

Statement by Ambassador Daniel Fried (Retired)

**Hearing on Outside Perspectives on Russia Sanctions:
Current Effectiveness and Potential for Next Steps**

Committee on Banking, Housing, and Urban Affairs

U.S. Senate

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Mr. Chairman, Ranking Member Brown, I appreciate the opportunity to appear before you today. The topic is relevant and timely.

The Russia problem

In recent testimony before Congress, Assistant Secretary of State Wess Mitchell, Under Secretary of Treasury Sigel Mandelker, and Assistant Secretary of Treasury Marshall Billingslea summed up well the behavior of Putin's regime: its aggression against Ukraine and Georgia; interference in US and European elections; its use of violence against opponents at home and abroad, including assassination and attempted assassination; and its autocracy and corruption.

President Trump has noted that it would be nice if the United States got along with Russia. Indeed, it would. Both Presidents Bush and Obama tried to establish constructive relations with Putin's Russia. Both failed, however, and the reasons for those failures are instructive. Russia's conditions for good relations with the US are those that no US Administration can or should accept: namely, US deference to Russian domination of its neighbors, including through intimidation and war, and US indifference to Russia's repression at home.

There are those in this country and in Europe who might accept these Russian conditions. But hard experience in the 20th century – through World Wars and Cold War – taught that a country's bad behavior inside its borders is a reliable indicator of bad behavior abroad, and that spheres of influence established through force and repression, Russia's usual methods, are neither stabilizing nor self-limiting.

Putin's system of rule combines political authoritarianism and economic kleptocracy; it is a regime dedicated to enriching its members, not the nation it supposedly serves. Economically, it depends on control of raw materials which it can export. Russia's advance over the longer term would require, among other things, respect for the rule of law, property rights, and freedom of speech and assembly. These are reforms that the Putin regime seems unable to accept, because these would allow the development of economic and political power independent of the regime-connected crony system. Thus, the Putin regime essentially condemns Russia to structural

stagnation, recalling the more reactionary Tsars and the late-Soviet period. Under these circumstances, Putinism cannot depend on democratic legitimacy, but must rely on repression at home combined with chauvinistic campaigns directed especially against the United States, which remains the “main enemy.”

The regime seeks to prevent its democratic rivals -- what we used to call the Free World -- from challenging Putin’s regime by the power of their example. From this perspective, it is critical for the Kremlin that Ukraine not succeed in its attempt to transform itself from a Putin-dependent kleptocracy, as it was before 2014, to a free market democracy drawing closer to Europe. Should Ukraine succeed, it might demonstrate to the Russian people the viability of an alternative to Putinism. In like fashion, Putin’s policy, like that of the Soviets, also aims to weaken the institutions of the Free World, including the European Union and NATO, and to discredit the very idea of democracy as a potentially appealing alternative for Russia.

To challenge the Free World’s democratic, rule-of-law system, Putin seeks to assemble a counter-alliance of autocrats and nationalists. The Trump Administration’s national security strategy argues that the world has returned to a period of great power rivalry, with Russia and China challenging the United States and its allies. The Administration has a point, and I hope that it will seek, in a consistent way, to strengthen our friends and resist the aggression of our adversaries.

Given this background, some believe that Russia will always be America’s strategic rival, that its history condemns it to perpetual hostility to the United States and the values which our country has championed for at least one hundred years.

I do not share this view. While relations with Russia are currently bad and may get worse, Russia’s history suggests that if the West resists Russia’s aggression abroad, Russia may turn to reform at home, accompanied by efforts to improve relations with the West to support economic reforms and integration with the world.

A wise US policy toward Russia would, therefore, combine resistance to Russia’s current aggression, including by working with our Allies; efforts to reduce the risks of destabilizing clashes, without, however, unwarranted concessions or apologies; cooperation with Russia where possible, without expecting too much, too soon; and the anticipation of, and planning for, potential better relations with a better Russia. A strong, democratic, and peaceful Russia would be an asset to the world and a country with which we should seek and could sustain better relations.

Current Russia sanctions

In the face of Russian aggression in many areas, the Administration – and Congress – have turned to sanctions as a principal tool of the US response. Launched during the Obama Administration,

these included extensive Ukraine-related sanctions, coordinated with the EU and other key Allied governments; human rights sanctions through the Magnitsky Act, a few Syria- and DPRK-related sanctions; non-proliferation related sanctions; and sanctions related to cyber/election interference, announced in late December 2016.

The Trump Administration has continued these, adding new designations. It has also used additional authorities, such as a significant individual designation under the “Global Magnitsky” Act, new sanctions under the 1991 Chemical and Biological Weapons Control Act (in response to Russia’s use of nerve gas in the UK), a strong set of omnibus sanctions under the framework of the Countering America’s Adversaries Through Sanctions Act of 2017 (CAATSA), and a broad tranche of designations of Russian oligarchs and their companies on April 6, 2018. The Administration is reportedly preparing additional sanctions, including, according to the “Washington Post,” a new Executive order providing for more sanctions in case of Russian illegal interference in the US midterm elections.

The Office of Foreign Assets Control, part of the Treasury Department, has the major responsibility for sanctions within the US Government and has done, and continues to do, capable work, supported by professionals at the State Department and NSC, both career and political appointees. CAATSA has given the State Department increased sanctions authorities; given this and the importance of sanctions generally, State might wish to strengthen its sanctions policy capacity, including by re-establishing the Office of the Sanctions Coordinator (which I headed from 2013-2017), led by a senior career official.

Congress last summer passed a major piece of sanctions legislation, CAATSA, and is considering additional legislation, including the Defending Elections from Threats by Establishing Redlines Act (DETER) and the Defending American Security from Kremlin Aggression Act (DASKAA).

The scope of the sanctions programs against Russia, either existing or planned, reflects the fact that there are a lot of areas of bad Russian behavior.

Sanctions Lessons

What lessons can the US draw from the use of sanctions against Russian targets? What are our next best moves, by the Executive and Congress?

Lesson one: remember what it is we’re trying to achieve. Sanctions should put pressure on the Russians to change their behavior. Sanctions are not themselves a strategy. They are a tool, as good as the policy they seek to advance. Specifically, the US Government’s (USG) Russia sanctions seek to:

- Support a settlement that will get the Russians out of the Donbass and eventually Crimea, while dissuading the Russians from a renewed military offensive or new forms of aggression against Ukraine;
- Deter or limit future Russia's deplorable actions in Syria (though I would keep expectations regarding Syria under control), continued sanctions evasion with respect to the DPRK, and more use of nerve gas to murder its enemies;
- Dissuade the Russians from repeated illegal interference in our elections; and
- Demonstrate that there will be a cost for the regime's gross corruption and human rights violations, including inside Russia.

Sanctions are not an alternative to diplomacy, as is sometimes suggested. They advance diplomacy by giving weight to our proposals, credibility to our threats, and leverage from which to negotiate.

Do sanctions work? They can, if we don't get greedy or impatient. Sanctions, combined with other means of pressure, can sometimes bring about changes surpassing expectations. In the 1980's, pressure, combined with diplomacy and democratic resistance inside the Soviet empire such as Poland's Solidarity, helped bring about the end of Communism in Europe. But I would caution against outsized expectations. Sanctions alone seldom cause their target to surrender, or to admit that it is beaten. Sanctions usually work at a pace slower than you want (or have promised to your boss or to Congress). Still, if maintained and enforced, they can have a cumulative impact over time, especially when accompanied by other forms of pressure.

Nevertheless, when sanctions work, they may bring about an imperfect or incomplete outcome, as is often the case with diplomatic action and was the case with Iran and the JCPOA (the Joint Comprehensive Plan of Action, aka the Iran nuclear deal).

In my career, however, I learned not to dismiss imperfect outcomes. In the case of Ukraine, the imposition of US and parallel European and Canadian sanctions, combined with Ukraine's own determined resistance, probably convinced Putin to limit his objectives – including by abandoning (for the present) Russia's floated claim of huge areas of Ukraine as "Novorossiya" or "New Russia" – and to accept the Minsk framework for settlement in the Donbass. The Minsk framework is flawed, and it does not include Crimea. But the Minsk framework does signify Russia's formal agreement that the Donbass is in fact Ukrainian and that a settlement there will include restoration of Ukrainian control over its Eastern international border. The Minsk framework can be the basis of a settlement that ends at least part of Russia's aggression against Ukraine. Imperfect can be good enough.

Moreover, it is worth doing a thought experiment: what would Russia have concluded and what would it have done, had the US and Europe not imposed sanctions at all after Russia's invasion

of Ukraine in 2014? Putin is certainly aware of – and probably follows – Lenin’s old dictum, “Thrust in the bayonet; when you hit fat, keep pushing; when you hit steel, pull back.” Had we done nothing, Russia might well have attempted to do still worse, such as trying to seize the Ukrainian city of Mariupol, pushing further West to create a land-bridge to Crimea, or opening new fronts in Ukraine.

Sanctions have costs and risks, and we need to think these through. Sanctions should not be imposed for their optics. We should not try to prove our commitment to a policy by showing how much pain we’re willing to absorb ourselves. The point is to impose costs which fall on the opponent, at a level minimal to ourselves.

Sanctions Options

This background suggests the following guide to next steps:

Work with Allies. The US imposed sanctions in solidarity with its European and other allies, and our allies generally did their part. Putin may not have expected that European governments, given their varying views about Russia, would agree to impose sanctions or be able to sustain them. But they did. When they did, this international solidarity extended the sanctions’ power and may have frustrated Putin’s expectations.

Moving forward, the US should choose Russian sanctions targets aware of the relative impact on the US and European countries, as well as Japan, Canada, and other allied nations. Those impacts are not likely to be equal, but the US should strive for some rough equity. US and European companies have taken hits from sanctions and should not expect immunity in the future; companies should know by now that doing business with Russia carries extra risks due to Russian aggression. Nevertheless, both the Executive and Congress should be aware of the costs to business and countries before making decisions. Working with allies also means making clear that we will enforce sanctions, including, if warranted, through action against either European companies or our own for sanctions evasion. We must play it straight, however: we cannot let a narrative develop that US companies get off the hook while European companies get hit.

Prepare credible escalatory options. In the short-term, Putin is likely to continue his aggression and he may intensify it, either in Ukraine, against the US through election interference, or elsewhere. Therefore, the US should have, and the Russians should know that we have, escalatory sanctions options that are tough enough to hurt but restrained enough to use. Escalatory options can include two types: intensified sectoral sanctions targeting specific sectors such as finance, energy, defense/dual use technology, and cyber; and additional sanctions against individuals, particularly those close to Putin. We should escalate sanctions for cause – in response to specific malign Russian actions – not as a show of general irritation or as part of a domestic-driven political cycle.

Within sectoral sanctions, there remains plenty of reasonable escalatory headroom, especially in finance and cyber. Viable options in the finance sector could include steps against new Russian sovereign debt, prohibition of new debt financing for all Russian state-owned companies, and imposition of full blocking sanctions against selected state-run financial institutions such as VEB. However, full blocking sanctions against all the major Russian state-owned banks is likely to trigger financial blowback that would not be in the US or broader Western interest. In the cyber sector, the US should be aggressive in pursuing financial sanctions against Russian malign cyber actors and their sources of funding, and in denying exports of technology relevant to the cyber sector generally. To strengthen export controls, it may be worth reconstituting COCOM, the Cold War-era multilateral forum, to coordinate Western export controls to the Soviet Union.

There may be escalatory room in the energy sector, but the US should be careful not to target current energy production or areas where US and EU companies could be quickly replaced by less scrupulous actors. Doing so could panic markets and drive up prices, which might perversely give the Putin regime a windfall, causing little harm to Russian companies and effectively transferring western investments to Asian or other energy players. DASKAA Sections 601/236 and 237, imposing mandatory sanctions and similar DETER Act sanctions on large energy or oil projects are probably too broad. There is much to be said against Nord Stream II. But sanctions explicitly targeting that project would risk political blowback in Germany, which has otherwise been key in upholding a strong European stance in support of Russia sanctions generally.

Instead, in the energy sector the US could intensify targeting of future Russian oil production. This could include banning the export to Russia of exotic technology such as fracking or all enhanced oil recovery (EOR) technologies for all new energy projects. As an additional escalation in response to additional Russian aggression, the US should explore the impact of banning EOR technologies, even for existing and conventional fields. As a yet further escalation, we should with our allies explore targeting the gas sector, focusing on future (not existing) liquified national gas (LNG) projects.

There is also room to target additional individual Russians close to Putin. CAATSA Section 241 -- a smart provision -- instructed the Executive branch to produce a study identifying these people (sometimes called the "The Kremlin Report"). The mere preparation of the Kremlin Report triggered consternation last fall within elite circles in Moscow, suggesting that its potential impact was significant. In fact, using the Kremlin Report to target Putin's circle of cronies and agents can demonstrate the costs of being close to Putin. The Administration mishandled the rollout of the Section 241 unclassified report last January, but appears to have drawn on the classified report, said to be of high quality, in preparing its April 6 package of sanctions. The Kremlin Report may well have considerable potential as a source of future sanctions. Still, discretion in picking targets will be required. When the Administration last April 6 imposed full blocking sanctions against the aluminum magnate Oleg Deripaska, a justified target given his

actions and closeness to Putin, that required the sanctioning of all the companies Deripaska owns or controls, and all their subsidiaries, including companies located in EU member states. The Treasury Department has been struggling since to mitigate the spillover consequences while denying benefit to Deripaska, the target of those sanctions.

Maintain operational flexibility. The Executive branch should make clear that the USG is prepared and able to remove sanctions should Russian behavior improve. The US, for example, needs to be able to fulfill its commitment to remove most of the Ukraine-related sanctions should there be an agreement that restores effective sovereignty of the Donbass and Ukraine's Eastern international border to Ukraine (the Crimea-related sanctions should remain in place while Russia occupies Crimea). Given the limitations imposed by CAATSA, this could be a challenge. Congress must be ready and willing to approve lifting sanctions if Russia's actions warrant it. Happily, the DETER Act outlines conditions for lifting sanctions imposed for Russian election interference.

As it considers legislative options, Congress should allow the Executive branch sufficient flexibility to administer sanctions, especially by keeping OFAC's licensing authority intact. Licenses are not a tool to weaken sanctions; on the contrary, they enable bolder, faster action on sanctions by allowing the Executive flexibility to rapidly deal with unintended consequences or excessive spillover.

Advance good legislative ideas. CAATSA Section 241 (mandating the Kremlin Report) was a good idea. Other good ideas from pending legislation include provisions targeting corrupt officials and their family members (DASKAA Section 601/235), restricting US persons from dealing in new Russian sovereign debt (DASKAA Section 601/238; DETER has parallel provisions), allowing the US to designate persons operating in the cyber sector generally (DASKAA Section 601/239), and a provision that would identify beneficial owners in high-end real estate deals (DASKAA Section 702). This latter provision (especially if focused on foreign beneficial owners) would restrict the ability of corrupt oligarchs and others generally to easily disguise their purchase of expensive real estate in Miami, New York, and elsewhere. That said, this provision is relatively narrow and other legislation has been introduced that seeks on a broad basis to get at the problem of corrupt money flowing into the United States. Perhaps inspired by CAATSA Section 241, DASKAA (Section 623) mandates a study of Putin's wealth, which could generate additional sanctions targets.

Timing and conditions are important. Some legislative provisions, such as those targeting corrupt officials or imposing greater transparency on real estate markets, could be put into effect now. A study of Putin's wealth should be launched as soon as possible and, in combination with the Kremlin Report, used to provide material for future sanctions. Preparing such a study could have deterrent value. Other measures, such as escalation in the financial sector, might best be held for future response to new acts of Russian aggression. Congress (and the Administration) should try, as much as is practical, to tie different sanctions to different aspects of bad Russian behavior, rather than lump all sanctions together as a response to collective malign actions. Advertising

potential future sanctions can have deterrent value, and the Obama Administration used this technique. If done thoughtfully, contingent sanctions authorities, whether in law or in Executive orders, can be useful, especially when they are credible and done in coordination or at least consultation with Europe.

As a veteran of the Executive branch, I generally support maximum discretion for the Administration. If Congress chooses mandatory sanctions, it should weigh each action to make sure that the US and its allies come out ahead in the balance. The current Administration would strengthen its case for discretion in sanctions if its overall message on Russia is steady; if it uses existing sanctions authorities well and not minimally; and if, as needed, it extends its authorities, such as through one or more new Executive orders, to deal with Russian aggression such as continued election interference.

Strategic Context

This leads to a final thought: sanctions will have more power if they are embedded in an overall policy that works, is credible, and is consistently expressed. Russia policy has been a challenge for this Administration, given some of the President's remarks, including during his press event with President Putin in Helsinki earlier this summer. Nevertheless, the Administration has significant tools, and through wise legislation the prospect of more, to advance a strong policy of resisting Russian aggression, defending US interests and values, and setting the stage for better days to come.

A strong Russia policy should be linked to an American Grand Strategy which recognizes that a rules-based world which favors democracy is in America's national interest. For the past one hundred years, American Presidents have advanced such a Grand Strategy, and America and the world have benefited thereby. Putin, and likeminded nationalists and despots, stand for nothing more than power. America can do better. At the end of our current national debate about America's role in the world, I hope and believe that we will recall the values and purposes which have propelled American world leadership.

Mr. Chairman, Ranking Member Brown, I appreciate the opportunity to appear before you to discuss these issues and look forward to your questions.