In Anticipation of a New U.S. Sanctions Program

From Sanctions to Irreconcilable Disagreements?

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The call for "fair trade" will soon replace the mantra of "free trade," which will eventually legitimize the U.S. launching sanctions against Chinese enterprises operating in strategic areas where ethical norms have not yet been established—from biotechnology to artificial intelligence.

U.S. sanctions are likely to play an increasingly prominent role in the coming years, not only in U.S. foreign policy as such, but also in an intensive delimitation of the global centers of power. Since traditionally the American sanctions policy requires justification by the values rhetoric, Washington and Beijing are likely to fall into the Henry Kissinger trap: when the issue of opposing values is raised in negotiations, they are doomed to failure. The established practice of responding to unilateral sanctions will require complex decisions from the majority of actors engaged in the global economy.

The reasons for such a pessimistic forecast lie in both the structure of the U.S.-China confrontation and the technical side of the sanctions issue. The question of whether or not to increase U.S. sanctions pressure on China is a clinched matter: commitment to apply sanctions against Beijing is present in all of the latest relevant public documents of the State Department and Congress bills. The only question that remains open is the design and pace of the new sanctions program.

The technical aspects need a little explanation. While the world was struggling for a sanctions-compliant banking sector and businesses on both sides of the Atlantic and the Pacific were trying hard to not fall prey to the 32 U.S. sanctions programs (which was especially difficult for Iranian and Russian companies), the question of whether to observe or not to observe U.S. sanctions was resolved. Ordinary commercial enterprises and banks that were not created to engage in potentially sanctions-breaching transactions generally comply with American sanctions. Sanctions are circumvented from time to time, import substitution programs are revised and markets are diversified in order to reduce the negative effects; in any event, institutions are forced to comply. Appeals to the lack of legitimacy of such sanctions usually fall on deaf ears, and Iran's case is most indicative in this respect—despite the highest level of political rhetoric from European politicians, the issue has been resolved unequivocally for European businesses operating on the global market: an American No means No. But in the case of legal entities whose primary task is to ensure national security, the severity of

U.S. sanctions is sharply reduced, as the examples of India, China, Turkey and some other countries show.

An analysis of the combination of these two trends—the inevitability of active application of sanctions by the world's largest economy against the world's second-largest economy (in nominal terms), or the second-largest economy against the first (in PPP terms) and the deep integration of the sanctions tool in international interaction indicates that we will most likely see three key trends in the coming years: the need for new value justifications of anti-Chinese sanctions, a similar need regarding Russia, and the accelerated delimitation of the American-centric model and the rest of the global economy.

First, one can expect that American sanctions against China will soon cease to struggle with the traditional value narrative and shift to open deterrence, albeit propped up by justification in a new ethical field. After that it will be practically impossible to soften them without a profound transformation of the concept of U.S. national interests in relation to China in the short and medium term.

Indications for such a scenario are well seen in the way the anti-Russian sanctions program has been evolving from the Magnitsky Act to CAATSA. The morally justified sanctions launched with minimal economic effects is only the first phase of the sanctions program, of which the S.178 the Uyghur Human Rights Policy Act of 2019, already supported by the House of Representatives, is a clear sign. We can expect further increase in sanctions and this time they will affect key areas of the strategic competition between the two countries: investment, telecommunications, and IT.

However, American sanctions cannot be introduced with an official statement that they are beneficial to the United States. So the need for their ethical justification will remain, but it will soon be spun in a new way: the alleged plight of the Uyghur population will give way to an appeal for "fair trade." And the call for "fair trade" will soon replace the mantra of "free trade," which will eventually legitimize the U.S. launching sanctions against Chinese enterprises operating in strategic areas where ethical norms have not yet been established—from biotechnology to artificial intelligence. Historically, the logic of American sanctions has always been grounded in a purported fight against absolute evil—be it dictatorship, violation of human rights, drug trafficking, world terrorism, or cybercrime. So we will most likely see a new "crusade for ethics" very soon.

However, it is worth recalling Nixon's visit to China in 1972: the refusal to discuss value issues during the talks helped the architect of this visit, Henry Kissinger, to achieve well-known results. The more values will be involved in negotiations between the U.S. and China after almost 50 years of bilateral trade, the less chance there will remain for their success.

Second, due to the strategic nature of the U.S.'s confrontation with China, general inter-party consensus on this issue and the need for a cohesive foreign policy agenda, there are no signs that the approach to sanctions tested against Russia will not be applied to China. It will include work on a toxic jurisdiction to be applied in cases where direct prohibition may cause tangible damage to own companies or institutions, enhancement of informal restrictions, and preemptive efforts taken to consistently increase sanctions pressure or, at the very least, political pressure with a view to introducing new sanctions. Congress is most likely to be passionately drafting new frightful bills— now anti-Chinese ones—any time soon.

Third,—and this is the most significant development in recent years—the issue will be less and less about dollar settlements and financial sanctions as such, and more and more about the autonomy of the two models. The situation of third parties and companies located outside of the U.S. and China will therefore be so vulnerable and direct sabotage so expensive that sanctions will become a catalyst for a profound delimitation of value chains, technology platforms, and financial systems. It will not be sufficient to conduct transactions in a different currency, it will be necessary to monitor the ownership structure of both the company involved and its parent companies, monitor the business of subcontractors, etc. Sanctions paranoia will become a recurring ailment for those seeking to continue doing business as usual.

Systemic international cooperation with the United States and China will be increasingly difficult to achieve as other parties will have to resort to stop-gap measures for making transactions in national currencies or such tricks as using paper companies, foreign intermediaries, ships flying neutral flags, etc. Of course, modern mechanisms for monitoring sanctions compliance are successful in tracking settlements and systems that are under strict control, but since Iran's "gold for gas operations" a lot of indirect evidence has been collected of the violation of U.S. sanctions legislation: fines are increasingly often levied on the basis of corporate email messages rather than payment receipts. Such measures may be used as "insurance against a rainy day" to avoid immediate sanctions-related risks (for example, blocked access to operations and accounts) but it would not be sensible to rely on them when planning national development strategies.

This raises new and acute questions for a vast number of countries and companies that do not want to limit themselves to doing business with either the U.S. or China. Political will may not be enough for overcoming new risks: a "movement of sanctions non-compliance" is impossible without fragmentation of financial, payment, insurance and logistics systems, and the establishment of new consortia for technological and IT solutions. This, of course, is not a matter to be solved overnight, but if it remains unresolved, the situation between the hammer of the American Themis and the anvil of the Chinese market will be soon too troublesome.