield spoke in favor of its adoption. See United Nations, UN News, “UN General Assembly votes to suspend Russia from the Human Rights Council,” April 7, 2022, at <https://news.un.org/en/story/2022/04/1115782>; and United Nations Digital Library, “Suspension of the rights of membership of the Russian Federation in the Human Rights Council : resolution / adopted by the General Assembly,” A/RES/ES-11/3, April 7, 2022, at <https://digitallibrary.un.org/record/3967778?ln=en>.

⁵⁸ Gary Clyde Hufbauer, Jeffrey J. Schott, Kimberly Ann Elliott, and Barbara Oegg, *Economic Sanctions Reconsidered*, 3rd Edition, p. 157, Peterson Institute Press, June 2009.

⁵⁹ See, for example, David A. Baldwin, “The Sanctions Debate and the Logic of Choice,” *International Security* 24, no. 3 (1999): 80–107. This study finds sanctions to be effective in approximately 23% of cases. This study included U.N. sanctions in its data. See also Hufbauer et al., *Economic Sanctions Reconsidered*, p. 158. This study found sanctions to be at least partially successful in 34% of cases and excluded U.N. sanctions in its data. A study of U.N.-targeted (continued...)

Although predicting or analyzing the efficacy of sanctions is challenging, there are certain conditions under which sanctions are most likely to be effective. Criteria for maximizing the efficacy of sanctions include

- establishing sanctions programs that support clear and concise foreign policy objectives, that are easily understood, and that are reversible where possible;
- imposing sanctions in a manner that maximizes the economic impact on the target;
- avoiding negatively affecting unintended targets or imposing unintended costs on the U.S. economy, allies, or third parties; and
- incorporating multilateral sanctions coordination, where appropriate.⁶⁰

Sanctions Targets

Although sanctions may be imposed on the entire economy of a foreign country, since the late-1990s they have more often targeted individuals and entities, government officials, groups of subnational actors, and specific economic sectors.⁶¹ The type of target designated for sanctions may depend on multiple factors, including

- the nature of the objectionable behavior for which the target is designated;
- the type of individual or entity engaged in sanctionable behavior;
- the type of restriction/target that would most effectively prompt a change of behavior, or most effectively maximize the sanction's effect on the desired target and minimize negative effects on unintended targets; and
- other factors related to broader national security or foreign policy priorities.

Depending on a sanction's target, the same restriction may have varied effects. For instance, a prohibition on transactions between U.S. persons and designated persons may have a different economic impact if the prohibition is imposed on an individual foreign national rather than the central bank of a foreign country. Further, the same types of restrictions may have different economic effects on similar targets, depending on whether those targets substantially rely on or interact with the U.S. economy or financial system.

Secondary Sanctions

U.S. sanctions operate primarily by restricting the activities of U.S. persons, such as by prohibiting them from engaging in transactions with designated foreign persons, or by requiring them to freeze designated assets that are held within U.S. jurisdiction. When policymakers use sanctions to alter or deter the behavior of a foreign actor who has limited connections to or reliance on the U.S. economy or financial system, those restrictions may have limited economic impact and be less likely to achieve their objectives. In such cases, the United States may use the threat of additional sanctions to deter non-U.S. persons from engaging in transactions with sanctioned persons.⁶² The threat or use of such sanctions is frequently referred to as “secondary

sanctions found that they are successful 22% of the time; see Thomas J. Biersteker, Sue E. Eckert, Marcos Tourinho, and Zuzana Hudáková, “UN targeted sanctions datasets (1991–2013),” *Journal of Peace Research*, 55(3) (2018), pp. 404–412.

⁶⁰ Hufbauer et al., *Economic Sanctions Reconsidered*; U.S. Department of the Treasury, 2021 Sanctions Review, October, 2021.

⁶¹ Jonathan Masters, “What Are Economic Sanctions?,” Council on Foreign Relations, August 12, 2019; Uri Friedman, “Smart Sanctions: A Short History,” *Foreign Policy*, April 23, 2012.

⁶² Ole Moehr, “Secondary Sanctions: A First Glance,” *The Atlantic Council*, February 6, 2018.

sanctions.” Secondary sanctions implicitly require a foreign person to choose between transacting with targeted persons or maintaining the ability to transact within the U.S. financial system.⁶³ For example, through the implementation of the North Korea Sanctions and Policy Enhancement Act (NKSPEA), the President is required to impose sanctions on a foreign person who engages in prohibited transactions with North Korea.⁶⁴ Such restrictions do not prevent foreign persons from engaging in prohibited transactions with North Korea, but carry the risk that if they do so, they may be subject to U.S. sanctions. Powers granted to the President under IEEPA and TWEA authorize secondary sanctions. Moreover, Congress may seek to authorize or require the imposition of secondary sanctions through specific legislation. Secondary sanctions are sometimes controversial among foreign states, especially U.S. partners and allies, and viewed as an attempt to extraterritorially enforce U.S. law.⁶⁵

Sanctions Exemptions

U.S. policymakers may seek to provide exemptions to sanctions programs for various reasons, including to reduce the unintended economic impact on actors other than the targets, and to minimize the burden that enforcing sanctions may place on U.S. partners and allies. In other cases, such exemptions may be made when it is in the foreign policy or national security interest of the United States to do so.

Both Congress and the executive branch have a role in defining the conditions under which certain activities normally prohibited by sanctions are exempt from such restrictions. When sanctions are authorized through program-specific legislation, Congress may be prescriptive in defining how the President can or should issue sanctions exemptions, and what form those exemptions should take.⁶⁶ When the President invokes emergency authority to establish sanctions programs—without further legislative action from Congress—he or she may exercise flexibility in issuing exemptions to sanctions.

OFAC generally issues exemptions for financial sanctions through “specific licenses” and “general licenses.” Both licenses authorize transactions that are normally prohibited by OFAC sanctions regulations. Specific licenses, which are not issued publicly, are granted to specific persons or entities that apply for such licenses through written applications.⁶⁷ General licenses, which are issued publicly, apply to larger classes of persons, authorizing them to engage in certain

⁶³ Daniel Flatley, “What Secondary Sanctions Mean, for Russia and World,” Bloomberg, April 5, 2022, at <https://www.bloomberg.com/news/articles/2022-04-05/what-secondary-sanctions-mean-for-russia-and-world-quicktake>.

⁶⁴ North Korea Sanctions and Policy Enhancement Act of 2016, as amended (P.L. 114-122 §104, 22 U.S.C. §9214); “North Korea Sanctions Regulations,” 31 C.F.R. Part 510, Subpart B.

⁶⁵ Jason Bartlett and Megan Ophel, “Sanctions by the Numbers: U.S. Secondary Sanctions,” Center for a New American Security, August 26, 2021; Richard N. Haass, “Economic Sanctions: Too Much of a Bad Thing,” Brookings Institution, June 1, 1998.

⁶⁶ Congress previously mandated that existing and future sanctions programs provide exemptions for agricultural commodities and medicine and medical items through the Trade Sanctions Reform and Export Enhancement Act of 2000, as amended (Title IX of the Agriculture, Rural Development, Food and Drug Administration, and Related Agencies Appropriations Act, 2001, P.L. 106-387; 22 U.S.C. §7201 et seq.). The act provides that the President shall terminate any unilateral agricultural or medical sanction, and not impose such sanctions subsequently, except in cases where the United States is engaged in armed hostility with a foreign country, or when the government of a country is designated as a sponsor of acts of international terrorism.

⁶⁷ U.S. Department of the Treasury, Office of Foreign Assets Control, “OFAC License Application Page,” at <https://ofac.treasury.gov/ofac-license-application-page>.

transactions without the need to apply for a license.⁶⁸ OFAC general licenses frequently exempt the official business of the U.S. government and humanitarian operations in contexts where these transactions might otherwise be subject to restrictions. For example, in line with the provisions of U.N. Security Council Resolution 2664, OFAC announced in December 2022 its intention to issue four standing general licenses across multiple sanctions programs providing exemptions for the official business of the U.S. government, the official business of certain international organizations and entities, transactions in support of certain nongovernmental organizations' activities, and the provision of agricultural commodities and medicine and medical items.⁶⁹ In a press release, OFAC stated that these general licenses are intended to “enable the flow of legitimate humanitarian assistance supporting the basic human needs of vulnerable populations while continuing to deny resources to malicious actors.”⁷⁰ Because these exemptions were issued recently, there is not yet clear data demonstrating whether these general licenses have prompted an expansion of humanitarian activities in contexts where the United States maintains active sanctions programs.

Executive Agencies Implementing Sanctions

In the executive branch, several agencies and departments are responsible for implementing or administering sanctions, primarily the Departments of State, the Treasury, and Commerce.

The Department of State

The Department of State manages restrictions including those on visa issuance, diplomatic relations, arms sales, military aid, and foreign aid. The Secretary of State makes determinations, including designating foreign terrorist organizations (FTOs) and governments that sponsor acts of international terrorism (often referred to as SSOT).⁷¹ Because of its international presence, the Department of State plays a major role in gathering information on potential sanctions targets, including by identifying instances of potentially sanctionable behavior and assisting in the compilation of evidentiary packages supporting designation.

The roles that offices and bureaus within the Department of State have regarding sanctions implementation may vary over time. Select Department of State entities with closer involvement in implementing sanctions and other restrictions include the following:

- Secretary of State.
- Office of Sanctions Coordination.
- Bureau of Democracy, Human Rights, and Labor.

⁶⁸ U.S. Department of the Treasury, Office of Foreign Assets Control, “Frequently Asked Questions: OFAC Licenses,” at <https://ofac.treasury.gov/faqs/topic/1506>.

⁶⁹ U.S. Department of the Treasury, Office of Foreign Assets Control, Recent Actions, “Publication of Humanitarian-related Regulatory Amendments and Associated Frequently Asked Questions,” December 20, 2022, at <https://ofac.treasury.gov/recent-actions/20221220>.

⁷⁰ U.S. Department of the Treasury, Office of Foreign Assets Control, Press Release, “Treasury Implements Historic Humanitarian Sanctions Exceptions,” December 20, 2022 at <https://home.treasury.gov/news/press-releases/jy1175#main-content>.

⁷¹ Pursuant to INA, 8 U.S.C. §1189; Section 620A of the Foreign Assistance Act of 1961 (FAA'61; P.L. 87-195; 22 U.S.C. 2371), as amended; Section 40 of the Arms Export Control Act (AECA; P.L. 90-629; 22 U.S.C. 2780), as amended; Section 1754(c) of the Export Controls Act of 2018 (ECA'18; Part I, Subtitle B, Title XVII, of the John S. McCain National Defense Authorization Act for Fiscal Year 2019; P.L. 115-232; 50 U.S.C. 4813. See also CRS In Focus IF10613, *Foreign Terrorist Organization (FTO)*, and CRS Report R43835, *State Sponsors of Acts of International Terrorism—Legislative Parameters: In Brief*.

- Bureau of International Security and Nonproliferation.
- Bureau of Intelligence and Research.
- Office of the Legal Adviser.
- Bureau of Economic and Business Affairs.
 - Office of Economic Sanctions Policy and Implementation.
- Bureau of Counterterrorism.
- Bureau of International Narcotics and Law Enforcement Affairs.
- Directorate of Defense Trade Controls.
- Bureau of Consular Affairs.
- Office of International Religious Freedom.
- Regional Bureaus.
- Bureau of International Organization Affairs.
 - Office of Sanctions and Counterterrorism.

The Department of the Treasury

The Department of the Treasury regulates transactions between U.S. persons and foreign persons designated for sanctions, access to U.S.-based assets, and access to or use of the U.S. dollar and the U.S. banking system. It also oversees the use of the U.S. voice vote within international financial institutions such as the International Monetary Fund. Legislation establishing sanctions, and executive orders regarding sanctions, frequently delegate sanctions designation authority to the Secretary of the Treasury, often in consultation with the Secretary of State or other agencies/actors.

Within the Department of the Treasury, OFAC is primarily responsible for implementing U.S. financial sanctions. OFAC is part of the Office of Terrorism and Financial Intelligence (TFI), which oversees not only OFAC but also the Office of Intelligence and Analysis (OIA), the Office of Terrorist Financing and Financial Crimes (TFFC), the Executive Office for Asset Forfeiture (TEOAF), and the Financial Crimes Enforcement Network (FinCEN). OFAC frequently issues sanctions designations through “list-based” sanctions resources, such as the Specially Designated Nationals (SDN) list.⁷² OFAC works with interagency partners such as the Department of State and the intelligence community to identify instances of potentially sanctionable behavior, and to compile evidentiary packages supporting the determination to designate persons for sanctions. OFAC also investigates potential violations of sanctions regulations, issuing fines for violators and, in certain cases, making criminal referrals in coordination with the Department of Justice and sometimes the Department of Commerce.⁷³ OFAC engages in public outreach to promote compliance with U.S. sanctions regulations.

The Department of Commerce⁷⁴

The Department of Commerce oversees export licensing and implements controls coordinated with partner countries. Within Commerce, the Bureau of Industry and Security (BIS) oversees the U.S. export control regime, which restricts the export of software, emerging technologies,

⁷² 31 C.F.R. 599, Appendix A to Chapter V.

⁷³ See CRS In Focus IF12063, *Enforcement of Economic Sanctions: An Overview*.

⁷⁴ Christopher A. Casey, CRS Analyst in International Trade and Finance, contributed to this section of this report.

conventional arms, and dual-use or sensitive goods and services for national security and foreign policy reasons.⁷⁵ BIS promulgates regulations to implement U.S. export restrictions, including those related to foreign policy or national security objectives. For instance, BIS issued final rules related to export controls imposed on Russia and Belarus following Russia's expansion of its invasion of Ukraine in February 2022.⁷⁶ As part of its responsibilities, Commerce maintains several lists of end-users and exporters subject to additional limitations. The Entity List,⁷⁷ the Military End-User List,⁷⁸ and the Unverified List⁷⁹ contain the names of end-users subject to additional limitations.⁸⁰ The Denied Persons List, in contrast, places limits on certain exporters who have violated or may be in the process of violating U.S. export controls.⁸¹

Other Agencies

Depending on the nature of the restrictions or their foreign policy objectives, other U.S. executive departments and agencies may contribute to the implementation of U.S. sanctions. For example, the Department of Homeland Security, through its U.S. Customs and Border Protection agency, enforces restrictions on imports into the United States. The Department of Justice prosecutes violations of sanctions and export laws, along with efforts to evade U.S. sanctions regulations. Other departments not closely associated with foreign policy implementation might have a role in sanctions implementation as well, such as the Department of Energy's oversight obligations under international nuclear agreements,⁸² and its role in consulting on and implementing export controls under the Export Control Reform Act of 2018.⁸³

Congress's Role in Sanctions

Legislative Authorization

Congress can enact legislation to authorize or require sanctions, even if the President already has authority to do so under emergency authorities. In enacting legislation authorizing sanctions related to specified actors and/or activities, Congress may seek to maximize its role in shaping (1) the foreign policy or national security objectives the sanctions seek to achieve; (2) the context in which sanctions are implemented as part of the broader slate of foreign policy tools; (3) the discretion and flexibility granted to the office of the President to impose and enforce sanctions; (4) the content, frequency, and purpose of executive reporting to Congress on sanctions implementation; (5) the criteria by which sanctions may be imposed, removed, or relaxed; and (6)

⁷⁵ CRS Report R46814, *The U.S. Export Control System and the Export Control Reform Act of 2018*.

⁷⁶ Department of Commerce, Bureau of Industry and Security, Final Rule "Implementation of Sanctions Against Russia Under the Export Administration Regulations (EAR)," March 3, 2022, 87 *Federal Register* 12226; Department of Commerce, Bureau of Industry and Security, Final Rule "Imposition of Sanctions on 'Luxury Goods' Destined for Russia and Belarus and for Russian and Belarusian Oligarchs and Malign Actors Under the Export Administration Regulations (EAR)," March 11, 2022, 87 *Federal Register* 14785.

⁷⁷ 15 C.F.R. Part 744, Supplement no. 4.

⁷⁸ 15 C.F.R. Part 744, Supplement no. 7.

⁷⁹ 15 C.F.R. Part 744, Supplement no. 6.

⁸⁰ 15 C.F.R. Part 744.

⁸¹ 15 C.F.R. Part 764. The requirement for BIS to establish lists is included as part of ECRA, Title XVII, Subtitle B, of P.L. 115-232, 50 U.S.C. §§ 4801-4852.

⁸² Chapter 11 of the Atomic Energy Act of 1954, as amended, §§121-135 P.L. 79-585, 42 U.S.C. §§2151-2155.

⁸³ ECRA §1755, 50 U.S.C. § 4814.

the situations in which exemptions for sanctions may be established. Congress has previously used all of these mechanisms in legislation.

Congress may also legislate sanctions programs that the President initiated using emergency powers in the NEA and IEEPA. By enacting a sanctions program, Congress may take a greater role in determining how that program is implemented. Conversely, Congress may revoke a national emergency by joint resolution pursuant to the NEA, thereby terminating sanctions imposed under IEEPA authority in relation to that emergency.⁸⁴

Although Congress can legislate sanctions programs established by the President's emergency authority to gain a greater voice in how those programs are implemented, doing so may curtail the President's flexibility in responding to changing conditions or strategic interests related to those programs. When considering sanctions legislation, Members might weigh, on a case-by-case basis, whether U.S. interests are best served by expanding Congress's role in sanctions implementation and whether maximizing oversight or flexibility is more advantageous.

Oversight

Congress can engage in oversight of sanctions implementation with or without authorizing or codifying sanctions programs through legislation. In enacting legislation authorizing the imposition of sanctions, Congress often requires the President to report to Congress on the implementation of those sanctions. Such reporting can include annual summaries of actions taken and the impact of sanctions,⁸⁵ certifications that certain conditions have been met before removing or expanding sanctions restrictions,⁸⁶ domestic economic burdens and costs, and reporting on how sanctions continue to form a part of a broader foreign policy or national security strategy.⁸⁷ Congress can also request or compel executive officials to testify before Congress on matters related to the use of sanctions.

Congress may also enact reporting or testimony requirements for sanctions programs established by the President using national emergency authority.⁸⁸

Constitutional Considerations

Certain sanctions legislation may raise constitutional concerns. Congress may consider such concerns, and whether the potential for legal challenge warrants the exclusion of such provisions with unresolved legal status.

Members, for example, have sought to require the President to impose sanctions on named individuals and entities. Such provisions, if enacted, could be challenged under Article I, Section

⁸⁴ NEA §202, 50 U.S.C. 1622.

⁸⁵ See, for example, Section 1264 of the Global Magnitsky Human Rights Accountability Act, Title XII, Subtitle F, of P.L. 114-328 (National Defense Authorization Act for Fiscal Year 2017); 22 U.S.C. §10101 et seq..

⁸⁶ See, for example, Section 305 of the Chemical and Biological Weapons Control and Warfare Elimination Act of 1991, as amended, P.L. 102-182; 22 U.S.C. §5605.

⁸⁷ For example, reporting requirements enacted in Section 1222(b)(11) of the National Defense Authorization Act (NDAA) for Fiscal Year 2022 relating to the U.S. defense and diplomatic strategy for Syria include an assessment of the progress made toward meeting the criteria specified in the Caesar Syria Civilian Protection Act of 2019 (Title LXXIV of Division F of P.L. 116-92) to suspend sanctions against the Assad regime.

⁸⁸ For example, Section 717 of the Intelligence Authorization Act for Fiscal Year 2022 (Division X of P.L. 117-103; 136 Stat. 1010) requires the Director of National Intelligence, in consultation with the Assistant Secretary of the Treasury for Intelligence and Analysis, to file a one-time report with Congress on sanctions effectiveness, including with respect to China and Iran.

9, Clause 3, of the Constitution, which states, “No Bill of Attainder or ex post facto Law shall be passed.” The Supreme Court has described a bill of attainder as “a legislative act which inflicts punishment without a judicial trial.”⁸⁹ Previous interpretations of this clause may indicate that legislation enacted to impose sanctions on a named individual or entity might be subject to a legal challenge, though it is unclear whether such a challenge would be successful.⁹⁰ In certain instances, Congress has enacted legislation that used alternative means to require or compel the President to impose sanctions on discrete subsets of foreign actors.⁹¹ To date, however, there have been no instances where Congress sought to require the President to impose sanctions on specific foreign actors and the President explicitly refused to do so. Lacking a direct legal precedent, it remains uncertain whether Congress can “require” specific sanctions determinations for named individuals, and how “mandatory” sanctions prescribed through legislation can be.

In addition, Congress has introduced legislation seeking to compel the President to render determinations on the official recognition of foreign governments.⁹² The Supreme Court has ruled that Article II of the Constitution grants the President the exclusive power to recognize foreign governments,⁹³ nominate U.S. ambassadors to foreign countries,⁹⁴ and receive foreign ambassadors into the United States.⁹⁵ If Members of Congress enact legislation requiring the President to make determinations on the aforementioned functions, the executive branch may decline to abide by such provisions, and that legislation may face judicial challenge or be ruled unconstitutional.

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⁸⁹ *Cummings v. Missouri*, 71 U.S. 277 (1867).

⁹⁰ See CRS In Focus IF12237, *Sanctions Legislation and the Bill of Attainder Clause*.

⁹¹ Congress required the Secretary of State to render some determination on whether the Haqqani Network met the criteria for designation as an FTO through the Haqqani Network Terrorist Designation Act of 2012, P.L. 112-168, 126 Stat. 1299. Congress also required the President to impose sanctions on former Burmese military officials and their families by enacting the Tom Lantos Block Burmese JADE (Junta’s Anti-Democratic Efforts) Act of 2008, P.L. 110-286, 50 U.S.C. 1701 note. The JADE Act also required the President to provide Congress with a list of current Burmese military officials meeting the description described in the act, with provisions that persons described on such a list would necessarily be designated for sanctions.

⁹² H.R. 5272, the Taliban Recognition Prevention Act, provided that the President should not “extend diplomatic recognition to the Taliban-controlled government of Afghanistan.” Other legislative efforts have sought to prohibit funding used to recognize a foreign government, rather than seeking to prevent or rescind recognition explicitly. See, for example, H.R. 3202, the Assad Regime Anti-Normalization Act of 2023.

⁹³ *Zivotofsky v. Kerry*, 576 U.S. 1, 7-9 (2015).

⁹⁴ U.S. Const. art. II, §2.

⁹⁵ U.S. Const. art. II, §3.

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