18

A Private-Sector Perspective on the Sanctions–Industrial Complex

Nicholas W. Turner

Since Russia's invasion of Ukraine, in February 2022, a coalition of nations led by the US, EU, and the UK, has adopted a series of ever-increasing sanctions aimed at punishing Russia (and Belarus) and restricting the Russian military's access to resources.[1] The efficacy of these sanctions will be studied closely in the years to come. One effect that is evident already even to a casual observer is that the sanctions have contributed to a trend of "de-globalization," an unraveling of previously stable trading relationships, that started in the years leading up to the conflict.[2] There is also a growing awareness of the consequences of this trend on third countries and populations that are bystanders to the conflict. As Nicholas Mulder, a scholar and noted sanctions expert, wrote for the IMF shortly after the invasion:

> It is rapidly becoming clear just how significant the spillover effects are of sanctions against countries in the top stratum of the global economy. As sanctions remove Russian commodity exports from world markets, prices are driven higher, putting pressure on the import bills and constrained public finances of net-commodity-importing emerging market and developing economies. Unsurprisingly, these are precisely the countries that have not joined the sanctions against Russia, since they are most at risk of a balance of payments crisis if sanctions on Russian exports are tightened over an extended period.[3]

This chapter draws on the author's observations and experiences in advising multinational companies as an in-house attorney and compliance specialist and as external counsel over the past decade. The information in this chapter reflects the author's own views unless otherwise noted.

[1] Ashurst (website), "Russia Sanctions Tracker," updated November 7, 2024, accessed November 16, 2024, www.ashurst.com/en/insights/russia-sanctions-tracker.

[2] See Pinelopi K. Goldberg and Tristan Reed, "Is the Global Economy Deglobalizing? If So, Why? And What Is Next?" Brookings Institute, updated March 29, 2023, accessed November 16, 2024, https://tinyurl.com/3ny7j2c2.

[3] Nicholas Mulder, "The Sanctions Weapon," International Monetary Fund, updated June 2022, accessed November 16, 2024, www.imf.org/en/Publications/fandd/issues/2022/06/the-sanctions-weapon-mulder.

Downloaded from https://www.cambridge.org/core. UNIVERSIDAD AUTONOMA METROPOLITANA, on 16 Nov 2026 at 15:14:54, subject to the Cambridge Core terms of use, available at https://www.cambridge.org/core/terms. https://doi.org/10.1017/9781108915632.021

With Russia being just one example, this chapter frames the adverse consequences of sanctions as a product of the interplay between government policy and commercial decision-making. Corporations, whether privately or state owned, are conveyors of government policy concerning the distribution and withdrawal of goods and services. Corporate decision-making about when and how to comply with economic sanctions (and when to stop complying) is at least as important as government decision-making when it comes to evaluating the efficacy of sanctions. A government minister may announce sanctions against a foreign adversary; commercial actors give the sanctions bite by withdrawing their goods and services from the target. It follows that the effects of sanctions are determined, at least in part, by the way governments communicate and clarify their expectations and how corporations interpret and apply those messages.

This chapter does not argue that sanctions, even unilateral sanctions, are bad in and of themselves. Often, as in the case of Russia's aggression against Ukraine, the reasons for sanctions are valid. But there are harms associated with sanctions – economic isolation, reduced development, humanitarian crises – that cannot be overlooked. The scale of these problems is well illustrated by other authors in this volume. As corporations are the principal conduits for sanctions policy, their role in causing or amplifying these harms also cannot be overlooked. The image of multinational corporations as intrepid, risk-taking enterprises is a false one when it comes to sanctions. Rather, the evidence, including the author's own experience, suggests that many companies tend to "overcomply." This tendency is desirable when the target is, say, a military aggressor, corrupt oligarch, illegitimate dictator, or human rights abuser. If the idea is to deny the target access to resources, the fact that companies zealously comply is a good thing and increases the chances of success.[4] A problem arises when companies over comply in the direction of withdrawing legitimate business from non-sanctioned parties or declining to support much-needed humanitarian trade (meaning trade in agricultural goods, pharmaceuticals, and medical devices, and activities of NGOs) at the expense of already vulnerable populations and developing economies.[5]

[4] Pierre-Hugues Verdier, "Sanctions Overcompliance: What, Why, and Does It Matter?" *Northern Carolina Journal of International Law* 48 (June 18, 2023): 471. While acknowledging the prevalence and drivers of overcompliance, Verdier concludes that overcompliance is on balance a desirable outcome from the point of view of sanctioning governments to the extent it maximizes the effects of sanctions on their targets. ("Overcompliance is a rational response to uncertainty in sanctions rules, which is itself a rational response by policymakers to the costs of providing additional clarity (which may include facilitating evasion). As a result, one cannot easily conclude that current levels of overcompliance are undesirable, at least from the standpoint of policymakers." (Verdier, "Sanctions," 473)).

[5] Justine Walker, "The Public Policy of Sanctions Compliance: A Need for Collective and Coordinated International Action," *International Review of the Red Cross* 103 (2021): 707. ("The combined effect of comprehensive, unilateral sanctions plus terrorist and security concerns has created immense hurdles for those engaged in supporting humanitarian efforts.")

Downloaded from https://www.cambridge.org/core. UNIVERSIDAD AUTONOMA METROPOLITANA, on 16 Nov 2026 at 15:14:54, subject to the Cambridge Core terms of use, available at https://www.cambridge.org/core/terms. https://doi.org/10.1017/9781108915632.021

The tendency for commercial actors to terminate trade relations well beyond the actual terms of sanctions regulations is worth studying because it reveals a gap between the expectations of government policymakers who characterize their sanctions as "smart" and "targeted" and the reality of how business practices take place. Over time, it can also make sanctions weaker by reducing the amount of trade that can be leveraged for influence over the target and by incentivizing the creation of alternative "unsanctioned" trade channels.

MANUFACTURING COMPLIANCE

Sanctions As Legal Rules

Before discussing the causes of over compliance, it is worth exploring how sanctions operate through the law to regulate the activities of commercial actors. As used here, overcompliance refers to cases where commercial actors consciously avoid an activity that would be legally permissible, whether based on a rational calculation of risk or a misunderstanding of how the law applies to them.

On the face of it, sanctions are an exercise in power. They are designed to punish or coerce their targets by depriving them of something valuable. Sanctions are also an exercise in law because they are formulated and administered in terms of regulations and legal rules. Most sanctions are "jurisdiction-based" or "primary" sanctions. These involve a state regulating the activities of persons over whom it exercises legal jurisdiction in an attempt to influence a third party over whom it does not. Primary sanctions are limited by traditional notions of jurisdiction and due process. The most important of these notions is that states may enforce their laws against their own nationals (wherever located) and activities taking place in whole or in part in their territories.[6] That is to say, US sanctions apply to US persons, EU sanctions apply to EU persons, People's Republic of China (PRC) sanctions apply to PRC persons, and so on. "Extraterritorial" sanctions that seek to regulate persons with tenuous or no direct ties to the sanctioning state are highly controversial. But it is often

[6] "Articles 3" and "Article 5," in *American Journal of International Law*, "Harvard Research Draft Convention on Jurisdiction with Respect to Crime," Supplement 29, no. S1 (1935): 439–442. (Article 3 on territorial jurisdiction states: "A State has jurisdiction with respect to any crime committed in whole or in part within its territory. This jurisdiction extends to (a) Any participation outside its territory in a crime committed in whole or in part within its territory; and (b) Any attempt outside its territory to commit a crime in whole or in part within its territory." Article 5 concerning jurisdiction over nationals states:

> A State has jurisdiction with respect to any crime committed outside its territory, (a) By a natural person who was a national of that State when the crime was committed or who is a national of that State when prosecuted or punished; or (b) By a corporation or other juristic person which had the national character of that State when the crime was committed.)

Downloaded from https://www.cambridge.org/core. UNIVERSIDAD AUTONOMA METROPOLITANA, on 16 Nov 2026 at 15:14:54, subject to the Cambridge Core terms of use, available at https://www.cambridge.org/core/terms. https://doi.org/10.1017/9781108915632.021

the case that, while taking exception to a target's conduct, the sanctioning state does not purport to exercise legal jurisdiction over the target. If it did, it could simply haul them into court to face charges, rather than sanctioning them from afar. When the target is out of reach, a sanctioning state instructs the persons over whom it has jurisdiction to shun the target, threatening punishment for those who disobey.[7]

Because sanctions are limited by a state's ability to enforce its laws against rulebreakers over whom it has jurisdiction, it follows that a state has the greatest potential to influence a third party who depends on that state's nationals or territory for trade; and less influence over a third party who is not dependent on them. It also follows that a sanction's bite can deteriorate over time as the target forms new trading relationships. For example, Venezuela's top export market was once the US, but its trade and diplomatic links with countries such as China, Russia, Cuba, Iran, and Turkey are understood to have increased steadily after the imposition of US sanctions in 2015.[8] If trade and influence are linked, it follows that their ability to apply economic pressure to the Maduro government is growing, while the US is left with fewer economic levers to pull. Similarly, strong demand from India and other markets have complicated efforts to sanction Russia's energy exports after its invasion of Ukraine.[9] Meanwhile, trade data show that Russian importers are increasingly sourcing a wide range of goods via third countries in Central Asia and elsewhere in an effort to replace previously reliable Western suppliers.[10] This

[7] In exceptional cases, a state may seek to exercise jurisdiction over a foreign individual through extradition. However, this usually requires establishing that the person undertook an act within the prosecuting state's jurisdiction and that the act falls within the terms of an extradition treaty. For instance, the US has sought the extradition of foreign persons who have used the US financial system to carry out transactions on behalf of sanctioned parties. These cases may be framed in terms of bank fraud to meet the requirements of the relevant extradition agreement. See UN Office on Drugs and Crime, "Revised Manuals on the Model Treaty on Extradition and on the Model Treaty on Mutual Assistance in Criminal Matters," May 11, 2004, accessed November 16, 2024, www.unodc.org/pdf/model_treaty_extradition_revised_manual.pdf; Jonathan Master, "What is Extradition?" Council on Foreign Relations, updated January 8, 2020, accessed November 16, 2024, www.cfr.org/backgrounder/what-extradition.

[8] Moises Rendon and Claudia Fernandez, "The Fabulous Five: How Foreign Actors Prop Up the Maduro Regime in Venezuela," Center for Strategic & International Studies, October 19, 2020, accessed November 16, 2024, https://tinyurl.com/4ktzkezu.

[9] Chloe Cornish, John Reed, and Tom Wilson, "Russia Becomes India's Top Oil Supplier As Sanctions Deflate Price," *Financial Times*, November 9, 2022, accessed November 16, 2024, www.ft.com/content/f01161be-189f-4f69-918f-fd2a1f0fa1e3.

[10] Zsolt Darvas et al., "Russian Foreign Trade Tracker," Brugel, updated September 13, 2024, accessed November 16, 2024, www.bruegel.org/dataset/russian-foreign-trade-tracker; Barbara Moens, Leonie Kijewski, and Suzanne Lynch, "EU Targets Central Asia in Drive to Stop Sanctioned Goods Reaching Russia," *Politico*, May 8, 2023, accessed November 16, 2024, www.politico.eu/article/eu-aims-central-asia-sanction-circumvention-russia-war/; FinCEN, "Supplemental Alert: FinCEN and the US Department of Commerce's Bureau of Industry and Security Urge Continued Vigilance for Potential Russian Export Control Evasion Attempts,"

Downloaded from https://www.cambridge.org/core. UNIVERSIDAD AUTONOMA METROPOLITANA, on 16 Nov 2026 at 15:14:54, subject to the Cambridge Core terms of use, available at https://www.cambridge.org/core/terms. https://doi.org/10.1017/9781108915632.021

is one reason why US policymakers have emphasized China's potential role in influencing Russia's behavior, although China has declared it will not use sanctions to do so.[11]

Using the Market As Leverage

These jurisdictional shortcomings could be solved through collective sanctions adopted by the United Nations Security Council (UNSC) and faithfully implemented by all UN member states. Jurisdictional gaps would not exist were all states to impose the same sanctions (putting aside questions of uneven implementation and enforcement of those rules). This is the model enshrined in the UN Charter.[12] Multilateral sanctions outside of the UN framework are based on the same logic, albeit limited to participating states. Multilateral sanctions following Russia's invasion of Ukraine are a case in point. They also evidence why UN sanctions may not always be available, given Russia's status as a permanent member of the Security Council.

The US – well known for using unilateral sanctions – attempts to overcome this limitation by stretching its jurisdiction through "extraterritorial" enforcement of sanctions laws against foreign persons who would not ordinarily be subject to US law. Here, the term extraterritorial refers to a set of law enforcement and communications strategies for maximizing the effect of primary sanctions by encouraging persons outside the US to obey certain US laws. The first of these strategies is through the global regulation of financial institutions and corporations incorporated under US law, wherever they operate. This strategy is uncontroversial because the US has uncontested jurisdiction over companies incorporated under US law – most states seek to regulate companies

May 19, 2023, accessed November 16, 2024, https://tinyurl.com/4pmyymdp. ("BIS has identified certain common transshipment points through which restricted or controlled exports have been known to pass before reaching destinations in Russia or Belarus. These points include but are not limited to: Armenia, Brazil, China, Georgia, India, Israel, Kazakhstan, Kyrgyzstan, Mexico, Nicaragua, Serbia, Singapore, South Africa, Taiwan, Tajikistan, Turkey, United Arab Emirates, and Uzbekistan.")

[11] Maia Nikoladze, Phillip Meng, and Jessie Yin, "How is China Mitigating the Effects of Sanctions on Russia?" Atlantic Council, June 14, 2023, accessed November 16, 2024, https://tinyurl.com/mweujh7a.

[12] Indeed, some argue that any sanction imposed outside of the UN system is presumptively illegitimate under international law. This is the position taken by the PRC. See Ministry of Foreign Affairs of the People's Republic of China, "Remarks by China's Permanent Representative to the UN Ambassador Zhang Jun at the UN Security Council Open Debate on Effective Multilateralism through the Defense of the Principles of the UN Charter," April 24, 2023, accessed November 16, 2024, www.mfa.gov.cn/eng/xw/zwbd/202405/t20240530_11365563.html. ("[W]e must resist unilateral sanctions that violate international law. Unilateral sanctions indiscriminately imposed by the United States and other countries outside the Council mandate are entirely for maintaining their hegemony, technology monopoly, and ideology. Their practice has no legal basis.")

Downloaded from https://www.cambridge.org/core. UNIVERSIDAD AUTONOMA METROPOLITANA, on 16 Nov 2026 at 15:14:54, subject to the Cambridge Core terms of use, available at https://www.cambridge.org/core/terms. https://doi.org/10.1017/9781108915632.021

incorporated under their jurisdiction, regardless of where their business takes place.[13] Second, the US Department of the Treasury's OFAC and the US Department of Justice enforce sanctions rules against foreign persons who transact through the US or with US persons. A corporation outside the US that processes wire transfers through a correspondent bank in New York – an intermediary bank that facilitates transnational transactions – can be held liable if the transfers violate OFAC regulations.[14] Similarly, a trading company in Dubai can be prosecuted for re-exporting some types of US-origin goods to Iran.[15] Although these companies are not ordinarily subject to US jurisdiction, US agencies are allowed to assert their jurisdiction when the companies' activities touch on the US. While controversial internationally, this authority has been ratified by US federal courts and is rarely challenged.[16] Once caught up in an investigation, reputable firms are often compelled to participate in legal proceedings in the US to minimize damages and avoid further retaliation. Third, the US threatens foreign persons with "secondary sanctions" if they engage in activities that are offensive to certain US policies, even if those activities are outside of traditional US enforcement jurisdiction and have no nexus to the US. For instance, under

[13] While regulating US corporations is uncontroversial, the same cannot be said of US attempt to regulate foreign companies incorporated outside the US but "owned or controlled" by US persons. This is the case under OFAC's Cuba and Iran sanctions regulations and foreign financial institutions owned or controlled by US persons under OFAC's North Korea sanctions regulations. OFAC does not typically assert jurisdiction over foreign companies owned or controlled by US persons, but was directed to do so by Congress in respect of these three countries. Practically speaking, such foreign companies will usually submit to US jurisdiction when faced with allegations of violating OFAC's Cuba, Iran, or North Korea sanctions, particularly if a US-based parent is implicated.

[14] US Department of Justice, "United States Obtains $629 Million Settlement with British American Tobacco to Resolve Illegal Sales to North Korea, Charges Facilitators in Illicit Tobacco Trade," Press Release, April 25, 2023, accessed November 16, 2024, https://tinyurl.com/3pehs4zt.

[15] US Department of Justice, "Iranian National and U.A.E. Business Organization Charged with Criminal Conspiracy to Violate Iranian Sanctions," Press Release, August 19, 2020, accessed November 16, 2024, https://tinyurl.com/ytus7y3y.

[16] For a discussion of the role of US federal courts in legitimizing the extraterritorial application of US law, see Sascha Lohmann, "Extraterritorial U.S. Sanctions: Only Domestic Courts Could Effectively Curb the Enforcement of U.S. Law Abroad," *SWP Comment: German Institute for International and Security Affairs*, No. 5 (February 2019), accessed November 16, 2024, www.swpberlin.org/publications/products/comments/2019C05_lom.pdf. ("Indeed, many federal district courts have supported the US administration's expansive interpretation of its enforcement jurisdiction while not even considering possible limits to the extraterritorial reach of the IEEPA. Thus, the district courts did not engage in weighing the respective interests of the United States and those of the other nations involved in each respective case. Most foreign defendants charged with violating US law abroad have generally preferred to forego criminal proceedings in exchange for entering into Deferred Prosecution Agreements, in which they submit to civil enforcement by the US. administration. Up until now, the extraterritorial application of the IEEPA has rarely been litigated in federal district and appellate courts, let alone in the Supreme Court." (Lohman, "Extraterritorial," 7–8)).

Downloaded from https://www.cambridge.org/core. UNIVERSIDAD AUTONOMA METROPOLITANA, on 16 Nov 2026 at 15:14:54, subject to the Cambridge Core terms of use, available at https://www.cambridge.org/core/terms. https://doi.org/10.1017/9781108915632.021

the Hong Kong Autonomy Act of 2020, a "foreign financial institution" could lose access to the US financial system (that is, lose the ability to transact with financial institutions within the jurisdiction of the US) for engaging in "significant transactions" with PRC and Hong Kong government officials sanctioned by the US.[17] From the legal perspective, a secondary sanction is an extension of a primary sanction because it threatens to forbid *a US person* from doing something with a foreign target (e.g., processing a wire transfer for a sanctioned bank), but it does not purport to directly exercise law enforcement jurisdiction over the target. That is to say, the foreign bank that transacts with a sanctioned official is not going to be hauled into a US administrative hearing or before a judge or jury – instead, the US government would simply instruct US persons to stop transacting with it.[18] Although secondary sanctions have the potential to be devasting (and are marketed as such), in practice secondary sanctions apply to a relatively narrow band of transactions defined in legislation or executive orders, and most OFAC programs do not have a clearly defined secondary sanctions component.[19] Moreover, the US government rarely uses secondary sanctions to their full extent. For instance, as of November 2024, the US Department of the Treasury has not identified any financial institutions to sanction under the Hong Kong Autonomy Act.[20]

Perceiving and Assessing Risk

If one assumes that corporations follow the letter of the law, and nothing more, then the above description would also suggest that corporations outside the jurisdiction of a sanctioning state would tend to maintain business with sanctions targets, to the extent permitted under the laws of their home country and assuming secondary sanctions risk was minimal. This is because they would not fear administrative or criminal penalties or other forms of retaliation for breaching a sanction so long as they are outside the jurisdiction of the sanctioning state. There may even exist a business case for doing so. After all,

[17] Hong Kong Autonomy Act, Pub. L. No. 116–149 (2020).

[18] By avoiding asserting jurisdiction over the foreign target, the US government gains the added benefit of not having to afford them full due process rights. Sanctions targets are rarely successful in overturning US sanctions designations. See Elena Chachko, "Due Process Is in the Details: U.S. Targeted Economic Sanctions and International Human Rights Law," *AJIL Unbound*: *The American Society of International Law* 113 (April 29, 2019): 157–162.

[19] The term "secondary sanction," as used by OFAC, refers to sanctions that can be applied to foreign persons who engage in otherwise ordinary commercial activity that falls within a "designation criteria," such as significant transactions involving the Iranian energy sector or with PRC and Hong Kong officials identified under the Hong Kong Autonomy Act of 2020. OFAC usually identifies secondary sanctions as such to distinguish them from its other sanctions programs. In practice, the difference between a primary and secondary sanction can appear semantic.

[20] OFAC, "Report Pursuant to Section 5(B) of the Hong Kong Autonomy Act," May 18, 2021, accessed November 16, 2024, https://ofac.treasury.gov/recent-actions/20210518.

Downloaded from https://www.cambridge.org/core. UNIVERSIDAD AUTONOMA METROPOLITANA, on 16 Nov 2026 at 15:14:54, subject to the Cambridge Core terms of use, available at https://www.cambridge.org/core/terms. https://doi.org/10.1017/9781108915632.021

without American companies in the mix, Chinese, Japanese, and European competitors could do very well in a place like Iran. Yet, many companies avoid business with sanctioned persons and countries at all costs, even when the law permits it. To put it another way: The content of a sanction (as a legal rule) is not always predictive of market behavior. Even if the letter of the law allows companies to engage in business, they may nevertheless avoid it.

Often, the reasons for this hesitancy are based on a rational perception of risk. Take for instance the US government's efforts to persuade companies to re-enter the Iranian market after the adoption of the JCPOA, a multilateral agreement that called for the lifting of many secondary sanctions imposed by the US in the preceding decade. In May 2016, then US Secretary of State John Kerry met with representatives of major European banks to promote business opportunities in Iran following the entry into force of the JCPOA.[21] There were few takers. In the years leading up to the JCPOA, US agencies had collected in excess of $15 billion in civil and criminal penalties from financial institutions ($8.9 billion of which was paid by BNP Paribas) for violations of US primary sanctions on Iran, Cuba, Sudan, and other "comprehensively sanctioned" countries.[22] In some cases, the banks' settlement agreements with the US government forbade taking on new "high-risk" business, which would have precluded their reentry into Iran, in any event. Notwithstanding Secretary Kerry's efforts, many companies continued to perceive the Iranian market as high risk as long as the US primary sanctions remained in force.

Two years later, the Trump administration withdrew the US from the JCPOA, strengthened the primary sanctions, re-imposed secondary sanctions, and embarked on a series of new enforcement actions against banks and other companies whose business ran afoul of OFAC regulations. As of November 2024, the prospects for a renewed JCPOA are uncertain at best.[23] Given Iran's support for Russia's war efforts, and general concerns over the stability of US policy, it is unclear to what degree Iran would benefit from such a deal if multinational corporations continued to shun the country. After all, a future president could again reverse the course of US policy. Unlike sanctions, foreign investment cannot be turned on and off like a proverbial light switch. Cross-border opportunities can take years to bring to fruition even under the best of circumstances. After finding and wooing suitable local partners, a company must secure reliable banking and logistics channels and navigate a labyrinth of regulation, customs requirements, and tax issues. Without an airtight

[21] Felicia Schwartz, "Kerry Tries to Drum Up Some Business in Europe for Iran," *The Wall Street Journal*, May 10, 2016, accessed November 16, 2024, https://tinyurl.com/4u69waj8.

[22] OFAC (website), "Civil Penalties and Enforcement Information," n.d., accessed November 16, 2024, https://ofac.treasury.gov/civil-penalties-and-enforcement-information.

[23] Mohammad Mazhari, "Iran's Dilemma in Dealing with a New Trump Administration," Stimson Center, November 15, 2024, accessed November 16, 2024, www.stimson.org/2024/irans-dilemma-in-dealing-with-a-new-trump-administration/.

Downloaded from https://www.cambridge.org/core. UNIVERSIDAD AUTONOMA METROPOLITANA, on 16 Nov 2026 at 15:14:54, subject to the Cambridge Core terms of use, available at https://www.cambridge.org/core/terms. https://doi.org/10.1017/9781108915632.021

guarantee that US sanctions could not be reimposed for a third time, Iran would remain a high-stakes gamble for many firms.

US sanctions toward China offer other examples. In November 2020, the Trump administration imposed a ban on US persons transacting in publicly traded securities of certain companies designated as "Communist Chinese military companies."[24] The named companies included Xiaomi Corporation, a maker of everyday consumer electronics with no apparent links to the Chinese military. Although the sanctions, on their face, only applied to US persons and to their dealings in publicly traded securities, some foreign and US-based companies nonetheless chose to terminate other business with the targeted firms, something the law did not explicitly require, because of the perceived reputational harm and uncertain legal consequences of associating with a listed company. Following this, several of the so-called military companies challenged their designations in US federal court, and their pleadings evidenced substantial business harms and reputational damages that went well beyond the sanctions' stated purpose of restricting their access to US capital markets.[25] Eventually, the Biden administration revised the ban and removed numerous companies from the list of Chinese military companies. The companies that were removed included Xiaomi and other companies that had filed court challenges against their designations as military companies.[26]

The confusion caused by OFAC's Afghanistan-related sanctions was even more consequential. In August 2021, after the Taliban seized control of the government, NGOs began urging the Biden administration to issue general licenses authorizing the provision of aid to the country. "Specific licenses" are issued by OFAC only after a company submits a formal application. "General licenses" are categories of permitted activities defined in regulations or posted to OFAC's website that do not require any prior approval. The organizations reported serious problems with accessing financial transfers and deliveries of

[24] Exec. Order No. 13959, 85 FR 73185, November 12, 2020, accessed November 16, 2024, https://tinyurl.com/4kdtkacz.

[25] *Xiaomi Corp.* v. *US Department of Defense*, No. 21-280 (RC) (D.D.C. March 12, 2021). In its complaint, Xiaomi asserted that the Trump administration sanctions would "damage the company's ability to conduct, grow and finance its business, sell its products, maintain and grow its business relationships, and recruit and retain employees." First Amended Complaint at 18, *Xiaomi*, No. 21-280 (February 5, 2021). Another company that successful challenged the sanctions, Luokung Technology, described in its complaint that "there are indications that some of its business partners will sever their relationships with Luokung due to the CCMC Designation and the associated stigma it has attached to Luokung." First Amended Complaint at 20, *Luokung Technology Corp.* v. *U.S. Department of Defense*, No. 21-583 (RC) (D.D.C. March 23, 2021). Additionally, "several potential recruits for senior technical positions have informed Luokung that they are reluctant to join Luokung because of the measures the U.S. Government has taken against it." (*Luokung Technology Corp.* v. *U.S. Department of Defense*, No. 21-583 (RC)).

[26] Exec. Order No. 14032, 86 FR 30145, June 3, 2021, accessed November 16, 2024, https://tinyurl.com/bdfjbs7v.

Downloaded from https://www.cambridge.org/core. UNIVERSIDAD AUTONOMA METROPOLITANA, on 16 Nov 2026 at 15:14:54, subject to the Cambridge Core terms of use, available at https://www.cambridge.org/core/terms. https://doi.org/10.1017/9781108915632.021

urgent humanitarian goods, with banks and vendors citing US sanctions.[27] In reality, US sanctions on the Taliban, while broad, did not apply to the territory or government of Afghanistan as a whole. Nevertheless, confusion about the sanctions and fear of US reprisals stymied the delivery of humanitarian aid in part because banks and other service providers were not willing to facilitate it. The US Department of the Treasury issued a handful of licenses several weeks after the Taliban takeover and ensuing chaos.[28] In December 2021, following the adoption of UNSC Resolution 2615 (2021) authorizing humanitarian aid to Afghanistan, OFAC issued three additional general licenses.[29] But the licenses did not remove every obstacle. According to some reports, the general licenses, although well intentioned, were not sufficient to provide assurances to commercial actors, who continued to be reluctant to engage with Afghanistan, even in the face of imminent suffering.[30] Moreover, foreign assets of Afghanistan's central bank remain blocked under a US Executive Order issued in February 2022, which reportedly compromised the government's ability to purchase goods necessary to respond to the humanitarian crisis.[31]

Another example is the 2022 "oil-price cap" imposed by the G7 and EU in an effort to prevent the Russian state from profiting from rising oil prices after its invasion of Ukraine. The price cap prohibits G7 and EU companies from providing services in connection with the maritime transport of Russian-origin crude oil and petroleum products if those products are sold above a certain price. According to a US Department of the Treasury fact sheet, this novel form of sanction is meant to achieve the contradictory goals of reducing Russia's profits while ensuring that Russian oil products continue to reach the

[27] See Center for Strategic and International Studies, "Impact of U.S. Sanctions on Aid Delivery in Afghanistan," September 3, 2021, accessed November 16, 2024, www.csis.org/analysis/impact-us-sanctions-aid-delivery-afghanistan; Norwegian Refugee Council, "Life and Death: NGO Access to Financial Services in Afghanistan," January 2022, accessed November 16, 2024, https://tinyurl.com/3xeht5st.

[28] OFAC, "Treasury Issues Additional General Licenses and Guidance in Support of Humanitarian Assistance and Other Support to Afghanistan," Press Release, December 22, 2021, accessed November 16, 2024, https://home.treasury.gov/news/press-releases/jy0545.

[29] UNSC, "U.N., Security Council Unanimously Adopts Resolution 2615 (2021), Enabling Provision of Humanitarian Aid to Afghanistan as Country Faces Economic Crisis," Press Release, December 22, 2021, accessed November 16, 2024, https://press.un.org/en/2021/sc14750.doc.html; OFAC, "Treasury Issues General Licenses and Guidance to Facilitate Humanitarian Assistance in Afghanistan," Press Release, September 24, 2021, accessed November 16, 2024, https://home.treasury.gov/news/press-releases/jy0372.

[30] See Norwegian Refugee Council, "Report: Afghanistan Should Be Open for Business, But Misconceptions about Sanctions Are Increasing Suffering for Millions," April 5, 2023, accessed November 16, 2024, https://tinyurl.com/55umnzr4.

[31] OHCHR, "Afghanistan: UN Experts Call on U.S. Government to Unblock Foreign Assets of Central Bank to Ease Humanitarian Impact," April 25, 2022, accessed November 16, 2024, https://tinyurl.com/yc3azw8h.

Downloaded from https://www.cambridge.org/core. UNIVERSIDAD AUTONOMA METROPOLITANA, on 16 Nov 2026 at 15:14:54, subject to the Cambridge Core terms of use, available at https://www.cambridge.org/core/terms. https://doi.org/10.1017/9781108915632.021

market, thereby avoiding price shocks.[32] Fearing the consequences of inadvertently breaching the convoluted rules, some companies reportedly took the decision to stop providing any services related to Russian energy exports, regardless of the price.[33]

FINANCIAL EXCLUSION

Harms to Innocent Third Parties

As suggested above, the tendency for corporations to over comply with sanctions is desirable in some cases. Where multilateral or UN-led sanctions are not forthcoming, the willing participation of private actors in a boycott against a blameworthy target offers a partial substitute for coordinated state action. However, this tendency becomes dysfunctional when it harms innocent bystanders and vulnerable populations. The causes of overcompliance are complex. As previously noted, overcompliance is often based on a company's rational calculation of risk based on perceptions about government expectations. In other cases, overcompliance is based on a misunderstanding of how sanctions apply. Sanctions regulations are technical in nature, and misunderstandings are more likely to occur when governments fail to make their rules intelligible and unambiguous.

Companies may over comply by withdrawing business from *non-sanctioned* parties that are indirectly associated with a sanctioned territory or person. While a Syrian or Iranian national who resides outside of Syria or Iran is not subject to the US embargos, the mere sight of a Syrian or Iranian passport (or, increasingly, a Russian one) can stop a bank from opening a retail banking account, even in Dubai, Hong Kong, or Singapore.[34] Unfortunately, individuals

[32] OFAC, "Fact Sheet: Limiting Kremlin Revenues and Stabilizing Global Energy Supply with a Price Cap on Russian Oil," updated December 2, 2022, accessed November 16, 2024, https://home.treasury.gov/news/press-releases/jy1141. The US Department of the Treasury asserted in a May 2023 report that the price cap had succeeded in reducing Russia's export revenues despite an increase in the volume of oil exports. US Department of the Treasury, "The Price Cap on Russian Oil: A Progress Report," May 18, 2023, accessed November 16, 2024, https://tinyurl.com/3w74ykmz.

[33] John Basquill, "Banks Remain Wary As Russian Oil Price Cap Kicks In," *Global Trade Review*, June 12, 2022, accessed November 16, 2024, https://tinyurl.com/4358hzta.

[34] Gregor Stuart Hunter, "Banks Turn Away Iran and Syria Nationals," *The National*, February 8, 2013, accessed November 16, 2024, https://tinyurl.com/yc5rdzv2; Peyman Jamali, "Locked Out: Why Are Australian Banks Refusing Customer Transactions with Iran?" *SBS Persian*, May 27, 2022, accessed November 16, 2024, https://tinyurl.com/msm57t2k; Saeed Kamali Dehghan, "UK Bank Accounts of Iranian Customers Still Being Closed, Says Law Firm," *The Guardian*, April 21, 2017, accessed November 16, 2024, https://tinyurl.com/rpbtmsnr; Massoud Salari, "Italian Banks are Closing Iranian Citizens' Accounts over U.S. Sanctions: Is It Legal?" *Euronews*, February 13, 2020, accessed November 16, 2024, https://tinyurl.com/6a44p8wb; Liz Lee and A. Ananthalakshmi, "Iranians in Malaysia Say Banks Close Their Accounts as U.S. Sanctions Bite," Reuters, October 30, 2019, accessed November 16,

Downloaded from https://www.cambridge.org/core. UNIVERSIDAD AUTONOMA METROPOLITANA, on 16 Nov 2026 at 15:14:54, subject to the Cambridge Core terms of use, available at https://www.cambridge.org/core/terms. https://doi.org/10.1017/9781108915632.021

who were born in territories that are subject to sanctions are routinely denied banking services, even after relocating to other places. Overcompliance may even affect entire countries or regions. For instance, most UN sanctions are highly targeted in nature – with most being restricted to arms embargoes and asset freezes on a relatively small number of individuals and groups. Yet, it is not difficult to find companies whose terms of service prohibit any dealings with any territory affected by sanctions, no matter how targeted. For example, the terms of service of a US-based digital payments company identifies thirty "sanctioned" countries and regions. However, only seven of the territories on the list are, in fact, subject to comprehensive US sanctions that would prohibit the provision of services to persons in those territories.[35] (The remainder are the focus of targeted UN and US sanctions which would not prohibit these services generally.) Another US-based payments company prohibits using its services in connection with forty-two territories that it deems to be prohibited. Again, only seven of those territories are actually subject to country-wide sanctions.[36] Although the reasons companies mischaracterize or misapply sanctions vary, in the author's experience, overinclusive sanctions clauses are usually the result of a misunderstanding over what constitutes a "comprehensive" sanction prohibiting most trade with a designated territory and a "list-based" sanction aimed at a relatively small number of individuals and entities in a particular territory. For example, Iran is subject to comprehensive sanctions prohibiting most trade, whereas Ethiopia is subject to a list-based program targeting named persons. As it happens, OFAC identifies a grand total of three individuals and two

2024, www.reuters.com/article/us-malaysia-iran-banks-idUSKBN1X90A9; Saeid Jafari, "U.S. Sanctions Hit Iranian Students Seeking Bank Accounts in Europe," *Al Monitor*, January 11, 2019, accessed November 16, 2024, https://tinyurl.com/4m3kj8mk; Jess Ma, "Russians Lose Access to Some Banking Services in Hong Kong Due to Western Sanctions over Ukraine," *South China Morning Post*, October 15, 2022, accessed November 16, 2024, https://tinyurl.com/4rkrzr5e; Michelle Price and Sumeet Chatterjee, "Focus: Global Banks Eschew Risk As They Navigate Russia Sanctions Quagmire," Reuters, March 2, 2022, accessed November 16, 2024, https://tinyurl.com/yc4ce6ms.

[35] Paymentwall (website), "Sanctioned Countries, Regions and Entities," n.d., accessed November 16, 2024, www.paymentwall.com/en/faq/sanctioned-countries-and-entities. The list of territories includes: Afghanistan, Belarus, Bosnia and Herzegovina, Burundi, Central African Republic, Cuba, Democratic Republic of the Congo, Ethiopia, Guinea, Guinea-Bissau, Haiti, Iran, Iraq, Libya, Mali, Myanmar, North Korea, Russia, Somalia, South Sudan, Sudan, Syria, Venezuela, Yemen, Zimbabwe, and the regions of Crimea, Donetsk, Luhansk, Kherson, and Zaporizhzhia.

[36] Rho (website), "Rho Terms of Service," effective July 8, 2023, accessed November 16, 2024, www.rho.co/terms-of-service. The list of territories includes: Afghanistan, American Samoa, Belarus, Belize, Bonaire, Burundi, Cameroon, Central African Republic, Chad, Colombia, Comoros, Congo, Democratic Republic of Congo, Cuba, Curacao, Djibouti, Equatorial Guinea, Eritrea, Ethiopia, Guam, Jordan, Islamic Republic of Iran, Iraq, People's Democratic Republic of Korea, Republic of Kosovo, Lebanon, Libya, Madagascar, Mali, Myanmar, Nigeria, Russian Federation, Saint Barthelemy, Somalia, South Sudan, Sudan, Syrian Arab Republic, Turkmenistan, Ukraine, Bolivarian Republic of Venezuela, Yemen, and Zimbabwe.

Downloaded from https://www.cambridge.org/core. UNIVERSIDAD AUTONOMA METROPOLITANA, on 16 Nov 2026 at 15:14:54, subject to the Cambridge Core terms of use, available at https://www.cambridge.org/core/terms. https://doi.org/10.1017/9781108915632.021

entities in Ethiopia who are on the SDN List.[37] Yet, the entire territory of 120 million people is off limits under the terms of service of the aforementioned companies. It could be the case that the companies received inaccurate legal advice or failed to do their homework before drafting their terms of service. Another possibility is the companies opted to "de-risk" by writing off dozens of markets, to the detriment of anyone who might lawfully benefit from their services, rather than committing time and resources to the issue.

Humanitarian trade, which tends to be directed toward "high-risk" jurisdictions by necessity, is especially impacted when companies over comply with sanctions. In December 2020, the UN Special Rapporteur on the negative impact of unilateral coercive measures on the enjoyment of human rights observed that "[h]umanitarian organisations refer to unilateral sanctions as the main obstacle to the delivery of aid, including medicine, medical equipment, protective kits, food and other essential goods."[38] In June 2022, the Special Rapporteur issued a "Guidance Note on Overcompliance with Unilateral Sanctions and its Harmful Effects on Human Rights," calling on commercial actors to avoid overcompliance that harms human rights.[39] The note also urges governments to balance the use of unilateral sanctions against international legal obligations to protect human rights. In September 2022, the Special Rapporteur submitted a report to the UNGA concerning sanctions enforcement and secondary sanctions based on information gathered from a wide range of public- and private-sector actors.[40] While criticizing states for ignoring the detrimental effects of unilateral sanctions on human rights, the report singles out companies' overcompliance as a "widespread practice on a global scale" that "must be recognized as a significant new danger to international law and human rights."[41]

A February 2021 US GAO report entitled "Additional Tracking Could Aid Treasury's Efforts to Mitigate Any Adverse Effects U.S. Sanctions Might Have on Humanitarian Assistance" found that US sanctions against Venezuela's government and state-owned entities significantly hampered the delivery of humanitarian aid to the country, both before and after the Covid-19 pandemic. In discussing the work of USAID in Venezuela, the report states:

[37] See OFAC (website), "Sanctions List Search," n.d., accessed November 16, 2024, https://sanctionssearch.ofac.treas.gov/. The listed persons are: Al-Haramain Ethiopia Branch; Paul Malong Awan; Adnan Ayad; Global Relief Foundation, Inc.; and Filipos Woldeyohannes.

[38] OHCHR, "UN Expert Issues Sanctions Guidance amid COVID-19 Aid Concerns," Press Release, December 10, 2020, accessed November 16, 2024, www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=26589&LangID=E.

[39] Special Rapporteur on Unilateral Coercive Measures, "Guidance Note on Overcompliance with Unilateral Sanctions and Its Harmful Effects on Human Rights," OHCHR, June 28, 2022, accessed November 16, 2024, https://tinyurl.com/4h3y2d8d.

[40] Alena F. Douhan, "Report of the Special Rapporteur on the Negative Impact of Unilateral Coercive Measures on the Enjoyment of Human Rights, A/HRC/51/33," OHCHR, July 15, 2022, accessed November 16, 2024, https://tinyurl.com/yetr9r3n.

[41] Douhan, "Report," para. 18.

Downloaded from https://www.cambridge.org/core. UNIVERSIDAD AUTONOMA METROPOLITANA, on 16 Nov 2026 at 15:14:54, subject to the Cambridge Core terms of use, available at https://www.cambridge.org/core/terms. https://doi.org/10.1017/9781108915632.021

All nine USAID implementing partners we spoke with reported instances of banks closing their accounts or delaying or rejecting transactions due to concerns over U.S. sanctions … Treasury provides licenses to authorize humanitarian-related transactions, but banks may still seek to minimize risk by limiting services for any transactions involving Venezuelan entities, according to Treasury officials … Officials noted that such delays occur in all conflict and high-risk jurisdictions, even where there are not U.S. sanctions programs, because banks conduct increased due diligence to comply with their own internal risk-based approaches on money laundering and terrorist financing.[42]

In other words, the ability of NGOs to deliver humanitarian aid to Venezuela (and other territories affected by sanctions) is limited by the willingness of banks (as well as suppliers and logistics companies) to support them, even where the US government has expressly authorized and promoted their activities. According to the GAO report, US officials are aware of the tendency of banks to decline such transactions and have attempted to advise banks about the types of activities that are permitted under US sanctions regulations.[43] Unfortunately, these messages may have been overshadowed during the Trump administration by official rhetoric that discouraged companies from taking advantage of humanitarian authorizations. In October 2019, the US Department of the Treasury issued a guidance document accusing the Iranian government of abusing "the goodwill of the international community, including by using so-called humanitarian trade to evade sanctions and fund its malign activity."[44] The document alleged that the Iranian government was siphoning resources from humanitarian channels to fund other activities and obscuring the involvement of military groups and other sanctioned persons in ostensibly humanitarian trade. It laid out expectations for companies to conduct extensive due diligence before engaging in humanitarian trade with Iran, lest they expose themselves to US sanctions risk. The document strongly implied that otherwise innocent parties could find themselves sanctioned if they inadvertently dealt with the wrong Iranian counterparty, even indirectly.

Balancing Risks and Costs

Beyond simple misunderstandings about the law, there are several possible explanations for the type of over compliance described in the GAO report and by the Special Rapporteur. As noted in the previous excerpts, sanctions rules do not operate in isolation. Inside a bank, risk management systems designed to comply with various AML/CTF requirements categorize jurisdictions as "low,"

[42] GAO, "Additional Tracking Could Aid Treasury Efforts to Mitigate Any Adverse Effects US Sanctions Might Have on Humanitarian Aid," GAO-21-239, February 2021, accessed November 16, 2024, www.gao.gov/assets/gao-21-239.pdf.

[43] GAO, "Additional Tracking."

[44] OFAC, "Financial Channels to Facilitate Humanitarian Trade with Iran and Related Due Diligence Reporting Expectations," October 25, 2019, accessed November 16, 2024, https://ofac.treasury.gov/media/31416/download?inline.

Downloaded from https://www.cambridge.org/core. UNIVERSIDAD AUTONOMA METROPOLITANA, on 16 Nov 2026 at 15:14:54, subject to the Cambridge Core terms of use, available at https://www.cambridge.org/core/terms. https://doi.org/10.1017/9781108915632.021

"medium," or "high" risk based on various factors, including the presence of sanctioned persons.[45] AML/CTF regulations based on standards such as the recommendations of the FATF – the international body that sets standards for banking procedures in contexts such as anti-money laundering – require banks to apply enhanced due diligence, monitoring, and other controls to their transactions with higher risk countries and customers.[46] A banker who wishes to pursue an opportunity in a higher risk jurisdiction or with a sanctioned counterparty (which may include processing payments for NGOs) must justify "taking risk," not to mention spending resources for enhanced compliance.

Consider the following hypothetical example. A bank that is asked to onboard an NGO working in Afghanistan would usually be required under its internal standards to undertake enhanced due diligence on the organization, often consisting of lengthy questionnaires and open-source research, a process that could take weeks or even months. In addition to sanctions risk, the bank must consider whether the NGO could be used as a conduit for terrorist financing because international AML/CTF standards deem some (but not all) NGOs to be at greater risk of abuse by terrorist organizations.[47] Given that US sanctions on the Taliban could apply to any transaction in which a member of the Taliban has an interest – for example, the purchase of a government vehicle or other asset that could be used be a Taliban member, or funds which could be used to pay them – the bank's compliance officers would likely recommend evaluating all transactions to or from Afghanistan and require the NGO to somehow prove that the Taliban had no involvement, direct or indirect, in the NGO's work in the territory. All of the NGO's transactions and documents submitted to the bank would be screened against databases of sanctioned names, with each potential hit being reviewed and if necessary checked by hand. This inevitably takes operational resources away from other customers and transactions, costing the bank in time and resources, and potentially in lost business opportunities. The NGO's transactions would also be subject to continuous AML/CTF monitoring to detect unusual patterns which may call for additional reviews. Because Afghanistan is a high-risk jurisdiction, the decision to onboard the NGO would fall to senior management, who may ask for internal or external legal counsel to opine on the proposed relationship. Once

[45] See FATF, "Guidance for Risk-Based Approach: The Banking Sector," October 2014, accessed November 16, 2024, https://tinyurl.com/4bapuxws.

[46] See generally FATF, "International Standards on Combatting Money Laundering and the Financing of Terrorism & Proliferation: The FATF Recommendations," as amended November 2023, accessed November 16, 2024, www.fatf-gafi.org/en/publications/Fatfrecommendations/Fatf-recommendations.html.

[47] FATF, "Public Consultation on the Revision of Recommendation 8 (Non-profit Organizations)," April 22, 2016, accessed November 16, 2024, https://tinyurl.com/s6jrwbn8; FATF, "Outcomes of the Plenary Meeting of the FATF, Busan Korea, 22–24 June 2016," June 24, 2016, accessed November 16, 2024, www.fatf-gafi.org/en/publications/Fatfgeneral/Plenary-outcomes-june-2016.html.

Downloaded from https://www.cambridge.org/core. UNIVERSIDAD AUTONOMA METROPOLITANA, on 16 Nov 2026 at 15:14:54, subject to the Cambridge Core terms of use, available at https://www.cambridge.org/core/terms. https://doi.org/10.1017/9781108915632.021

the NGO is onboarded, external scrutiny is likely inevitable. To the extent the NGO's transactions pass through correspondent accounts, the bank may draw unwanted attention from intermediaries, who may begin to view the bank itself as higher risk. Correspondents may stop transactions and demand additional information about the NGO's activities, a task that would fall to a relationship manager or customer service representative. Regulators, too, could begin asking questions about how the bank manages money laundering and terrorist financing risks and whether sufficient compliance resources are being applied to its Afghanistan payments. High-risk business lines are also subject to more frequent compliance testing and audits – the results of which may factor into individual managers' performance reviews. It is unsurprising that banks at all levels – those providing direct services and correspondent banks at each point in the chain – choose to terminate their services, or to charge much higher fees, to cover their own costs and risks. And it is also unsurprising that the individual decision-makers in this process, such as compliance officers and senior executives, would be incentivized to recommend against the business, rather than taking on the personal and professional risk of recommending a transaction that could result in legal penalties for the bank. As a result of the loss of legitimate, ordinary banking services, the NGO may then be forced into less transparent, riskier, and higher cost alternatives – such as using cash transactions or unregulated banking channels – or may have to abandon its plans all together.

A growing body of research is bringing attention to the consequences of the tendency of banks to "de-risk" certain types of customers or regions in regard to the availability of financial services globally. A frequently cited 2015 survey from the World Bank found that the money transfer sector (companies other than banks that transmit funds such as family remittances) was particularly hard hit, with nearly half of respondents reporting they had received account closure notifications from their banks, threatening the flow of remittances worldwide.[48] According to the report, many operators had resorted to moving money through other channels or personal bank accounts. Another World Bank survey that year found strong evidence for the decline of correspondent banking networks globally.[49] A 2015 report from the Center for Global Development highlighted the risks posed by these trends to global remittance flows, trade, and NGOs, as banks increasingly pulled away from certain activities deemed too risky under prevailing AML/CTF standards.[50] Africa and the Caribbean were among the regions that saw the greatest declines in services. (The effects

[48] World Bank, "Report on the G20 Survey on De-risking Activities in the Remittance Market," October 2015, accessed November 16, 2024, https://tinyurl.com/59tea4cm.

[49] World Bank, "Withdrawal from the Correspondent Banking: Where, Why, and What to Do About It," November 2015, accessed November 16, 2024, https://tinyurl.com/ms6ahh5m.

[50] Center for Global Development, "Unintended Consequences of Anti-money Laundering Policies for Poor Countries: A CGD Working Group Report," 2015, accessed November 16, 2024, https://tinyurl.com/59596stj.

Downloaded from https://www.cambridge.org/core. UNIVERSIDAD AUTONOMA METROPOLITANA, on 16 Nov 2026 at 15:14:54, subject to the Cambridge Core terms of use, available at https://www.cambridge.org/core/terms. https://doi.org/10.1017/9781108915632.021

of de-risking on the Caribbean were considered specifically in a September 2022 hearing before the US House of Representatives Financial Services Committee.[51]) A 2018 briefing from the International Finance Corporation reinforced these concerns and argued that the decline in correspondent banking "slows business growth, keeps people poorer longer, weakens links to the global financial system and markets, and disrupts the connections that countries desperately need."[52] A March 2020 analysis of SWIFT data from the Bank for International Settlements (BIS) showed the number of correspondent accounts fell by 20 percent from 2011 to 2018.[53] (No doubt this number is higher today following the 2022 expulsion of many Russian banks from the SWIFT network.) The BIS paper found AML/CTF regulations to be one of the factors driving the reduction in correspondent relationships, noting that a continued decline could threaten the integrity of the international financial system as more payments move into unregulated channels.[54] In March 2021, the European Banking Authority released an opinion that drew attention to the risk to the EU financial system from de-risking within EU member states.[55] An April 2021 report from the ESAAMLG listed Zimbabwe, Kenya, and Botswana as having suffered the most from correspondent banking restrictions in recent years.[56] A 2024 report published by the Centre for Economic Policy Research attempts to quantify the effects of the withdrawal of correspondent banking relationships on seventeen local European economies, finding that export growth rates fell by roughly 8 percentage points, while import growth rates fell by up to 24 percentage points, in countries that saw high rates of correspondent account closures following the US government's emphasis, beginning in 2014, on criminal prosecutions for corporations that violate sanctions.[57] A 2023 report from

[51] 117th Congress, "When Banks Leave: The Impacts of De-risking on the Caribbean and Strategies for Ensuring Financial Access: Hearing Before the House Committee on Financial Services," September 14, 2022, accessed November 16, 2024, www.congress.gov/event/117th-congress/house-event/115101; Congressional Research Service, "Overview of Correspondent Banking and 'De-risking' Issue," April 8, 2022, accessed November 16, 2024, https://crsreports.congress.gov/product/pdf/IF/IF10873/3.

[52] Ariane Volk and Susan Starnes, "Increased Regulation and De-risking Are Impeding Cross-Border Financing in Emerging Markets," *EM Compass: International Financial Corp.*, January 2018, accessed November 16, 2024, https://tinyurl.com/24n2z2yf.

[53] Tara Rice, Goetz von Peter, and Codruta Boar, "On the Global Retreat of Correspondent Banks," *BIS Quarterly Review* (March 2020):37–52, accessed November 16, 2024, www.bis.org/publ/qtrpdf/r_qt2003g.pdf.

[54] Rice, Peter, and Boar, "On the Global Retreat," 48–50.

[55] European Banking Authority, "Opinion of the European Banking Authority on the Risks of Money Laundering and Terrorist Financing Affecting the European Union's Financial Sector," March 3, 2023, accessed November 16, 2024, https://tinyurl.com/2vycshz2.

[56] ESAAMLG, "Follow Up Report to Assess the Continued Existence and Impact of De-risking in the ESAAMLG Region," April 2021, accessed November 16, 2024, www.esaamlg.org/reports/De-risking_FUR_April2021.pdf.

[57] Lea Borchert et al., "The Impact of De-risking by Correspondent Banks on International Trade," *VoxEU*, September 18, 2024, accessed November 16, 2024, https://tinyurl.com/47bcnunc.

Downloaded from https://www.cambridge.org/core. UNIVERSIDAD AUTONOMA METROPOLITANA, on 16 Nov 2026 at 15:14:54, subject to the Cambridge Core terms of use, available at https://www.cambridge.org/core/terms. https://doi.org/10.1017/9781108915632.021

the Norwegian Refugee Council links de-risking and overcompliance to the financial exclusion of vulnerable groups and a wide range of harms including "new conflict, extremist ideologies, gender inequality and human rights abuses such as modern slavery and human trafficking," while impeding NGOs' ability to deliver humanitarian goods and services to those in need.[58]

Even where a company is open to supporting humanitarian trade, the complexity of sanctions regulations presents an obstacle. All international sanctions, including those of the US, include authorizations for the provision of humanitarian trade. However, these authorizations are rarely straightforward, even for speakers of legalese, and are narrowly drafted. A May 2019 editorial in the *Financial Times* by Justine Walker, a noted expert on the intersection of economic sanctions and humanitarian aid, argues that "a problem persists because the framework for implementing sanctions exceptions and licences are so technical even experts struggle to decipher them."[59] Walker continues, "[g]overnments cannot expect to impose sanctions on large swaths of a country's financial systems without it having major consequences for legitimate transactions."

The irony in all of this is that large financial institutions and corporates are not lacking for skilled practitioners with the capabilities to manage compliance risks. Government regulators with first-hand knowledge of the regulations often find well-paying jobs in the private sector as sanctions and AML/CTF experts. Former OFAC officials are employed at all major financial institutions, including many non-US banks. Every major US law firm and accountancy advertises a compliance practice group, while databases built by Bloomberg, Dow Jones, and Thomson Reuters supply intelligence on prospective customers. The Association of Certified Anti-money Laundering Specialists boasts tens of thousands of members in more than 175 countries and regions. Scores of external legal advisors and consultants stand ready to draft memoranda on the latest rules, implement sophisticated transaction monitoring systems, and guide clients on best practices for compliance. To the extent government regulators assume that corporations will hire lawyers, consultants, and compliance officers to interpret and apply the regulations (or look forward to doing so in private practice), the incentive to write clear regulations is diminished.

ENFORCEMENT OF SANCTIONS

Policymakers recognize the crucial role corporations play in carrying out sanctions, and considerable effort goes into promoting and enforcing sanctions to achieve greater impact. The US government, in particular, seeks to amplify

[58] Erica Moret, "Safeguarding Humanitarian Banking Channels: How, Why and by Whom?" Norwegian Refugee Council, January 2023, accessed November 16, 2024, https://tinyurl.com/2sk7nmyx.

[59] Justine Walker, "Sanctions Must Not Impede Humanitarian Relief," *Financial Times*, May 9, 2021, accessed November 16, 2024, www.ft.com/content/24f9ec16-15ac-4823-9265-5d11714c85c9.

Downloaded from https://www.cambridge.org/core. UNIVERSIDAD AUTONOMA METROPOLITANA, on 16 Nov 2026 at 15:14:54, subject to the Cambridge Core terms of use, available at https://www.cambridge.org/core/terms. https://doi.org/10.1017/9781108915632.021

sanctions through "force multipliers" such as financial institutions – the gatekeepers to the global economy – and through the use of secondary sanctions to influence foreign persons over whom it would ordinarily lack legal jurisdiction under the conventions of international law.

Sanctions enforcement is by no means limited to financial institutions, and even seemingly innocuous business can attract the ire of US enforcers. Take for instance OFAC's May 2020 settlement with BIOMIN America, a Kansas-based animal-nutrition company, which violated the US Cuban Assets Control Regulations (CACR) when its foreign subsidiaries exported agricultural products to Cuba.[60] In its public settlement notice, OFAC stated that BIOMIN "could potentially have availed itself of an existing general license under … the CACR or applied for a specific license from OFAC … but it failed to seek appropriate advice or otherwise take the steps necessary to authorize these transactions."[61] In other words, the business itself was not offensive to US policy toward Cuba because OFAC had already approved such exports under the CACR for other companies, and presumably it would have approved BIOMIN's transactions if the company had asked. Similarly, in September 2016, OFAC entered into a $4,320,000 settlement with Illinois-based PanAmerican Seed Co., which had exported flower seeds to Iranian distributors in violation of the Iranian Transactions and Sanctions Regulations (ITSR).[62] Again, OFAC observed in its settlement notice that "the exports at issue were likely eligible for an OFAC license," but the company did not seek one.[63]

The public settlement documents do not explain why the companies failed to seek OFAC's approval for their transactions. However, many such cases arises out of a general lack of awareness about OFAC sanctions or a misunderstanding about how the regulations apply to a specific activity. The challenge is illustrated by the ITSR's authorization for the exportation or re-exportation of medicine and medical devices at Section 560.530(a)(3)(i):

> Except as provided in paragraphs (a)(3)(ii) through (iv) of this section, the exportation or reexportation by a covered person (as defined in paragraph (e)(4) of this section) of medicine (as defined in paragraph (e)(2) of this section) and medical devices (as defined in paragraph (e)(3) of this section) to the Government of Iran, to any individual or entity in Iran, or to persons in third countries purchasing specifically for resale to any of the foregoing, and the conduct of related transactions, including the making of shipping and cargo inspection arrangements, obtaining of insurance, arrangement of financing and payment, shipping of the goods, receipt of payment, and entry into contracts

[60] OFAC, "Settlement Agreement between the US Department of the Treasury's Office of Foreign Asset's Control and BIOMIN America, Inc.," May 6, 2020, accessed November 16, 2024, https://ofac.treasury.gov/recent-actions/20200506.

[61] OFAC, "BIOMIN America, Inc."

[62] OFAC, "Settlement Agreement between the US Department of Treasury's of Foreign Assets Control and PanAmerican Seed Co.," September 13, 2016, accessed November 16, 2024, https://tinyurl.com/yc7xr5vn.

[63] OFAC, "PanAmerican Seed Co."

Downloaded from https://www.cambridge.org/core. UNIVERSIDAD AUTONOMA METROPOLITANA, on 16 Nov 2026 at 15:14:54, subject to the Cambridge Core terms of use, available at https://www.cambridge.org/core/terms. https://doi.org/10.1017/9781108915632.021

(including executory contracts), are hereby authorized, provided that, unless otherwise authorized by specific license, payment terms and financing for sales pursuant to this general license are limited to, and consistent with, those authorized by § 560.532; and further provided that all such exports or reexports are shipped within the 12-month period beginning on the date of the signing of the contract for export or reexport.

Not only must the goods themselves qualify as "medicine" or "medical devices" (terms defined separately under the Federal Food, Drug, and Cosmetic Act of 1938), but the exporter must also be a person subject to US jurisdiction (in this case, a US person or a foreign company owned or controlled by a US person). Finally, the payment terms must also fall within the strict conditions of the license. If any aspect deviates from these requirements, the exporter must seek a specific license from OFAC, something BIOMIN and PanAmerican Seed apparently failed to do. In bringing these cases, OFAC was not arguing that marigold seeds or animal supplements present a national security risk or even that Americans should not export them to sanctioned countries. The problem, in OFAC's eyes, was that the exporters failed to adhere to the technical requirements of the regulations which included applying for a license. To the uninitiated, the idea of fining companies millions of dollars for selling agricultural goods to Cuba and Iran may appear draconian or even misguided.

Financial institutions and other private actors may also become enforcers of the practice of overcompliance when they require their counterparties to adopt a restrictive approach to sanctions. This occurs, for example, when private agreements are drafted broadly and far exceed what is required by regulation (as noted in the examples of the US payment companies above). Through representations and warranties inserted into contracts, corporations require one another to terminate or avoid business with sanctioned territories or persons, even if that business may be perfectly legal. Lending agreements, whether inside or outside the US, often forbid the borrower from using the proceeds in support of any business involving a sanctions target as a condition of receiving financing (regardless of whether it is legally permissible). The purpose of these provisions is to avoid the perception that the lender is "facilitating" or condoning the activity. However, this is not strictly required by the regulations. Unless the borrower is of particular importance to the lender, a borrower who pushes back is usually told to take it or leave it. After accepting the language, a borrower may in turn become adverse toward new "high-risk" business out of fear of inadvertently breaching a covenant and potentially losing access to funding or banking services.

While the penalties for even inadvertent violations may be severe, that is not the sole cause of over compliance. Of equal significance are simply the vagaries of the system, the difficulty of interpreting the rules, and the very high costs of even trying to comply. In the author's experience, there is a genuine fear that any business with a sanctioned jurisdiction or counterparty could expose a company to crippling investigations and settlements or even secondary sanctions that would prevent all future business with the

Downloaded from https://www.cambridge.org/core. UNIVERSIDAD AUTONOMA METROPOLITANA, on 16 Nov 2026 at 15:14:54, subject to the Cambridge Core terms of use, available at https://www.cambridge.org/core/terms. https://doi.org/10.1017/9781108915632.021

US. Sometimes, the fear is of a counterparty terminating a contract or withdrawing services to minimize their own exposure. Financial institutions routinely exit business with customers after discovering previously overlooked nexuses to sanctions targets.

PROBLEM-SOLVING

Rethinking "Smart" Sanctions

Since the 1990s, proponents of sanctions have argued in favor of "targeted" or "smart" sanctions that are believed to minimize collateral damage to civilian populations by localizing costs on specific individuals and groups. The analogy to a precision-guided missile is clear, but the evidence for their success is not so. As demonstrated by sanctions aimed at the governments of Hong Kong, Myanmar, Russia, and Belarus, in recent years, targeted sanctions (while serving a legitimate expressive function) often fail to influence the target state's policies and may instead tend to push them into entrenchment and alignment with strategic competitors. Following the imposition of US sanctions in 2020, the Hong Kong government remains as committed as ever to its National Security Law under the direction of a Chief Executive who is personally sanctioned by the US. This does not mean that corporations have ignored the sanctions or that the targets have not felt their bite. The former Chief Executive of Hong Kong, who, like the current Chief Executive, is sanctioned, lamented to local media that she was reduced to spending cash after losing access to banking and credit card services, when the US sanctioned her and other officials in response to the adoption of the National Security Law and displeasure with the Hong Kong government's handling of local protests.[64] On some levels, this is surprising because most banks in Hong Kong are not directly subject to US regulatory jurisdiction and could continue to provide services to the sanctioned officials. Nonetheless, misunderstandings about how the sanctions apply, compliance costs, and fear of US retaliation, among other factors, have caused most Hong Kong banks to adhere to them, even if that means turning down business from the region's top-ranking local official. Likewise, while the US, the EU, and other powers have sanctioned specific individuals and state-owned enterprises in Myanmar following the country's military coup in February 2021, many transactions with the country remain permissible. Still, a large number of multinationals have withdrawn from the market or are refusing to engage in new business there.[65]

[64] Adam Taylor, "Hong Kong Leader Says She Has 'Piles of Cash at Home,' No Bank Account, Due to US Sanctions," *The Washington Post*, November 29, 2019, accessed November 16, 2024, www.washingtonpost.com/world/2020/11/28/carrie-lam-cash-sanctions/.

[65] See Business & Human Rights Resource Centre, "Myanmar: Survey of Companies That Have Expressed Withdrawal or Suspension of Operations Since the Attempted Coup," January 31, 2023, accessed November 16, 2024, https://tinyurl.com/a2xtxs7t; Reuters Staff, "Australian Lender ANZ to End Myanmar Operations by Early 2023," Reuters, November 22, 2022,

Downloaded from https://www.cambridge.org/core. UNIVERSIDAD AUTONOMA METROPOLITANA, on 16 Nov 2026 at 15:14:54, subject to the Cambridge Core terms of use, available at https://www.cambridge.org/core/terms. https://doi.org/10.1017/9781108915632.021

There has been some recognition by the major institutional actors of the large-scale effects of their policies and some efforts to address them. In October 2015, FATF issued a statement on the practice of "de-risking," through which financial institutions and other regulated entities terminate or avoid business with parties or jurisdictions perceived as high risk. FATF encouraged national AML/CTF authorities to pursue a "risk-based" rather than a "zero-tolerance" approach to enforcing regulation.[66] In June 2016, FATF adopted revisions to its Recommendation 8, concerning the risks presented by NGOs in general, to place greater focus on a specific subset of "non-profit organisations" (as defined by FATF) that are at higher risk of being used to facilitate terrorist financing, as opposed to the NGO sector at large.[67] In February 2021, FATF launched a project to further study the adverse consequences of its AML/CTF recommendations, which include de-risking, financial exclusion, targeting of NGOs, and curtailment of human rights through the misapplication of the FATF standards.[68] An interim report issued in October 2021 found that "AML/CFT rules are not the main cause of derisking," although they may be a contributing factor.[69] Instead, FATF holds that "profitability concerns are the primary driver," along with "fear of supervisory actions, reduced risk appetite in banks, and reputational concerns."[70] FATF is expected to consider proposals to respond to the project's findings in future plenary sessions.[71]

In December 2022, following the issuance of the Special Rapporteur's report on sanctions and human rights, the UNSC adopted Resolution 2664 to create an across-the-board carveout from asset freezes under all UN sanctions programs for "the provision of goods and services necessary to ensure the timely delivery of humanitarian assistance or to support other activities that support basic human needs," as long as those goods or services are provided by or in conjunction with one of several UN programs and initiatives listed in the resolution.[72] Although both China and Russia voted in favor of Resolution

accessed November 16, 2024, www.reuters.com/article/anz-bank-myanmar-restructuring-idUSL4N32IoWN; Jacob Atkins, "Energy Giants' Myanmar Exit Renews Attention on Sanctions," *Global Trade Review*, January 26, 2022, accessed November 16, 2024, https://tinyurl.com/nara5v58.

[66] FATF, "FATF Takes Action to Tackle De-risking," October 23, 2015, accessed November 16, 2024, https://tinyurl.com/3r7xest6.

[67] FATF, "Public Consultation" and "Outcomes of the Plenary."

[68] FATF, "Mitigating the Unintended Consequences of the FATF Standards," February 2021, accessed November 16, 2024, https://tinyurl.com/45pdmweb.

[69] FATF, "High Level Synopsis of the Stocktake of the Unintended Consequences of the FATF Standards," October 27, 2021, accessed November 16, 2024, www.fatf-gafi.org/content/dam/fatf-gafi/reports/Unintended-Consequences.pdf.

[70] FATF, "High Level Synopsis."

[71] FATF, "FATF Takes Action."

[72] UNSC, Resolution 2664, S/RES/2664, December 9, 2022. The Resolution specially applies to goods and services provided:

Downloaded from https://www.cambridge.org/core. UNIVERSIDAD AUTONOMA METROPOLITANA, on 16 Nov 2026 at 15:14:54, subject to the Cambridge Core terms of use, available at https://www.cambridge.org/core/terms. https://doi.org/10.1017/9781108915632.021

2664, their representatives noted that the US-sponsored resolution did not address the impacts of unilateral sanctions that were the focus of the Special Rapporteur's work.[73] This concern was highlighted in commentary from the Carnegie Endowment for International Peace that underscored the need for effective implementation of Resolution 2664 and additional exemptions for unilateral sanctions that go beyond UN asset freezes.[74]

Prior to the outbreak of war between Russia and Ukraine in February 2022, the Biden administration appeared to be placing special emphasis on addressing the adverse consequences and collateral damages that had come to be associated with the aggressive use of US sanctions. In June 2021, OFAC issued three general licenses authorizing US persons to engage in a wide range of activities to support Covid-19 relief efforts in Iran, Syria, and Venezuela.[75] (The licenses, which could have been issued by the Trump administration, came nearly a year and a half after the WHO declared Covid-19 a "public health emergency of international concern."[76] Even then, many practical barriers to delivering aid remain, as previously outlined.) In October 2021, the US Department of the Treasury issued the results of a "top-down review" of US sanctions, which called for "calibrating sanctions

by the United Nations, including its Programmes, Funds and Other Entities and Bodies, as well as its Specialized Agencies and Related Organizations, international organizations, humanitarian organizations having observer status with the United Nations General Assembly and members of those humanitarian organizations, or bilaterally or multilaterally funded non-governmental organizations participating in the United Nations Humanitarian Response Plans, Refugee Response Plans, other United Nations appeals, or OCHA-coordinated humanitarian "clusters," or their employees, grantees, subsidiaries, or implementing partners while and to the extent that they are acting in those capacities, or by appropriate others as added by any individual Committees established by this Council within and with respect to their respective mandates. (UNSC Resolution 2664, S/RES/2664, December 9, 2022, para. 1).

[73] UN, "Adopting Resolution 2664 (2022), Security Council Approves Humanitarian Exemption to Asset Freeze Measures Imposed by United Nations Sanctions Regimes," December 9, 2022, accessed November 16, 2024, https://press.un.org/en/2022/sc15134.doc.htm.

[74] Caroline Crystal, "Landmark UN Humanitarian Sanctions Exemption Is a Massive Win But Needs More Support," Carnegie Endowment for International Peace, March 20, 2023, accessed November 16, 2024, https://tinyurl.com/4r454x8y.

[75] OFAC, "Issuance of Syria General License 21, Venezuela General License 39, and Iran General License N, 'Authorizing Certain Activities to Respond to the Coronavirus Disease 2019 (COVID-19) Pandemic' and Associated Frequently Asked Questions," June 17, 2021, accessed November 16, 2024, https://tinyurl.com/mvb92kva.

[76] WHO, "Listing of WHO's Response to COVID-19," January 29, 2021, accessed November 16, 2024, www.who.int/news/item/29-06-2020-covidtimeline. While OFAC failed to issue the general licenses early in the pandemic, in April 2020, OFAC Director Andrea Gacki disclosed at an event hosted by the Center for a New American Security, a think tank, that OFAC would prioritize requests for specific licenses for delivering Covid-19 relief to sanctioned territories. See Center for a New American Security, "Virtual Roundtable: US Sanctions Policy and COVID-19," April 17, 2020, accessed November 16, 2024, www.cnas.org/events/virtual-roundtable-u-s-sanctions-policy-and-covid-19.

Downloaded from https://www.cambridge.org/core. UNIVERSIDAD AUTONOMA METROPOLITANA, on 16 Nov 2026 at 15:14:54, subject to the Cambridge Core terms of use, available at https://www.cambridge.org/core/terms. https://doi.org/10.1017/9781108915632.021

to mitigate unintended economic, political, and humanitarian impact."[77] On the topic of overcompliance, the report states:

> Treasury should seek to tailor sanctions in order to mitigate unintended economic and political impacts on domestic workers and businesses, allies, and non-targeted populations abroad. This will protect key constituencies and help preserve support for U.S. sanctions policy. For example, U.S. small businesses may lack the resources to bear the costs of sanctions compliance while competing with large companies at home and abroad; uncalibrated sanctions could unnecessarily lead them to turn down business opportunities in order to avoid these costs. Better tailored sanctions can help avoid these costs and maintain the competitiveness of U.S. businesses.[78]

The Department of the Treasury's report frames overcompliance too narrowly as a problem among US small businesses, which ignores the role of large multinationals and non-US companies who also turn down business to avoid compliance costs. The report does, however, acknowledge the need to "provide clear guidance at the outset when sanctions authorities are created and implemented," to promote the flow of humanitarian trade "through legitimate channels."[79] While more needs to be done, the Biden administration has followed through with modest steps that include the aforementioned Covid-19 general licenses, general licenses aimed at facilitating humanitarian activities in Afghanistan and after the February 2023 Turkey-Syria earthquake, and sponsorship of Resolution 2664 carving out humanitarian activities from UN asset freezes, along with administrative steps to implement Resolution 2664 in the US. Congress has also taken note of the negative effects of de-risking on American interests. The US Anti-money Laundering Act of 2020 (AMLA) mandated the US. Department of the Treasury to undertake a review of de-risking caused by US AML/CTF laws and to issue a "de-risking strategy." Like FATF's 2021 interim report, the Department of the Treasury's April 2023 strategy identified "profitability as the primary factor in financial institutions' de-risking decisions," but also points to considerations of "reputational risk, risk appetite, a lack of clarity regarding regulatory expectations, and regulatory burdens, including compliance with sanctions regimes."[80] The effects of US sanctions related to Russia are also beginning to be considered. A December 2022 Congressional Research Services report on the economic impact of Russia sanctions called the sanctions a "shock to the global economy, which is still struggling to recover from the COVID-19 pandemic." The

[77] US Department of the Treasury, "The Treasury 2021 Sanctions Review," October 2021, accessed November 16, 2024, https://home.treasury.gov/system/files/136/Treasury-2021-sanctions-review.pdf.

[78] US Department of the Treasury, "The Treasury 2021," 5.

[79] US Department of the Treasury, "The Treasury 2021."

[80] US Department of the Treasury, "AMLA: The Department of the Treasury's De-risking Strategy," April 2023, accessed November 16, 2024, https://home.treasury.gov/system/files/136/Treasury_AMLA_23_508.pdf.

Downloaded from https://www.cambridge.org/core. UNIVERSIDAD AUTONOMA METROPOLITANA, on 16 Nov 2026 at 15:14:54, subject to the Cambridge Core terms of use, available at https://www.cambridge.org/core/terms. https://doi.org/10.1017/9781108915632.021

report acknowledged the sanctions "have likely contributed to disruptions in global supply chains, higher global commodity prices, and a slowdown in global economic growth," while generating concerns about global food security.[81] In June 2023, OFAC and the UK OFSI issued a joint fact sheet on Russia sanctions, humanitarian assistance, and food security, listing a number of general licenses and policy statements authorizing the continued flow of humanitarian goods to Russia and elsewhere.[82]

The US has another incentive for reducing adverse consequences of its sanctions. The US can achieve an oversized effect by leveraging the predominance of the US dollar as a global reserve currency, at least for the time being. According to IMF data, US dollar reserves accounted for about 58 percent of central bank reserves globally as of the second quarter of 2024.[83] A June 2021 BIS report estimated that about half of all cross-border bank loans and international debt securities were denominated in USD.[84] Meanwhile, SWIFT, the global payments network, calculated that, as of September 2024, more than 47 percent of payments over the network were denominated in USD, while almost 84 percent of trade-finance transactions were in USD.[85] Thus, whether the US unilateral measures are or are not accepted by other governments, the impact is considerable. At the same time, there is a growing recognition that this predominance may not last forever. The US Department of the Treasury's October 2021 policy report warns that new technologies could "empower our adversaries seeking to build new financial and payments systems intended to diminish the dollar's global role."[86] On this point, the report quotes former Treasury Secretary Steven Mnuchin: "I do seriously think we have a responsibility to use sanctions for important national security issues. But we need to think about the long-term impact on the global currency."[87] A January 2023 staff report from the New York Federal Reserve on the topic of sanctions provides an extensive background of the growth of the SWIFT international payment framework and recent efforts to develop alternatives less susceptible to US sanctions pressure. The authors conclude: "While currently limited in scope,

[81] Congressional Research Service, "The Economic Impact of Russia Sanctions," December 13, 2022, accessed November 16, 2024, https://crsreports.congress.gov/product/pdf/IF/IF12092.

[82] OFAC and Office of Financial Sanction Implementation, "Humanitarian Assistance and Food Security Fact Sheet: Understanding UK and US Sanction and their Interconnection with Russia," June 28, 2023, accessed November 16, 2024, https://ofac.treasury.gov/media/931946/download?inline.

[83] IMF, "Currency Composition of Official Foreign Exchange Reserves (COFER)," n.d., accessed November 16, 2024, https://data.imf.org/?sk=E6A5F467-C14B-4AA8-9F6D-5A09EC4E62A4.

[84] BIS, "US Dollar Funding: An International Perspective," June 2020, accessed November 16, 2024, www.bis.org/publ/cgfs65.pdf.

[85] SWIFT, "RMB Tracker: Monthly Reporting and Statistic on Renminbi (RMB) Progress towards Becoming an International Currency," October 2024, accessed November 16, 2024, www.swift.com/swift-resource/252344/download.

[86] US Department of the Treasury, "The Treasury 2021," 2.

[87] US Department of the Treasury, "The Treasury 2021," 2.

Downloaded from https://www.cambridge.org/core. UNIVERSIDAD AUTONOMA METROPOLITANA, on 16 Nov 2026 at 15:14:54, subject to the Cambridge Core terms of use, available at https://www.cambridge.org/core/terms. https://doi.org/10.1017/9781108915632.021

over time these alternative systems could meaningfully reduce the effectiveness of restricting access to the existing infrastructure of cross-border payments based in the West."[88] The report echoes the conclusion of the Congressional Research Service in its report on Russia sanctions:

> Sanctions also could accelerate efforts by various countries, particularly China, to reduce their reliance on the U.S. dollar in international transactions, and Western cross-border payments infrastructure more generally. The freeze of Russia's central bank assets, in particular, could make countries reconsider their holdings of and use of the dollar. If de-dollarization efforts gain traction on a broader scale, U.S. borrowing costs could increase and sanctions could become a less effective policy tool.[89]

New Strategies for Humanitarian Trade

To counteract the perception that humanitarian trade is not worth the risk, enforcers could adopt safe harbors for companies and NGOs involved in humanitarian trade such as food and medicine. OFAC enforces its regulations under a "strict liability" standard that does not require a showing of specific knowledge or intent to bring an administrative penalty (which currently can result in a fine of more than $300,000 per violation). That a transaction was technically outside the letter of a regulation is sufficient, even if it was accidental or inadvertent. In both the BIOMIN and PanAmerican Seed cases, OFAC claimed that the companies could have received licenses for agricultural exports. Apart from using its discretion not to bring such cases, OFAC could apply a higher standard of knowledge to cases involving agricultural goods, pharmaceuticals, medical devices, and NGOs – the criminal standard of willful intent is one option. By bringing these cases under a strict liability standard, OFAC demonstrated that no industry is safe from administrative enforcement, even if that means discouraging others from engaging in potentially lawful transactions.

Another strategy, albeit divisive, is for other governments to actively discourage overcompliance through "blocking regulations" and other legal mechanisms that prohibit their nationals from complying with foreign sanctions that are contrary to national interests. The EU Blocking Regulation and its UK equivalent prohibit EU and UK persons from complying with US secondary sanctions on Cuba and Iran.[90] In June 2021, China adopted the Anti-foreign

[88] Marco Cipriani, Linda S. Goldberg, and Gabriele La Spalda, "Financial Sanctions, SWIFT, and the Architecture of the International Payments System," *Federal Reserve Bank of New York Staff Reports*, No. 1047 (New York: Federal Reserve Bank of New York, January 2023), 28, accessed July 4, 2025, https://tinyurl.com/4auxej7v.

[89] Congressional Research Service, "The Economic Impact of Russian Sanctions," 2.

[90] European Commission, "Extraterritoriality (Blocking Statute): Protecting EU Operators, Reinforcing European Strategic Autonomy," n.d., accessed November 16, 2024, https://tinyurl.com/dzrez29x; UK Department for Business and Trade, "Guidance: Protection of Trading Interests," June 26, 2023, accessed November 16, 2024, www.gov.uk/guidance/protection-of-trading-interests.

Downloaded from https://www.cambridge.org/core. UNIVERSIDAD AUTONOMA METROPOLITANA, on 16 Nov 2026 at 15:14:54, subject to the Cambridge Core terms of use, available at https://www.cambridge.org/core/terms. https://doi.org/10.1017/9781108915632.021

Sanctions Law, loosely based on the EU Blocking Regulation, which authorizes PRC government agencies to take action to prohibit compliance with "discriminatory measures" aimed at China and Chinese companies.[91] By drawing attention to a conflict between policy expectations, blocking regulations are effective in causing companies to more carefully weigh the potential risks of withdrawing business where doing so is not strictly required. For example, an EU company that is not otherwise subject to US law may think twice about terminating a contract with an Iranian counterparty solely to minimize its risk of US reprisals, an issue explored by the EU Court of Justice in its December 2021 decision concerning Telekom Deutschland's termination of a contract with Bank Melli Iran.[92] As remarked by the Special Rapporteur in her September 2022 report to the UNGA, blocking regulations are limited in scope and are not typically framed in terms of protecting humanitarian trade or development.[93] Still, they represent one potential avenue for discouraging overcompliance and de-risking that results in demonstrable harms.

Commercial actors are the ultimate conveyors of government-led sanctions, and efforts to refine sanctions policy cannot succeed without their involvement. It is worth studying more closely how companies, and the individuals within them, come to learn about, interpret, and apply sanctions to their day-to-day activities because the aggregate outcome of business decisions matters for global development and populations who suffer as a consequence of overcompliance. This is doubly true where sanctions are found to have failed to bring about a desired change in the target or to have given a trading advantage to a foreign adversary. Where harms outweigh benefits, sanctions should not be a "tool of first resort."[94] Where sanctions must be used, governments should aim to create conditions in which commercial actors are able to partake in legally permissible trade without facing an intractable dilemma between crippling compliance costs or crippling enforcement. This may include steps to more clearly authorize and promote legitimate commercial and humanitarian activities and genuine measures to stimulate economic activity once a sanction is terminated.

BIBLIOGRAPHY

American Journal of International Law. "Articles 3 & 5 Harvard Research Draft Convention on Jurisdiction with Respect to Crime." *Supplement* 29, no. S1 (1935): 439–442.

Ashurst (website). "Russia Sanctions Tracker." Updated November 7, 2024. Accessed November 16, 2024. www.ashurst.com/en/insights/russia-sanctions-tracker.

[91] Xinhua, "Anti-foreign Sanctions Law Necessary to Fight Hegemonism, Power Politics: Official," June 11, 2021, accessed November 16, 2024, www.xinhuanet.com/english/2021-06/11/c_1310001370.htm.

[92] Case C-124/20, *Bank Melli Iran* v. *Telekom Deutschland GmbH*, ECLI:EU:C:2021:1035 (2021).

[93] Douhan, "Report," paras. 72–74.

[94] U.S. Department of the Treasury, "The Treasury 2021," 2.

Downloaded from https://www.cambridge.org/core. UNIVERSIDAD AUTONOMA METROPOLITANA, on 16 Nov 2026 at 15:14:54, subject to the Cambridge Core terms of use, available at https://www.cambridge.org/core/terms. https://doi.org/10.1017/9781108915632.021

Atkins, Jacob. "Energy Giants' Myanmar Exit Renews Attention on Sanction." *Global Trade Review*. January 26, 2022. Accessed November 16, 2024. https://tinyurl.com/nara5v58.

Basquill, John. "Banks Remain Wary As Russian Oil Price Cap Kicks In." *Global Trade Review*. June 12, 2022. Accessed November 16, 2024. https://tinyurl.com/4358hzta.

Borchert, Lea Ralph de Hass, Karolin Kirschenmann, and Alison Schultz. "The Impact of De-risking by Correspondent Banks on International Trade." *VoxEU*. September 18, 2024. Accessed November 16, 2024. https://tinyurl.com/47bcnunc.

Business & Human Rights Resource Centre. "Myanmar: Survey of Companies That Have Expressed Withdrawal or Suspension of Operations Since the Attempted Coup." January 31, 2023. Accessed November 16, 2024. https://tinyurl.com/a2xtxs7t.

Case C-124/20, *Bank Melli Iran* v. *Telekom Deutschland GmbH*. ECLI:EU: C:2021:1035 (2021).

Center for a New American Security. "Virtual Roundtable: US Sanctions Policy and COVID-19." April 17, 2020. Accessed November 16, 2024. www.cnas.org/events/virtual-roundtable-u-s-sanctions-policy-and-covid-19.

Center for Global Development. "Unintended Consequences of Anti-money Laundering Policies for Poor Countries: A CGD Working Group Report." 2015. Accessed November 16, 2024. https://tinyurl.com/59596stj.

Center for Strategic and International Studies. "Impact of U.S. Sanctions on Aid Delivery in Afghanistan." September 3, 2021. Accessed November 16, 2024. www.csis.org/analysis/impact-us-sanctions-aid-delivery-afghanistan.

Chachko, Elena "Due Process Is in the Details: U.S. Targeted Economic Sanctions and International Human Rights Law." *AJIL Unbound: The American Society of International Law* 113 (April 29, 2019): 157–162.

Cipriani, Marco, Linda S. Goldberg and Gabriele La Spalda. "Financial Sanctions, SWIFT, and the Architecture of the International Payments System." *Federal Reserve Bank of New York Staff Reports*, No. 1047 (New York: Federal Reserve Bank of New York, January 2023). Accessed July 4, 2025. https://tinyurl.com/4auxej7v.

Committee on the Global Financial System. "US Dollar Funding: An International Perspective." BIS. June 18, 2020. Accessed November 16, 2024. www.bis.org/publ/cgfs65.pdf.

Congressional Research Service. "Overview of Correspondent Banking and 'De-Risking' Issue." April 8, 2022. Accessed November 16, 2024. https://crsreports.congress.gov/product/pdf/IF/IF10873/3.

Congressional Research Service. "The Economic Impact of Russia Sanctions." December 13, 2022. Accessed November 16, 2024. https://crsreports.congress.gov/product/pdf/IF/IF12092.

Cornish, Chole, John Reed, and Tom Wilson, "Russia Becomes India's Top Oil Supplier As Sanctions Deflate Price." *Financial Times*. November 9, 2022. Accessed November 16, 2024. www.ft.com/content/f01161be-189f-4f69-918f-fd2a1f0fa1e3.

Crystal, Caroline. "Landmark UN Humanitarian Sanctions Exemption Is a Massive Win But Needs More Support." Carnegie Endowment for International Peace. March 20, 2023. Accessed November 16, 2024. https://tinyurl.com/4r454x8y.

Darvas, Zsolt, Luca Lery Moffat, Catarina Martins, and Conor McCaffrey, "Russian Foreign Trade Tracker." Brugel. Updated September 13, 2024. Accessed November 16, 2024. www.bruegel.org/dataset/russian-foreign-trade-tracker.

Downloaded from https://www.cambridge.org/core. UNIVERSIDAD AUTONOMA METROPOLITANA, on 16 Nov 2026 at 15:14:54, subject to the Cambridge Core terms of use, available at https://www.cambridge.org/core/terms. https://doi.org/10.1017/9781108915632.021

Dehghan, Saeed Kamali. "UK Bank Accounts of Iranian Customers Still Being Closed, Says Law Firm." *The Guardian*. April 21, 2017. Accessed November 16, 2024. https://tinyurl.com/rpbtmsnr.

Douhan, Alena F. "Report of the Special Rapporteur on the Negative Impact of Unilateral Coercive Measures on the Enjoyment of Human Rights, A/HRC/51/33." OHCHR. July 15, 2022. Accessed November 16, 2024. https://tinyurl.com/yetr9r3n.

ESAAMLG. "Follow Up Report to Assess the Continued Existence and Impact of De-risking in the ESAAMLG Region." April 2021. Accessed November 16, 2024. www.esaamlg.org/reports/De-risking_FUR_April2021.pdf.

European Banking Authority. "Opinion of the European Banking Authority on the Risks of Money Laundering and Terrorist Financing Affecting the European Union's Financial Sector." March 3, 2023. Accessed November 16, 2024. https://tinyurl.com/2vycshz2.

European Commission. "Extraterritoriality (Blocking Statute): Protecting EU Operators, Reinforcing European Strategic Autonomy." n.d. Accessed November 16, 2024. https://tinyurl.com/dzrez29x.

Exec. Order No. 13959, 85 FR 73185. November 12, 2020. Accessed November 16, 2024. https://tinyurl.com/4kdtkacz.

Exec. Order No. 14032, 86 FR 30145. June 3, 2021. Accessed November 16, 2024. https://tinyurl.com/bdfjbs7v.

FATF. "FATF Takes Action to Tackle De-risking." October 23, 2015. Accessed November 16, 2024. https://tinyurl.com/3r7xest6.

FATF. "Guidance for Risk-Based Approach: The Banking Sector." October 2014. Accessed November 16, 2024. https://tinyurl.com/4bapuxws.

FATF. "High Level Synopsis of the Stocktake of the Unintended Consequences of the FATF Standards." October 27, 2021. Accessed November 16, 2024. www.fatf-gafi.org/content/dam/fatf-gafi/reports/Unintended-Consequences.pdf.

FATF. "International Standards on Combatting Money Laundering and the Financing of Terrorism & Proliferation: The FATF Recommendations." Amended November 2023. Accessed November 16, 2024. www.fatf-gafi.org/en/publications/Fatfrecommendations/Fatf-recommendations.html.

FATF. "Mitigating the Unintended Consequences of the FATF Standards." February 2021. Accessed November 16, 2024. https://tinyurl.com/45pdmweb.

FATF. "Outcomes of the Plenary meeting of the FATF, Busan Korea, 22–24 June 2016." June 24, 2016. Accessed November 16, 2024. www.fatf-gafi.org/en/publications/Fatfgeneral/Plenary-outcomes-june-2016.html.

FATF. "Public Consultation on the Revision of Recommendation 8 (Non-profit Organizations)." April 22, 2016. Accessed November 16, 2024. https://tinyurl.com/s6jrwbn8.

FinCEN. "Supplemental Alert: FinCEN and the US Department of Commerce's Bureau of Industry and Security Urge Continued Vigilance for Potential Russian Export Control Evasion Attempts." May 19, 2023. Accessed November 16, 2024. https://tinyurl.com/4pmyymdp.

GAO. "Additional Tracking Could Aid Treasury Efforts to Mitigate Any Adverse Effects US Sanctions Might Have on Humanitarian Aid." GAO-21-239. February 2021. Accessed November 16, 2024. www.gao.gov/assets/gao-21-239.pdf.

Goldberg, Pinelopi K., and Tristan Reed. "Is the Global Economy Deglobalizing? If So, Why? And What Is Next?" Brookings Institute. Updated March 29, 2023. Accessed November 16, 2024. https://tinyurl.com/3ny7j2c2.

Downloaded from https://www.cambridge.org/core. UNIVERSIDAD AUTONOMA METROPOLITANA, on 16 Nov 2026 at 15:14:54, subject to the Cambridge Core terms of use, available at https://www.cambridge.org/core/terms. https://doi.org/10.1017/9781108915632.021

Hong Kong Autonomy Act, Pub. L. No. 116–149 (2020).
Hunter, Gregor Stuart. "Banks Turn Away Iran and Syria Nationals." *The National*. February 8, 2013. Accessed November 16, 2024. https://tinyurl.com/yc5rdzv2.
IMF. "Currency Composition of Official Foreign Exchange Reserves (COFER)." n.d. Accessed November 16, 2024. https://data.imf.org/?sk=E6A5F467-C14B-4AA8-9F6D-5A09EC4E62A4.
Jafari, Saeid. "U.S. Sanctions Hit Iranian Students Seeking Bank Accounts in Europe." *Al Monitor*. January 11, 2019. Accessed November 16, 2024. https://tinyurl.com/4m3kj8mk.
Jamali, Peyman. "Locked Out: Why Are Australian Banks Refusing Customer Transactions with Iran?" SBS Persian. May 27, 2022. Accessed November 16, 2024. https://tinyurl.com/msm57t2k.
Lee, Liz, and A. Ananthalakshmi. "Iranians in Malaysia Say Banks Close Their Accounts As U.S. Sanctions Bite." Reuters. October 30, 2019. Accessed November 16, 2024. www.reuters.com/article/us-malaysia-iran-banks-idUSKBN1X90A9.
Lohmann, Sascha. "Extraterritorial U.S. Sanctions: Only Domestic Courts Could Effectively Curb the Enforcement of U.S. Law Abroad." *SWP Comment: German Institute for International and Security Affairs*, No. 5 (February 2019). Accessed November 16, 2024. www.swpberlin.org/publications/products/comments/2019C05_lom.pdf.
Luokung Technology Corp. v. *U.S. Department of Defense*. No. 21-583 (RC) (D.D.C. March 23, 2021).
Ma, Jess. "Russians Lose Access to Some Banking Services in Hong Kong Due to Western Sanctions over Ukraine." *South China Morning Post*. October 15, 2022. Accessed November 16, 2024. https://tinyurl.com/4rkrzr5e.
Master, Jonathan. "What Is Extradition?" Council on Foreign Relations. Updated January 8, 2020. Accessed November 16, 2024. www.cfr.org/backgrounder/what-extradition.
Mazhari, Mohammad. "Iran's Dilemma in Dealing with A New Trump Administration." Stimson Center. November 15, 2024. Accessed November 16, 2024. www.stimson.org/2024/irans-dilemma-in-dealing-with-a-new-trump-administration/.
Ministry of Foreign Affairs of the People's Republic of China. "Remarks by China's Permanent Representative to the UN Ambassador Zhang Jun at the UN Security Council Open Debate on Effective Multilateralism through the Defense of the Principles of the UN Charter." April 24, 2023. Accessed November 16, 2024. www.mfa.gov.cn/eng/xw/zwbd/202405/t20240530_11365563.html.
Moens, Barbara, Leonie Kijewski, and Suzanne Lynch. "EU Targets Central Asia in Drive to Stop Sanctioned Goods Reaching Russia." *Politico*. May 8, 2023. Accessed November 16, 2024. www.politico.eu/article/eu-aims-central-asia-sanction-circumvention-russia-war/.
Moret, Erica. "Safeguarding Humanitarian Banking Channels: How, Why and By Whom?" Norwegian Refugee Council. January 2023. Accessed November 16, 2024. https://tinyurl.com/2sk7nmyx.
Mulder, Nicholas. "The Sanctions Weapon." International Monetary Fund. Last modified June 2022. Accessed November 16, 2024. www.imf.org/en/Publications/fandd/issues/2022/06/the-sanctions-weapon-mulder.
Nikoladze, Maia, Phillip Meng, and Jessie Yin. "How is China Mitigating the Effects of Sanctions on Russia?" Atlantic Council. June 14, 2023. Accessed November 16, 2024. https://tinyurl.com/mweujh7a.

Downloaded from https://www.cambridge.org/core. UNIVERSIDAD AUTONOMA METROPOLITANA, on 16 Nov 2026 at 15:14:54, subject to the Cambridge Core terms of use, available at https://www.cambridge.org/core/terms. https://doi.org/10.1017/9781108915632.021

Norwegian Refugee Council. "Life and Death: NGO Access to Financial Services in Afghanistan." January 2022. Accessed November 16, 2024. https://tinyurl.com/3xeht5st.

Norwegian Refugee Council. "Report: Afghanistan Should Be Open for Business, But Misconceptions about Sanctions Are Increasing Suffering for Millions." April 5, 2023. Accessed November 16, 2024. https://tinyurl.com/55umnzr4.

OFAC. "Fact Sheet: Limiting Kremlin Revenues and Stabilizing Global Energy Supply with a Price Cap on Russian Oil." Updated December 2, 2022. Accessed November 16, 2024. https://home.treasury.gov/news/press-releases/jy1141.

OFAC. "Financial Channels to Facilitate Humanitarian Trade with Iran and Related Due Diligence Reporting Expectations." October 25, 2019. Accessed November 16, 2024. https://ofac.treasury.gov/media/31416/download?inline.

OFAC. "Issuance of Syria General License 21, Venezuela General License 39, and Iran General License N, 'Authorizing Certain Activities to Respond to the Coronavirus Disease 2019 (COVID-19) Pandemic' and Associated Frequently Asked Questions." June 17, 2021. Accessed November 16, 2024. https://tinyurl.com/mvb92kva.

OFAC. "Report Pursuant to Section 5(b) of the Hong Kong Autonomy Act." May 18, 2021. Accessed November 16, 2024. https://ofac.treasury.gov/media/98121/download.

OFAC. "Settlement Agreement between the US Department of the Treasury's Office of Foreign Asset's Control and BIOMIN America, Inc." May 6, 2020. Accessed November 16, 2024. https://ofac.treasury.gov/recent-actions/20200506.

OFAC. "Settlement Agreement between the US Department of Treasury's of Foreign Assets Control and PanAmerican Seed Co." September 13, 2016. Accessed November 16, 2024. https://tinyurl.com/yc7xr5vn.

OFAC. "Treasury Issues Additional General Licenses and Guidance in Support of Humanitarian Assistance and Other Support to Afghanistan." Press Release. December 22, 2021. Accessed November 16, 2024, https://home.treasury.gov/news/press-releases/jy0545.

OFAC. "Treasury Issues General Licenses and Guidance to Facilitate Humanitarian Assistance in Afghanistan." Press Release. September 24, 2021. Accessed November 16, 2024. https://home.treasury.gov/news/press-releases/jy0372.

OFAC (website). "Civil Penalties and Enforcement Information." n.d. Accessed November 16, 2024. https://ofac.treasury.gov/civil-penalties-and-enforcement-information.

OFAC (website). "Sanctions List Search." n.d. Accessed November 16, 2024. https://sanctionssearch.ofac.treas.gov/.

OFAC and Office of Financial Sanction Implementation. "Humanitarian Assistance and Food Security Fact Sheet: Understanding UK and US Sanction and Their Interconnection with Russia." June 28, 2023. Accessed November 16, 2024. https://ofac.treasury.gov/media/931946/download?inline.

OHCHR. "Afghanistan: UN Experts Call on U.S. Government to Unblock Foreign Assets of Central Bank to Ease Humanitarian Impact." April 25, 2022. Accessed November 16, 2024. https://tinyurl.com/yc3azw8h.

OHCHR. "UN Expert Issues Sanctions Guidance amid COVID-19 Aid Concerns." Press Release. December 10, 2020. Accessed November 16, 2024. www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=26589&LangID=E.

Paymentwall (website). "Sanctioned Countries, Regions and Entities." n.d. Accessed November 16, 2024. www.paymentwall.com/en/faq/sanctioned-countries-and-entities.

Downloaded from https://www.cambridge.org/core. UNIVERSIDAD AUTONOMA METROPOLITANA, on 16 Nov 2026 at 15:14:54, subject to the Cambridge Core terms of use, available at https://www.cambridge.org/core/terms. https://doi.org/10.1017/9781108915632.021

Price, Michelle, and Sumeet Chatterjee. "Focus: Global Banks Eschew Risk As They Navigate Russia Sanctions Quagmire." Reuters. March 2, 2022. Accessed November 16, 2024. https://tinyurl.com/yc4ce6ms.

Rendon, Moises, and Claudia Fernandez, "The Fabulous Five: How Foreign Actors Prop Up the Maduro Regime in Venezuela." Center for Strategic & International Studies. October 19, 2020. Accessed November 16, 2024. https://tinyurl.com/4ktzkezu.

Reuters Staff. "Australian Lender ANZ to end Myanmar Operations by Early 2023." Reuters. November 22, 2022. Accessed November 16, 2024. www.reuters.com/article/anz-bank-myanmar-restructuring-idUSL4N32I0WN.

Rho (website). "Rho Terms of Service." Effective July 8, 2023. Accessed November 16, 2024. www.rho.co/terms-of-service.

Rice, Tara, Goetz von Peter, and Codruta Boar. "On the Global Retreat of Correspondent Banks." *BIS Quarterly Review* (March 2020): 37–52. Accessed November 16, 2024. www.bis.org/publ/qtrpdf/r_qt2003g.pdf.

Salari, Massoud. "Italian Banks are Closing Iranian Citizens' Accounts over U.S. Sanctions: Is It Legal?" *Euronews*. February 13, 2020. Accessed November 16, 2024. https://tinyurl.com/6a44p8wb.

Schwartz, Felicia. "Kerry Tries to Drum Up Some Business in Europe for Iran." *The Wall Street Journal*. May 10, 2016. Accessed November 16, 2024. https://tinyurl.com/4u69waj8.

Special Rapporteur on Unilateral Coercive Measures. "Guidance Note on Over-compliance with Unilateral Sanctions and Its Harmful Effects on Human Rights." OHCHR. June 28, 2022. Accessed November 16, 2024. https://tinyurl.com/4h3y2d8d.

SWIFT (website). "RMB Tracker: Monthly Reporting and Statistic on Renminbi (RMB) Progress towards Becoming an International Currency." October 2024. Accessed November 16, 2024. www.swift.com/swift-resource/252344/download.

Taylor, Adam. "Hong Kong Leader Says She Has 'Piles of Cash at Home,' No Bank Account, Due to US Sanctions." *The Washington Post*. November 29, 2019. Accessed November 16, 2024. www.washingtonpost.com/world/2020/11/28/carrie-lam-cash-sanctions/.

UK Department for Business and Trade. "Guidance: Protection of Trading Interests." June 26, 2023. Accessed November 16, 2024. www.gov.uk/guidance/protection-of-trading-interests.

UN. "Adopting Resolution 2664 (2022), Security Council Approves Humanitarian Exemption to Asset Freeze Measures Imposed by United Nations Sanctions Regimes." December 9, 2022. Accessed November 16, 2024. https://press.un.org/en/2022/sc15134.doc.htm.

UN Office on Drugs and Crime. "Revised Manuals on the Model Treaty on Extradition and on the Model Treaty on Mutual Assistance in Criminal Matters." May 11 2004. Accessed November 16, 2024. www.unodc.org/pdf/model_treaty_extradition_revised_manual.pdf.

UNSC. Resolution 2664, S/RES/2664 (December 9, 2022).

UNSC. "U.N., Security Council Unanimously Adopts Resolution 2615 (2021), Enabling Provision of Humanitarian Aid to Afghanistan as Country Faces Economic Crisis." Press Release. December 22, 2021. Accessed November 16, 2024. https://press.un.org/en/2021/sc14750.doc.html.

Downloaded from https://www.cambridge.org/core. UNIVERSIDAD AUTONOMA METROPOLITANA, on 16 Nov 2026 at 15:14:54, subject to the Cambridge Core terms of use, available at https://www.cambridge.org/core/terms. https://doi.org/10.1017/9781108915632.021

US Congress. "When Banks Leave: The Impacts of De-risking on the Caribbean and Strategies for Ensuring Financial Access: Hearing Before the House Committee on Financial Services." September 14, 2022. Accessed November 16, 2024. www.congress.gov/event/117th-congress/house-event/115101.

US Department of Justice. "Iranian National and U.A.E. Business Organization Charged with Criminal Conspiracy to Violate Iranian Sanctions." Press Release. August 19, 2020. Accessed November 16, 2024. https://tinyurl.com/ytus7y3y.

US Department of Justice. "United States Obtains $629 Million Settlement with British American Tobacco to Resolve Illegal Sales to North Korea, Charges Facilitators in Illicit Tobacco Trade." Press Release. April 25, 2023. Accessed November 16, 2024. https://tinyurl.com/3pehs4zt.

US Department of the Treasury. "AMLA: The Department of the Treasury's De-risking Strategy." April 2023. Accessed November 16, 2024. https://home.treasury.gov/system/files/136/Treasury_AMLA_23_508.pdf.

US Department of the Treasury. "The Price Cap on Russian Oil: A Progress Report." May 18, 2023. Accessed November 16, 2024. https://tinyurl.com/3w74ykmz.

US Department of the Treasury. "The Treasury 2021 Sanctions Review." October 2021. Accessed November 16, 2024. https://home.treasury.gov/system/files/136/Treasury-2021-sanctions-review.pdf.

Verdier, Pierre-Hugues. "Sanctions Overcompliance: What, Why, and Does It Matter?" *Northern Carolina Journal of International Law* 48 (June 18, 2023): 417–498.

Volk, Ariane, and Susan Starnes. "Increased Regulation and De-risking Are Impeding Cross-Border Financing in Emerging Markets." *EM Compass: International Financial Corp.* January 2018. Accessed November 16, 2024. https://tinyurl.com/24n2z2yf.

Walker, Justine. "Sanctions Must Not Impede Humanitarian Relief." *Financial Times*. May 9, 2021. Accessed November 16, 2024. www.ft.com/content/24f9ec16-15ac-4823-9265-5d11714c85c9.

Walker, Justine. "The Public Policy of Sanctions Compliance: A Need for Collective and Coordinated International Action." *International Review of the Red Cross* 103 (2021): 705–707.

WHO. "Listing of WHO's Response to COVID-19." January 29, 2021. Accessed November 16, 2024. www.who.int/news/item/29-06-2020-covidtimeline.

World Bank. "Report on the G20 Survey on De-risking Activities in the Remittance Market." October 2015. Accessed November 16, 2024. https://tinyurl.com/59tea4cm.

World Bank. "Withdrawal from the Correspondent Banking: Where, Why, and What to Do About It." November 2015. Accessed November 16, 2024. https://tinyurl.com/ms6ahh5m.

Xiaomi Corp. v. US Department of Defense. No. 21-280 (RC) (D.D.C. March 12, 2021).

Xinhua, "National People's Congress of the People's Republic of China. Anti-foreign Sanctions Law Necessary to Fight Hegemonism, Power Politics: Official." June 11, 2021. Accessed November 16, 2024. www.xinhuanet.com/english/2021-06/11/c_1310001370.htm.

Downloaded from https://www.cambridge.org/core. UNIVERSIDAD AUTONOMA METROPOLITANA, on 16 Nov 2026 at 15:14:54, subject to the Cambridge Core terms of use, available at https://www.cambridge.org/core/terms. https://doi.org/10.1017/9781108915632.021