

Decision-Making Mechanisms as a Determinant of US Sanctions' Effectiveness

Yulia Timofeeva,

School of Governance and Politics, MGIMO University

Abstract

The article focuses on decision-making regarding sanctions in the United States. It examines three main tendencies contributing to the US sanctions effectiveness. Their effectiveness is entwined with the role of the US Congress, US President and enforcement apparatus. A clear division of responsibilities and tasks between the US agencies inhibits violations of the US sanctions regimes. Both imposition and implementation of sanctions matter when it comes to the issue of sanctions' effectiveness.

Key Words: *sanctions, effectiveness, Congress, OFAC, sanctions enforcement*

Introduction

Sanctions are referred to as restrictive measures – economic and political – used by a state, a group of states or an international organization against another state (Dzhazairi, 2015) with the purpose to achieve changes in the policy pursued by the targeted country. The US is the most active initiator of restrictive measures. Through them, Americans defend their foreign policy interests by forcing other countries to comply with their demands. However, US sanctions often do not lead to the desired policy changes in a targeted state (Pape, 1997). Still they create significant costs for targeted countries. Sanctions have a cumulative effect and, thus, are taken into account by the governments of states when making strategic decisions. Research on the topic is focused on the issue of sanctions' effectiveness. G. Huffbauer and his colleagues, R. Pape, T. Peterson, D. Drezner, E. Ashford, E. Gilligan, J. Grauvogel and C. von Soest, T. De Graaf, M. Brzoska and others studied theoretical and practical components of sanctions. But, although the decision-making system for restrictive measures in the United States is an important factor providing for their effectiveness, it is

often disregarded in research. The main purpose of this article is to answer the questions what are the governance arrangements that contribute to the US sanctions effectiveness and how do those arrangements work in practice. This article proposes the following hypotheses as an answer to the questions posed. (1) Growing involvement of the US Congress in decision-making processes concerning sanctions imposition undermines the effectiveness of sanctions. (2) The US President's power to issue executive orders on sanctions serves as a tool of an immediate reaction to violations and increases effectiveness of US restrictive measures. (3) US sanctions cause significant damage to target countries due to the activity of "enforcement apparatus" - the institution of tracking and punishing violations, which makes the threat of US sanctions credible.

Main Body

The United States of America is actively resorting to sanctions in its foreign policy. Three features that affect the effectiveness of the restrictive measures characterize its decision-making mechanism on sanctions.

Firstly, over the past 30 years, the US Congress has been increasingly involved in decision-making processes concerning sanctions imposition. The introduction of sanctions has been within the purview of the President of the United States under the National Emergencies Act and the International Emergency Economic Powers Act (IEEPA). The situation, however, has changed since the 1990s. Since then, the US Congress' involvement in decision-making regarding restrictive measures has been growing. For instance, Congress passed two laws under the US Counter-Narcotic Trafficking sanctions program and three laws under the Ukrainian sanctions program against Russia: Support for the Sovereignty, Integrity, Democracy and Economic Stability of Ukraine, Ukraine Freedom Support Act 2014, CAATSA 2017. Congress enacted four laws under the Counter Terrorism Sanctions program. The legislative body has been passing sanctions bills on many other programs. A possible reason for the growing activity of the legislative body is the sanctions' consolidating nature for Congressmen. Furthermore, the development of a legal framework for sanctions is one of the ways the US Congress claims to be influential in terms of foreign policy.

Increased involvement of the US Congress in the process of sanctions imposition tends to hinder the US sanctions' effectiveness. The reason for it lies in the limited opportunity for diplomatic bargaining with the targeted state (Thomas, 2013). The lifting of sanctions imposed by the act of Congress is possible only by passing another bill that requires this lifting. As a result, the low probability of lifting sanctions reduces the motivation of the targeted state to comply with the US requirements.

Secondly, the President of the United States retains broad powers with regard to sanctions. The President issues executive orders responding to both minor and major incidents. An example of sanctions on a minor issue are the restrictive measures taken against Belarus for the violation of human rights, which was introduced by Executive Order 13405 (2006) (U.S. Department of the Treasury, 2006). The US President can immediately react to violations by issuing executive orders that contain more details on a specific issue. The number of executive orders significantly exceeds the number of Congressional laws on sanctions. Executive orders often duplicate the requirements set forth in Congressional laws.

Thirdly, the United States has become the first country to create an enforcement apparatus to ensure compliance with its sanctions regimes and make them effective. The US enforcement apparatus is represented by a system of departments and units whose functions and duties are explicitly divided. The enforcement apparatus includes the US Department of the Treasury, the US State Department, the US Department of Justice, and also the Prosecutor Office and the Federal Reserve System. Special units monitor all transactions conducted through the US financial system; therefore, it is practically impossible to conceal the fact of sanctions violation. Companies prefer to voluntarily disclose violations because their cooperation with the US Treasury in its investigation will be considered in defining the punishment – a fine imposed on a company can be considerably reduced.

Various units of the Treasury Department (USDT) are playing a special role. For example, Terrorism and Financial Intelligence (TFI) is in charge of the development and implementation of the US government's strategy to combat the financing of terrorism at home and abroad and money laundering, as well as implementation of other strategies and programs to combat financial crimes. The TFI division – the Office of Foreign Assets Control (OFAC) – uses economic sanctions against countries and their regimes, terrorists, international

drug dealers and other individuals and legal entities. In its activity, it is guided by US foreign policy and national security goals. OFAC supervises and controls transactions and freezes assets within the US jurisdiction. OFAC is the key authority responsible for implementing and coordinating financial sanctions. The Office of Intelligence and Analysis (OIA) of the US Department of the Treasury functions to protect the national and financial security of the United States by providing timely and accurate data and their analysis and maintaining the security infrastructure. The Office of Terrorist Financing and Financial Crimes (TFFC) identifies threats related to money laundering, terrorist financing, and proliferation of weapon of mass destruction, and develops measures to combat them. The role of the Financial Crimes Enforcement Network (FinCEN) is important as well. FinCEN is the US Treasury bureau that aims at curbing money laundering, terrorist financing and other financial crimes both domestically and internationally.

The second key agency for the enforcement apparatus is the US State Department. Its competencies include, for instance, the introduction of political measures such as visa restrictions.

The US Bureau of Industry and Security of the US Department of Commerce is also involved in US sanctions policy since it regulates export of dual-use goods and technologies. In February 2018, the Bureau designated 21 individuals and entities adding them on the sanctions list. Among them was JSC "VAD", a Russian construction company. It was accused of violating Executive Order 13685 due to its participation in the construction of the Tavrida highway in Crimea.

Another body involved in the sanctions policy is the FBI operating under the jurisdiction of the US Department of Justice. The FBI, as well as the CIA, carries out intelligence that becomes a basis for designations. For example, the joint investigation of the FBI and the District of Columbia Prosecutor's Office led to the imposition of sanctions against Russian ships for fuel supplies to Syria.

Finally, the Federal Reserve System is a banking regulator that can block certain high-level individuals from access to assets on bank accounts or revoke a banking license in the United States. An example of measures on the part of the FED is the penalization of the French bank Société Generale in the amount of \$81.3 million "for dangerous and unreasonable operations, primarily related

to the violation of US sanctions against Cuba. (Board of Governors of the Federal Reserve System , 2018)"

Conclusion. The US is actively applying sanctions, having the necessary resources for this. The main targets of US sanctions have not changed their political course fundamentally. The Iranian example makes it clear that the concessions to the initiator of sanctions give rise to the further requirements. Nevertheless, leaders of targeted states or entities take possible costs of sanctions into account while making decisions. Three hypotheses are confirmed. The imposition of sanctions remains mainly the responsibility of the President. His orders are more detailed and concise, and constitute a prompt response to alleged violations. By contrast, the engagement of the US Congress tends to hamper effectiveness of restrictive measures because it decreases the bargaining capacity. Enforcement apparatus matters a lot with regard to secondary sanctions. It establishes the system of monitoring and control that impede violations of the US sanctions regimes. In general, the United States managed to organize a unique and effective system of enforcement and coercion, thereby turning sanctions into a powerful foreign policy weapon.

References:

1. Bapat N.A. Determinants of Sanctions Effectiveness: Sensitivity Analyses Using New Data / N.A. Bapat // Taylor & Francis Group, LLC. International Interactions. 2013. pp. 79-98.
2. Dzhazairi I. Doklad Special'nogo dokladchika po voprosu o negativnom vozdejstvii odnostoronnih prinuditel'nyh mer na osushhestvlenie prav cheloveka ot 10.08.2015 // Sovet po pravam cheloveka. General'naja Assambleja OON. 22 s.
3. Hufbauer G., Schott J. Economic Sanctions Reconsidered / G. Hufbauer, J. Schott, K. Elliot, B. Oegg // Peterson Institute, 2009. p.233.
4. Pape R. Why Economic Sanctions Do Not Work / R. Pape // International Security. 1997. Vol. 22. pp. 90-136.
5. Thomas A. "Pariah States" and Sanctions: The Case of Syria / A. Thomas // Middle East Policy. 2013. Vol. 20. No. 3. pp. 27-40.

6. Timofeev I.N. Ekonomicheskie sankcii kak politicheskoe ponyatie / I.N. Timofeev // Vestnik MGIMO. 2018. №3. 14 s.
7. Executive Order 13405—Blocking Property of Certain Persons Undermining Democratic Processes or Institutions in Belarus of 19 June 2006 // US Department of the Treasury. URL: <https://www.treasury.gov/resource-center/sanctions/Documents/13405.pdf> (05.05.2020).
8. Order of the Board of Governors of the Federal Reserve System from 19 November 2018 // Federal Reserve System. URL: <https://www.federalreserve.gov/newsevents/pressreleases/files/enf20181119a1.pdf> (24.04.2020).