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Chair

The Honourable Robert Nault

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● (1530)

[*English*]

The Chair (Hon. Robert Nault (Kenora, Lib.)): Colleagues, good afternoon.

We'd like to start today's session with the officials from the Department of Foreign Affairs, Trade and Development.

What I'd like to do is, at the end of the meeting, keep you for about five minutes to go in camera to talk about a couple of issues we're working on that we need to have a quick conversation about. It won't take long.

Pursuant to the order of reference of Thursday, April 14, 2016, section 20 of the Freezing Assets of Corrupt Foreign Officials Act and the statutory review of the act, before us are the witnesses from the Department of Foreign Affairs. Mark Glauser, is the acting assistant deputy minister, Europe, Middle East, and Maghreb.

Mark, what I'd asked you to do is to introduce for the record all of your colleagues who are in front of us, then I'll turn the floor over to you for your presentation. Colleagues, it's a little longer presentation, and that's good. It's a little more detailed, but from there we'll go right into a series of questions.

Mr. Glauser, I'll turn it over to you.

Mr. Mark Glauser (Acting Assistant Deputy Minister, Europe, Middle East and Maghreb, Department of Foreign Affairs, Trade and Development): Thank you very much, Mr. Chairman.

Perhaps it would be quickest, given the change in job titles, for each of my colleagues to quickly tell you who they are, and their job titles, starting on my right.

The Chair: Sure.

Ms. Sarah Taylor (Director General, North Asia and Oceania, Department of Foreign Affairs, Trade and Development): I'm Sarah Taylor, Director General for Northeast Asia and Oceania, and that includes DPRK.

Ms. Alison LeClaire (Senior Arctic Official and Director General, Circumpolar Affairs and Eastern Europe & Eurasia Relations, Department of Foreign Affairs, Trade and Development): I'm Alison LeClaire, Senior Arctic Official and Director General for Circumpolar, Eastern Europe, and Eurasia Relations, and that includes Russia.

Mr. Hugh Adsett (Legal Adviser and Director General, Department of Foreign Affairs, Trade and Development): I'm Hugh Adsett, Legal Adviser and Director General.

[*Translation*]

Mr. Marc-Yves Bertin (Director General, International Economic Policy, Department of Foreign Affairs, Trade and Development): Marc-Yves Bertin, Director General of International Economic Policy.

[*English*]

The Chair: Okay, thank you.

Mr. Glauser, the floor is yours.

Mr. Mark Glauser: Thank you very much.

Good afternoon, and thank you to the committee for inviting my colleagues and me here today to provide further information and to respond to your questions on the Special Economic Measures Act, SEMA, in relation to three specific countries: Iran, the Democratic People's Republic of Korea, and Russia.

My colleagues and I represent a cross-section of expertise within Global Affairs Canada related to Canadians sanctions and the three countries highlighted for further discussion today. As acting assistant deputy minister for the Middle East and Europe, I have been asked to make the opening remarks on behalf of Global Affairs.

[*Translation*]

Before speaking briefly to each country, I would first like to take the opportunity to acknowledge the letter dated November 15, 2016, from the Honourable Chair, Robert Nault, in which more specific information is being requested on a number of items.

[*English*]

We thank you for providing this request. We will endeavour to provide the committee with a written response to bullets one, two, and eight from the letter, while the remaining requests will be touched on in my opening statement.

My colleagues and I would be pleased to respond to those or any other questions you may have after this statement.

I would like to start with Russia.

[*Translation*]

Turning to the measures that Canada has enacted against Russia, I will take this opportunity to respond to some of the questions posed by the chair by means of some illustrative examples.

[*English*]

Following the Maidan protests of November 2013, and the subsequent flight of President Yanukovych in February 2014, the Ukrainian province of Crimea was invaded. Within days, Russia reportedly had more than 6,000 troops in Crimea, and Ukraine appealed to the international community for help.

Before turning to Canada's sanctions regime against Russia, let me first highlight the assistance that Canada provided to the Ukrainian government under the Freezing Assets of Corrupt Foreign Officials Act.

Following a request in writing from the Ukrainian government, the Governor in Council determined that Ukraine was in the midst of a complex political transition due to economic weaknesses inherited from the former government and due to unilateral intervention in Ukraine by Russia. The Governor in Council also determined that it was in the interest of Canada's international relations to enact regulations freezing the assets of certain allegedly corrupt individuals associated with the former government of Viktor Yanukovych under FACFOA.

As a result, FACFOA regulations were enacted on March 5, 2014, freezing the assets of 18 individuals. By March 14, 2014, Russia had increased its military presence to an estimated 20,000 troops, and it had taken control of key institutions and facilities, including the legislature. The Governor in Council found that the situation constituted a grave breach of international peace and security that had resulted, or was likely to result, in a serious international crisis. As a result, the special economic measures regulations for Russia, and the special economic measures regulations related to Ukraine were approved on March 17, 2014.

● (1535)

[*Translation*]

In the weeks and months that followed, Global Affairs amended the Russia regulations 13 times and the Ukraine regulations 11 times to keep pace with the situation on the ground. In all cases across the sanctions regime, amendments are made to the regulations to adjust the measures, to better target the sanctions or to mitigate unintended consequences. This is an ongoing process that continues throughout the life of the regulation.

[*English*]

As you have heard, the SEMA allows for the imposition of particular measures, not only on the foreign state but on any person in that foreign state or its nationals who don't necessarily reside in Canada. Most SEMA regulations, save for the DPRK, include what are typically referred to as the "asset freeze" provisions, which apply to targeted individuals and entities listed in the regulations. All regulations imposing such measures contain descriptions of the types of persons who can be listed. In the case of the Russia regulations, senior government officials, entities controlled by the government of the sanctioned state, or individuals or entities contributing to the violation of the sovereignty or territorial integrity of Ukraine are all eligible to be listed.

To demonstrate that a targeted individual or entity satisfies those descriptions, officials from Global Affairs, both here in Ottawa and at our embassies abroad, monitor events on the ground, draw from academic and media reports, consult with other departments within the Government of Canada and our international partners, and draw from classified information.

[*Translation*]

Ensuring that we have done our due diligence in establishing the grounds for listing is key to the listing process. In addition, every SEMA regulation imposing measures on a listed person contains a provision allowing them to apply to be delisted. In such an application, the designated person can argue that they do not, or no longer do, fall within the categories of persons that can be designated as set out in the regulations. Alternatively, the designated person can argue that his or her designation does not further the objectives of the regulation.

[*English*]

To date, Canada has listed a total of 289 Russian and Ukrainian individuals and entities.

The Russia sanctions regulations currently comprise four schedules that list targeted individuals and entities, entities targeted under the sector-specific measures, and the products that are subject to restrictive measures. These were developed as Canada, along with its partners, moved beyond the initial targeting of individuals implicated in the illegal annexation of Crimea to economic measures aimed at key sectors of the Russian economy, in particular, the financial, energy, and defence sectors.

Canada's sanctions, along with those of our partners, are having a significant effect on the Russian economy. The combination of low commodity prices and western sanctions has weighed heavily on investor confidence, prompting large capital outflows from Russia. President Putin has publicly indicated that sanctions are "severely harming Russia", particularly with respect to opportunities on the international financial markets. The Russian central bank has forecast the net capital outflow for 2016 to be $53 billion U.S.

At the G7 summit in Japan in May 2016, leaders reiterated their condemnation of Russia and reaffirmed their policy of non-recognition of the annexation of Crimea, including sanctions against those involved. The duration of our sanctions is clearly linked to Russia's complete implementation of its Minsk agreements and respect for Ukraine's sovereignty. Canada stands ready to take further restrictive measures, in coordination with international partners, should Russia's actions so require.

● (1540)

[*Translation*]

I will now address North Korea.

North Korea is the only country to have undertaken nuclear tests in the 21st century, having carried out five tests in 2006, 2009, and 2013, and two this year, just eight months apart, on January 6 and September 9. The frequency of North Korea's ballistic missile launches has also risen sharply this year.

So far in 2016, North Korea has conducted more than 20 short, medium, intermediate range and submarine-launched ballistic missile launches. North Korea's ongoing development of nuclear weapons and their delivery systems—which constitutes a breach of its international obligations—as well as the accelerating pace of North Korea's nuclear and ballistic missile tests, is of grave concern.

[*English*]

On October 14, 2006, acting under chapter VII of the Charter of the United Nations, the United Nations Security Council adopted resolution 1718 imposing sanctions against DPRK in response to a nuclear test the DPRK conducted a week earlier on October 9.

Since then, the United Nations Security Council has adopted multiple resolutions modifying and strengthening the initial sanctions, including resolutions 1874 in 2009, 2094 in 2013, and 2270 in 2016, in response to the additional tests carried out by the DPRK.

Canada has enacted sanctions related to the DPRK under the United Nations Act and the Special Economic Measures Act in order to pressure the DPRK to abandon all existing weapons of mass destruction programs and in response to the DPRK's nuclear tests, ballistic missile launches, and other aggressive actions. Canada implemented UN Security Council resolution 1718 by introducing new regulations under the UN Act and implementing subsequent UN Security Council resolutions on the DPRK by introducing amendments to these regulations as required.

Through its implementation of UN sanctions, Canada has imposed an asset freeze and dealings prohibition on designated persons, including both individuals and entities. The regulations implementing the UN resolutions on the DPRK also impose far-reaching prohibitions on exports and imports in a number of areas, targeting financial flows into the DPRK, and seeking to restrict the export to the DPRK of materials or technical assistance that could contribute to the development of the DPRK's weapons programs.

This includes bans on the exports of items such as arms and related material, aviation fuel, and the provision of training to DPRK nationals in sensitive fields, such as advanced physics or aerospace engineering, among others. Canada has also implemented travel restrictions against persons designated by the UN Security Council under the Immigration and Refugee Protection Act and its regulations.

On August 11, 2011, Canada introduced unilateral sanctions against North Korea under SEMA , implemented through the special economic measures DPRK regulations, which complement and expand upon the sanctions imposed under the UN Act and provide for a ban on all exports to the DPRK, all imports to Canada from the DPRK, all new investment in the DPRK, the provision of financial services to the DPRK and to persons in the DPRK, the provision of technical data to DPRK, and the docking and landing in and transiting of Canada by DPRK ships and aircraft.

These regulations were adopted following the sinking of a South Korean naval ship, the *Cheonan*, on March 26, 2010. On that date, following an explosion in the Yellow Sea, the *Cheonan* sank, causing the deaths of 46 crew members. On May 20, 2010, South Korea released the results of a multinational investigation in which three Canadian naval experts participated, which concluded that a North Korean torpedo sank the *Cheonan*, and that overwhelming evidence supported the conclusion that the torpedo was fired by a North Korean submarine.

Following the release of the *Cheonan* investigation results, the Government of Canada strongly condemned North Korea's violent act of aggression. Canada's sanctions imposed under the Special Economic Measures Act, complement its implementation of UN sanctions and reinforce the message to the DPRK government that its aggressive actions, such as the sinking of the *Cheonan*, are unacceptable.

● (1545)

[*Translation*]

Some exceptions are possible under the regulations, notably for exemptions on humanitarian grounds, such as the export of goods like food, medicine, medical supplies, etc., consigned to organizations for the purpose of safeguarding human life or for disaster relief.

In its administration of the permits process, the department undertakes evaluations on a case-by-case basis of the impacts of the imposition or non-imposition, on humanitarian grounds, of the sanctions, in each case where an exemption to the regulations is requested.

Through this process, permits have been granted in 12 instances, for the export to North Korea of humanitarian goods such as food and medicine, baby formula, multivitamins and other items.

[*English*]

On March 2, 2016, the UN Security Council adopted resolution 2270, the latest addition to the UN sanctions regime against North Korea.

Few elements of this resolution go further than Canada's existing autonomous sanctions under SEMA, which already includes a full export ban, with some humanitarian exemptions. We hope that efforts to agree on a new Security Council resolution in response to North Korea's most recent nuclear tests, and its ongoing efforts to advance its ballistic missile program, will be successful.

In the context of assessing the impact of sanctions regimes imposed by the United Nations Security Council, which Canada has implemented, the department conducts internal analyses and participates in consultations with partner countries to assess the means by which the effectiveness of sanctions implementation may be improved.

Canada and its like-minded partners believe that effective and coordinated implementation of relevant sanctions is, and will remain, critical to international efforts to pressure the DPRK to resume dialogue and abandon its nuclear weapons and ballistic missile programs.

With regard to Iran, in September 2005, the board of governors of the International Atomic Energy Agency, IAEA, found Iran to be in non-compliance with its nuclear non-proliferation treaty safeguards agreement. Iran refused to suspend proliferation-sensitive activities, and the IAEA referred the matter to the UN Security Council in February 2006.

The Security Council identified Iran's nuclear program as a threat to international peace and security, and between 2006 and 2010 it adopted a series of successive resolutions against Iran and imposed four rounds of sanctions on Iran. The obligatory elements of these UN Security Council resolutions were implemented by Canada.

[*Translation*]

In 2010, Canada imposed the first of six tranches of autonomous sanctions against Iran under SEMA, in line with the broader global approach in response to Iran's nuclear proliferation and ballistic missile programs.

In the case of Iran, autonomous sanctions were imposed in response to Iran's continued violations of its international non-proliferation obligations including under relevant United Nations Security Council resolutions—in particular, failing to suspend its enrichment-related and reprocessing activities, which are both ways of producing the fissile materials necessary for nuclear weapons, and its refusal to co-operate fully with the IAEA.

● (1550)

[*English*]

In the intervening years, the UN sanctions regime applied in Canada under the UN Act, and supplemented by the autonomous sanctions applied by the U.S., EU, and a number of like-minded countries, including Canada, played a key role in bringing Iran to the negotiating table.

After lengthy negotiations, on July 14, 2015, the P5+1 concluded the joint comprehensive plan of action, JCPOA, with Iran. Under the deal, Iran agreed to significant constraints rolling back its nuclear program, and subjecting it to extensive and ongoing international verification in exchange for nuclear sanctions relief.

The JCPOA was endorsed by the UN Security Council in resolution 2231. A key milestone was reached on January 16, 2016, known as “Implementation Day”, after confirmation by the IAEA that Iran had implemented a number of upfront commitments dramatically reducing Iran's ability to produce the fissile material necessary for nuclear weapons. The UN, the U.S., and the EU then lifted or suspended their nuclear sanctions against Iran.

The EU and the U.S. have kept a subset of nuclear sanctions in place, which are due to be lifted in 2023, assuming Iran continues to implement the deal. However, the EU and U.S. sanctions related to Iran's support of terrorism and human rights abuses remain in place.

[*Translation*]

On February 5, 2016, in order to comply with the decisions of the UN Security Council in resolution 2231, Canada amended its UN-mandated sanctions under the Iran UN regulations. That same day, Canada also amended the sanctions against Iran imposed under SEMA, by replacing the broad ban on financial services, imports and exports with a set of controls and prohibitions specifically targeting trade with Iran in sensitive products with security implications.

[*English*]

Under the SEMA regulations for Iran, Canada continues to maintain a revised list of individuals and entities subject to asset freezes, and with whom all transactions involving property are prohibited, as well as prohibitions on the export of sensitive goods listed in the regulation or related technical data. Canada also continues to restrict the export to Iran of a wide range of sensitive products under the export control list, including a wide range of items for which proposed exports require prior approval and permit issuance by the Minister of Foreign Affairs.

According to the quarterly verification reports of the director general of the IAEA, Iran is continuing to implement its JCPOA commitments. That being said, in the IAEA board of governors' November report on verification and monitoring in Iran, it has been noted with some concern by Canada and like-minded countries that Iran's stock of heavy water slightly exceeded the JCPOA limit of 130 metric tonnes. This is the second time that Iran has exceeded the limit it committed to in the JCPOA.

According to these reports, Iran exceeded the limit by one-tenth of one tonne, or less than one-tenth of 1%, of the allowable limit. Global Affairs Canada officials are continuing to closely monitor all developments regarding the Iran nuclear deal. It is important that Iran continue to fully implement all of its JCPOA commitments. Were Iran to stop implementing its commitments, UN Security Council resolution 2231 includes a snap-back mechanism, through which the UN sanctions regime could be reapplied.

Canada continues to have serious concerns regarding Iran's nuclear ambitions, given its history of nuclear proliferation and its ongoing ballistic missile program. It therefore maintains tight restrictions on all exports to Iran of proliferation-sensitive goods, services, and technologies, in particular those which could assist in the development of Iran's nuclear and ballistic missile programs.

● (1555)

[*Translation*]

With this outline in mind, my colleagues and I look forward to your questions.

Thank you very much.

[*English*]

The Chair: Thank you, Mr. Glauser.

Colleagues, we have roughly an hour and a half, so I think there's a fair amount of time to get into the weeds and talk about some of the major questions of the day.

We want to review at some point, the letter written to the department, to assure ourselves of it. However, one question in particular, the question that is most often asked, that will be coming to us later, is the number of full-time equivalent positions that are attached by Global Affairs Canada to the administration and enforcement of Canada's economic sanctions, and the associated level of budgetary resources.

I assume, Mr. Glauser, that with this and the other two matters, we'll have a quick review to make sure we can get those questions answered for us. It's one that's asked quite often by members of the committee.

With that in mind, I want to turn it over to Mr. Kent to start with the questioning, and then we'll go through the rounds. We should be able to get through three rounds today.

Mr. Kent.

Hon. Peter Kent (Thornhill, CPC): Thank you, Chair, and thanks to you all for attending today and helping to lead us through some of the decision points of our study.

What we've heard from a variety of witnesses to date is that monitoring and compliance of sanctions and detection of violations and enforcement of sanctions comes down to the responsibilities of quite a number of Canadian government departments and agencies, the resource capacities of those departments and agencies, and the willingness of those departments and agencies to prioritize sanctions enforcement or investigation.

I would like to refer you to some testimony we had on October 26 from John Boscariol, who's a partner and leader of the international trade and investment section of the McCarthy Tétrault law group.

I paraphrase, but he testified that the United States represents the high-water mark in sanctions detection, enforcement, and compliance, and that the Canadian system is broken. He said that lacking a consolidated list it is very difficult for commercial banks, commercial operations in Canada, to know who they are dealing with, or whether they are dealing with people at some risk of violation of sanctions. He said Global Affairs refuses to provide advice. There's a lack of advice or expertise when it is sought by the legal representatives of Canadian firms that honestly want to comply and avoid any compromise of our sanctions regime.

Could you respond to Mr. Boscariol's testimony?

Mr. Hugh Adsett: Thank you very much, and thank you for the question.

On the specific question about whether the department is in a position to be able to provide legal advice to individuals who might seek that advice from the department, it is quite correct what Mr. Boscariol had to say, which is that we do not provide legal advice to the public. We certainly have heard the comments from stakeholders on the specific question of obtaining advice from the department.

I know you had a specific question about resources so that we can describe the best picture of the manner in which the department actually provides resources. It is a matter generally where the department is continuously, of course, reviewing its priorities and the resources that are dedicated to activities. I think the work of this committee will be important to future consideration of those issues.

● (1600)

Hon. Peter Kent: With regard to the lack of a consolidated list being available to Canadian companies, again, some smaller Canadian companies have very limited financial resources to be able to determine who they are dealing with, or when, as you say in your presentation today, a revised list of individuals and entities subject to asset freezes is corrected or adjusted. Without a consolidated list, how would you suggest companies that want to comply or agencies, for example immigration, that are assigned enforcement or detection, can accurately and completely do their work?

Mr. Hugh Adsett: It's also a question I've noticed that has come up in the committee hearings as well. We don't currently have a consolidated list. It is possible to access the lists in a couple of manners. One is through the department's website where the lists are posted immediately once they become law. We also through the website allow any individual who wishes to get an update of the list to receive it automatically, essentially through an RSS feed as well. That's another possible means of obtaining the information.

A consolidated list as such would be an administrative document as opposed to the actual legally binding text, in which case, you always have to go back to the Department of Justice regulations to get the actual legal text of what the names would be, for example, or what the names of the entities would be.

Hon. Peter Kent: With regard to the Russian sanctions, the public and the media have noticed discrepancies in the individuals and entities that are listed on either the American list or the Canadian list. For example, there are three notable individuals, Sergey Chemezov, Igor Sechin, and Vladimir Yakunin, who were on the American and Australian lists. Mr. Yakunin, particularly, was on those lists due to his being a close personal and financial associate of Vladimir Putin. Apparently, Mr. Yakunin has since been demoted in the oligarchy hierarchy because his son applied for U.K. citizenship after he established residency there on some of the wealth extracted from Russia.

In the case of Mr. Chemezov, he was the CEO of Rostec, an industrial and military company with which some Canadian aircraft manufacturers may have had an interest. Mr. Sechin was with Rosneft, which apparently owns or did own 30% of an Exxon project in Alberta. Mr. Yakunin was president of the Russian Railways from 2005 to 2015, and he apparently had some dealings with the Railway Association of Canada and SNC-Lavalin.

How do Canadian business considerations figure into whether someone is on the list or not on the list when that person is prominently on the higher levels of the U.S. sanctions list?

Ms. Alison LeClaire: Thank you very much for the question. I can speak from the Russian perspective, but there may be others who can speak more generally.

The underlying question, as I understand it, relates to the coordination between ourselves, the EU, and the U.S., and how we manage that. As you can see from the number of updates for Russia and the number of related ones for the Ukraine—13 in one instance and 11 in another—it's an ongoing effort of due diligence that takes into account multiple perspectives. That's the work of our missions abroad. It's the work at headquarters by officials, and that certainly involves stakeholder consultations, including those with business and the private sector. We're guided by the parameters of the specific regulation, and then in terms of the due diligence, by taking into account multiple perspectives.

That's kind of the systemic answer. I'm not sure that completely answers it, though, because it's an ongoing effort to see what's happening with what the U.S. and the EU are doing, so we are in constant coordination with them.

With respect to the three specific cases that you raise, I can't really speak to individual cases. If there are elements that I can respond to, I'm happy to do so later if we can get back to you.

● (1605)

Hon. Peter Kent: I might be comparing apples and oranges here, but with regard to the Iranian nuclear sanctions, it has been suggested fairly widely that they were relaxed because European countries had greater interest in commercial ventures and connections with Iran, and that, ultimately, the United States had to follow along and relent in that area.

In the case of these three—and I know you're not perhaps familiar with the specifics—can Canadian commercial considerations take priority over the intent of the sanctions being applied?

Ms. Alison LeClaire: I would say that when we look, in coordination with our partners, at the domestic implications of sanctions—the impact on our Canadian companies—we do make an effort to ensure that Canadian business is not going to be relatively disadvantaged, shall we say. That's part of the aim of coordination. It's, first of all, that the sanctions are effective, and second, that they're targeted and strategic. Part of making sure that they have impact is making sure that they operate in concert. From our standpoint, in terms of looking at the domestic impact, we would also want to make sure that, as a general rule, our competitiveness is not unduly affected in comparison to our international partners.

The Chair: Thank you, Mr. Kent.

We'll now go to Mr. Sidhu, please.

Mr. Jati Sidhu (Mission—Matsqui—Fraser Canyon, Lib.): Thank you, Mr. Chair.

Thank you all for your testimony today.

Mr. Kent touched a little on the Russian sanctions, but I'll be more general in my question. After the invasion of Crimea, the Government of Canada placed sanctions on several Russian and Ukrainian officials, but shortly afterwards, the Russian government responded by placing sanctions on a list of Canadian officials. Are these sanctions mainly symbolic or do they have practical uses?

Ms. Alison LeClaire: Do you mean the retaliatory ones that the Russians put on us?

Mr. Jati Sidhu: Yes, the retaliatory ones.

Ms. Alison LeClaire: That's a really good question. I must say that I'm more prepared to speak about the impact of our sanctions on Russia than on the return ones.

I have to say that I have been in this job for two months and less than that in dealing with Russia. Reciprocity is certainly a key principle when you're dealing with Russia. Whenever you do something, you can certainly expect there to be a response, and there will be an effort on their part to make the response commensurate with what we have done.

For more specific information on the impact on Canada of those sanctions, economically and in terms of our companies, I would have to take that down and come back to you. I'm afraid I'm not in a position to answer that right now.

Mr. Jati Sidhu: Okay. If the Government of Canada places sanctions like these, can you highlight the main goals of the Canadian government when we put those sanctions on other countries?

● (1610)

Ms. Alison LeClaire: With specific reference to the Russian sanctions and the associated Ukrainian sanctions, the purpose of the sanction, working with our partners, is to put pressure on the Government of Russia in the face of its actions in Ukraine in respect of Ukraine's sovereignty. Practically speaking, that would relate to the fulfillment of its commitments under the Minsk process, and with respect to its illegal annexation of Crimea. That is the purpose of the sanctions.

Mr. Jati Sidhu: Could you highlight any changes to SEMA or the Freezing Assets of Corrupt Foreign Officials Act that would make more effective legislation? Do you know of any recent changes to SEMA? You said you have been on the job for the last couple of months. Is somebody else going to have to—

Ms. Alison LeClaire: That's on Russia. On SEMA I would refer to my....

Mr. Marc-Yves Bertin: Sure. Perhaps I could understand the question a bit better. Are you asking whether I am aware of or have views on improvements to SEMA, or are you asking how the use of SEMA has evolved over time?

Mr. Jati Sidhu: I'm more concerned about any changes you have seen.

Mr. Marc-Yves Bertin: The Chair will know that our role here as public servants is to explain, if you will, the “how” of the legislation as opposed to the “what” and “why,” and whether or not we should be servicing potential amendments to the act. At this point, it would probably be premature for me to speak to you about any changes to the act, or I should say, it would be inappropriate for me to speak to you about any potential changes to the act.

Mr. Jati Sidhu: Thanks, Mr. Chair.

The Chair: Okay. Since there are still another four minutes left in Mr. Sidhu's time, I'll go to Mr. Miller.

Mr. Marc Miller (Ville-Marie—Le Sud-Ouest—Île-des-Soeurs, Lib.): Thank you.

Mr. Adsett, previously when you met with us, we discussed the holes that may exist in the current legislation, particularly with respect to gross violations of human rights. It's a topic that flows throughout the discussion we've been having at committee.

You mentioned that there is no perfect fit, obviously, whether it's in SEMA, FACFOA, or the current legislation that exists in the Criminal Code, and there seems, again, to be some confusion as to where the holes are.

A lot of people discuss the ability to freeze assets that are the product of crime, or proceeds of crime, and that legislation exists. Then in the context of a threat against international peace, obviously, the instruments under SEMA exist. Some of the concerns that have been raised are more in the nature of law enforcement. That is probably something, unless I'm mistaking the roles, you couldn't answer.

The question, then, is on the hole that does exist with respect to freezing legitimate assets or the proceeds of crime, but let's focus on legitimate assets that may exist within Canada with respect to gross human rights violators.

There are a number of concerns with plugging that hole, namely, due process, the ability to seize those assets—again, more in the realm of law enforcement—and also the nature of unintended consequences and repercussions of the state that may be involved that is backing the people who are violating human rights in a gross fashion.

I want to focus on more of a legal question. If you can't answer it, I'll submit it to you and perhaps you could submit a written response to the committee. What prevents, right now, the minister, by order in council or otherwise, from finding that a person abroad has violated human rights in a gross indecent fashion and freezing their assets in Canada? Again, I'm not talking about a Canadian national. I'm talking about a foreign national.

Mr. Hugh Adsett: Let me give a caveat at the very beginning. It wouldn't be appropriate for me to try to give legal advice to the committee, but maybe I can give some information, if that would be of use.

I think the question you're posing, if I can word it slightly differently, is, what would be the basis in Canadian law that would allow the minister to freeze the assets of an individual who is not a Canadian national, is abroad, and is a national of a foreign state? It's just the broad description, I think, of the issue or the question.

Currently your basis in Canadian law would be essentially the United Nations Act, the Special Economic Measures Act, or the Freezing Assets of Corrupt Foreign Officials Act, if you meet the criteria in that legislation. With the United Nations Act, of course, that's a Security Council resolution. With the Special Economic Measures Act, it could be one of two possibilities. The one most commonly discussed is a grave breach of international peace and security, but there's also another trigger under that act, which is essentially a resolution or decision of an association of states of which Canada is a part. That's actually how we implemented sanctions against the former Yugoslavia. It was a G7 decision or resolution.

Then with the Freezing Assets of Corrupt Foreign Officials Act, again, within the terms of that legislation, that's on the request of a foreign state to freeze the assets of corrupt foreign officials in the circumstances that are defined therein. Those would be the basic legislative tools that are currently available.

I know the committee, in a letter that was sent to the Minister of Justice, asked for information about the suite of legislative tools that might be available. There will be a response, I understand, from the Minister of Justice to that question that may assist, perhaps, as well.

● (1615)

Mr. Marc Miller: Again, I can't afford your billable rate on my salary—

Mr. Hugh Adsett: You can afford it.

Mr. Marc Miller: —so I'm glad you're now providing legal advice.

Let me ask how that is or is not precluded by an order in council, simply the minister deciding that this event has occurred and that action needs to be taken.

Mr. Hugh Adsett: Again, without venturing into a domain in which I would get into trouble, to have an order in council, you would generally need to have some kind of legislative basis or some kind of legal authority in some manner, as well. The question, I think, would be, what is the legal authority to issue that order in council?

The Chair: Thank you, Marc. We'll get back to you.

We will now go to Madame Laverdière, *s'il vous plaît*.

[*Translation*]

Ms. Hélène Laverdière (Laurier—Sainte-Marie, NDP): Thank you very much, Mr. Chair.

I thank the witnesses for this detailed presentation on the three groups of sanctions.

The committee is also very interested in knowing how the system functions, how the sanctions are implemented and if there are gaps in our legislation; in brief in everything that involves a systemic approach to the issue.

Since we will be able to ask several questions, I would like to follow up on what Mr. Kent raised. I would also like to emphasize that it was a pleasure to listen to him speak about the cases of Mr. Sechin, Mr. Chemozov and Mr. Yakunin. These are issues we had raised repeatedly under the former government.

That being said, after those 10 seconds of political intervention, I would like to continue on the topic of a consolidated list. Is there a reason why some countries have a consolidated list that is easy to consult by large and small enterprises, but Canada does not? Is this a practical issue, that is to say do we not have the necessary resources, or is it a legal matter? In short, why do we not have such a list?

[*English*]

Mr. Hugh Adsett: I have noted that the question of a consolidated list has come up a couple of times in the committee.

We currently don't have one. It's a question that has been raised by stakeholders as well, and one on which there will be further reflection.

I would say that one of the challenges with a consolidated list is that it is essentially an administrative list. At the end of the day, in order to have a fully solid sense of what the binding list is, it is necessary to return to the Department of Justice regulations themselves. That is one limitation of a consolidated list; at the end of the day, it's necessary to turn back to the regulations themselves as the source of the list in the first place.

[*Translation*]

Ms. Hélène Laverdière: Thank you.

Even without a consolidated list, businesses are obliged in any case to consult the regulatory texts. The consolidated list would simply be one less step. Have I understood the situation?

● (1620)

Mr. Hugh Adsett: Indeed.

Ms. Hélène Laverdière: Thank you.

Regarding the regulatory instruments, other countries offer legal services to help businesses. I am thinking particularly of smaller businesses for whom it is more difficult to understand the regulatory texts and be able to apply the sanctions effectively.

Is that something Canada could consider? If so, which department would be responsible for that service?

[*English*]

Mr. Hugh Adsett: That question, I think, probably goes back to the question that was posed earlier about the manner in which we have organized ourselves to respond to queries from the public, and generally to respond to sanctions.

I would say that, currently, we do have limits on our ability to provide advice to the public. What we have done, to date, to try to meet the demands for advice from the public has been, among other things, to make sure that we have what we hope is a clear website, which is set up in a manner that is meant to at least make it easier for small businesses and others to understand the sanctions regime and to break down the areas where we impose sanctions, not only by country but also by the types of sanctions that are imposed. It's a website that anybody can visit and click through to see what the scope of particular sanctions is. We've tried to do it in a fairly plain language kind of approach, because we understand that these issues can be very complex and complicated.

That's what we've done so far. As with other issues, we are taking good note of comments that have come, not only previously but during the committee hearings as well.

[*Translation*]

Ms. Hélène Laverdière: I would next like to know who is responsible for ensuring the follow-up of sanctions regarding businesses that work abroad. I am thinking for example of the Streit Group, that violated the Canadian sanctions and those of the United Nations. Who is responsible for monitoring the actions of Canadian companies abroad on the ground, to verify whether they are in violation of Canadian sanctions or those of the United Nations? What is the process for possible suits or sanctions regarding these companies?

[*English*]

Mr. Hugh Adsett: I can try a fairly high-level response to that question without, again, dealing with specific companies or specific concerns that might have been raised.

As a general approach, the enforcement of sanctions depends on, essentially, law enforcement agencies. That's the RCMP, and to a certain extent, the Canada Border Services Agency as well. If the department becomes aware of information that there are allegations that sanctions have been violated, that information can be passed on to law enforcement for them to take appropriate action. But it's very much a decision for law enforcement to make.

[*Translation*]

Ms. Hélène Laverdière: Are we proactive in monitoring what Canadian companies are doing abroad to ensure that illegal acts are not being committed? When we talk about companies who sell arms or sensitive materials, what are we doing in this regard? Are we actively ensuring that Canadian companies are not violating the sanctions that exist, or on the contrary, do we learn about this by chance or in the newspapers, and is that when we call on the RCMP or another police force to intervene?

● (1625)

[*English*]

Mr. Hugh Adsett: There's an expectation that Canadian companies operating abroad will comply with Canadian law; it's a general expectation and assumption that Canadian companies will do so. I would say that's probably the case in most circumstances. There are, of course, enforcement agencies, including the Canada Border Services Agency, that can probably talk more specifically to how they ensure that Canadian exports are done in a manner that is consistent with Canadian law, including Canadian sanctions law. There's not, to my knowledge, a monitoring program as such, but certainly, if we become aware of allegations or concerns, that information can be passed on to law enforcement as appropriate, as it would be, I suppose, with any other matter of law enforcement.

My colleague, Marc-Yves is....

[*Translation*]

Mr. Marc-Yves Bertin: Yes.

I would add that there are Department of Finance agencies, in particular the Office of the Superintendent of Financial Institutions, and also FINTRAC, that send information to clients, that is to say to the private sector, to keep them abreast of new regulations. In addition, there are the means of communication Mr. Adsett alluded to previously. There are, as you say, proactive measures to help the private sector comply with the law.

Ms. Hélène Laverdière: Briefly, I would like to add for Mr. Adsett's benefit, that the Canada Border Services Agency is certainly a recourse, but in the case of the Streit Group, for instance, these were weapons produced outside of Canada and sold to South Sudan and Libya and other countries. I presume that Global Affairs Canada has a potential role to play in this regard, since we have a presence abroad and the border agencies and even the RCMP do not.

You will note that I am referring to Global Affairs Canada.

[*English*]

Mr. Hugh Adsett: Perhaps I could use this as an additional point to make. Again, without speaking about specific cases, when we're talking about United Nations sanctions, for example, there's a role not only for Canada but a role for all member states of the United Nations. When you're talking about complex situations and complex sanctions, there is a role for other partners to play as well.

[*Translation*]

The Chair: Thank you.

[*English*]

We'll go to Mr. Miller, please.

Mr. Marc Miller: I want to continue on another related notion we're examining as part of the consideration of expanding this legislation with respect to gross human rights violations, but it isn't limited to that. It's limited to the individuals who find themselves on a list, often against their will, and it has to do with due process. It's the elements of due process that we don't necessarily think of.

Obviously, we think of the ability of a person to appear in front of a court and get proper judicial review. I'm sure you would like a lot of these people who come to Canada to stand in front of a court so that you could actually get your hands on them.

One of the things has to do with the judiciousness of imposing these sanctions on individuals in the first place. That is in the nature of reliable evidence gathering, the ability, as my colleagues mentioned, of a company, let's say, doing business somewhere, to access a list that is maybe cohesive, coherent, or up to date, and then challenging it in a court of law.

Hugh, perhaps you're the best person to answer this. What are your thoughts on that process as we look to expanding or at least reviewing the current legislative scheme?

Mr. Hugh Adsett: I think the due process question is an important one. I would say it has been central to the way we have approached sanctions in our own existing legislation to date. I think you have probably heard from some witnesses who have spoken already about the United Nations process and the role of the UN ombudsperson in the sanctions delisting process in the case of the United Nations Security Council sanctions.

I think we have established means by which individuals who are on the list or on a list under the Special Economic Measures Act, for example, can apply to be removed from the list. They may have grounds for doing so. They may argue, for example, that they don't belong to one of the categories that the list was established for.

Maybe I'll give you an example. In the case of the SEMA regulations for Iran, the category of persons who are listed include persons engaged in “proliferation-sensitive nuclear activities, or to Iran’s activities related to the development of chemical, biological or nuclear weapons”, etc.

Certainly, there is the possibility in Canadian law that individuals who believe they are not properly on the list would apply. If the individuals are not satisfied with the reply they get or the decision of the minister on that application, they can always potentially seek a judicial review as well.

The due process elements are important. In any efforts to establish legislation along these lines, it's very important that it contain those due process elements as well.

● (1630)

[*Translation*]

Mr. Marc Miller: I had not realized that Mr. Bertin was here with us.

Mr. Bertin, perhaps you are not the person I should be putting this question to, but I would like to know what measures the countries affected by this law can take against us and how effective they could be. What is the effectiveness of the measures we could take against these countries, especially when this is done unilaterally?

Mr. Marc-Yves Bertin: If I understood what you said, you are wondering about the negative impact that could result from applying restrictions?

Mr. Marc Miller: Precisely.

Moreover, what analysis do you do prior to making the decision?

[*English*]

Mr. Marc-Yves Bertin: Sanctions entail some obvious consequences for the target state, but also for the sending state, the state that's using these sanctions. From the target state perspective, obviously there's loss of commerce. There's adverse effect on civilians, in terms of lost jobs and economic hardship.

But in terms of the implications for Canada, and for any country imposing sanctions, there are foregone business opportunities for our firms. That can have lasting effects, insofar as a target state could implement import substitution measures. This creates restrictions on what Canadians can do in terms of remittances, and we know that remittances are important flows between Canada and other countries, and of course, there's exposure to retaliation by the other country.

With respect to the private sector, obviously the more their economic ties are deep, the greater the potential for lost business and investment. In addition to that, you could say that navigating compliance has a higher implication for them.

As the committee heard from a number of witnesses, there is some evidence out there, in academic journals, of the chilling effects on trade and investment. That's because firms, banks in particular, might take a more cautious approach to compliance. From that perspective, when it comes to using this measure, these are reasons why we look at this as a last resort, that we use it as a complement to a series of other diplomatic measures that would be deployed at the same time.

To the second part of your question, which is how do we balance the issue of the implications for Canada, we'll look at a range of information. As you heard, whether that's open source or classified information, that enables us to balance the foreign policy objectives associated with the use of the sanctions, with the implications for Canadian stakeholders, Canadian businesses, and Canadians more generally.

These include the actions of our allies, of the UN; the scope and severity of the offending state's actions; the impact of other diplomatic engagement actions to persuade a change in behaviour; and the possible impact sanctions would have on Canadian firms and citizens. In doing so, we'll take a look at not only what our people say on the ground and what our allies say, but obviously, also, what other departments would say, and how they might inform our decision-making.

That's a very theoretical, high-level answer. In the end, all of these instances—and I think the open remarks and some of the answers speak to this—depend on who you're targeting and the context within which you're targeting them. Generally speaking, though, we stay at a fairly high level. We tend to not get into the details of how we would do that, because we'd like to preserve the integrity of the details of our approach and very much deal with these issues behind closed doors.

● (1635)

The Chair: We'll go now to Mr. Levitt, please.

Mr. Michael Levitt (York Centre, Lib.): We're seeing in multilateral organizations like the UN a lack of ability to implement sanctions. We can use Russia as a prime example around what's going on in Syria.

Do you feel that given the new realities—and we see it with the ICC as well—of a weakening of some of these institutions, in terms of being able to build consensus and implement things in a kind of global way, Canada needs to shift its sanctions regime? We've heard testimony that the bulk of our sanctions have come in through the UN. Does this point to a need to work maybe more individually with like-minded countries outside of some of the multilaterals?

Does anybody want to maybe take a stab at that?

Mr. Mark Glauser: Let me make a couple of preliminary points, before handing it over.

Obviously, the sanctions that are passed by the UN Security Council have the agreement of the members of the Security Council, including the permanent members. That happens in a context. Those are then implemented under the UN Act. If the situation under consideration involves one of the UN Security Council's permanent members, obviously we're in a different political context. I think that's where the government has other instruments available to it to take action, and that's where, as Hugh had set out before, SEMA has been used in those kinds of contexts. That's where we look at the suite of tools that have been used to deal with a particular context.

Mr. Marc-Yves Bertin: Canada, similar to all of our allies, has autonomous sanctions regimes. We work through the UN system, and when, for various reasons, there's a gridlock, there's an inability to pass a sanction through that fora, each of us has instruments to do that. SEMA is the Canadian version.

In all of these cases, we can collectively impose sanctions in response to threats to international peace and security. We do that either in other countries or in Canada through the statutes or through regulations. When I take a look at what other countries have on the books in their practice, the approach is highly congruent with ours. In fact, their practice reinforces a lot of what you've heard in terms of witnesses, including from us and experts from around the world, which is that the harmonized approach to using these sanctions is key. Taking a universal approach is essential because the weak links in the chain create the dilemma of the effectiveness of those sanctions.

Within that context and because of the severity of the measure, absent war, this is putting restrictions on what are very legitimate activities. That's why we collectively, Canada and allies, tend to look at these as last resorts with high thresholds, and generally speaking, judicially reviewable measures as well.

I think Canadian practice is highly congruent with that of our allies.

Ms. Sarah Taylor: There's North Korea. That's an interesting example of the use of both UN Security Council sanctions and SEMA sanctions because of differing circumstances.

Obviously, as colleagues said, the ideal is a situation, as we have with the various UN Security Council resolutions, where the international community as a whole all comes together in a unified way because of the very deep level of concern around North Korean nuclear tests.

Then we had the situation with the sinking of the *Cheonan*, where it was more difficult to get universal agreement on the outcome of that study. There was a situation where a number of countries, including Canada, felt that there had been a very grave breach, but we weren't able to get that consolidated view within a UN Security Council setting. In that instance, it was very useful to have SEMA as a way to implement further sanctions.

● (1640)

Mr. Michael Levitt: Let's move to Iran for a second.

In your brief you mention the P5+1 and the compliance level that's been attained and the resulting elimination of a number of sanctions.

Minister Dion said that our eyes are wide open to the situation in Iran beyond just the nuclear issue to issues of human rights abuses and things like execution rates, treatment of LBGT, state sponsorship of terror, etc.

Do you feel that within our current sanctions regime we have the tools available to deal with some of those gross human rights abuses? What's your feeling on where we're positioned now in this delicate balance of having a country that to some extent is meeting its requirements as stipulated by the P5+1 but also where, as a country, as a government, we've identified some core concerns as to how they behave in the international arena?

Mr. Mark Glauser: There are a couple of parts to that question.

First, with respect to the implementation of the JCPOA, obviously the IAEA, headquartered in Vienna, is working very hard on this. The Canadian delegation there is among those keeping a very close watch on what's happening in that context. I addressed some of that in my opening statement. There's a very tight review of the implementation of the JCPOA.

With respect to other reasons why we are keeping a close watch on Iranian activity, there are other vehicles through which the government pursues its policy. With respect to human rights, the committee will no doubt be familiar with the resolution at the UN General Assembly on human rights that Canada led, which passed last week through the committee stage. This is another vehicle that reflects Canadian and the international community's views on the Iranian human rights record. There are other legislative provisions as well that bear on this. IRPA. the Immigration and Refugee Protection Act provides vehicles for admissibility of certain individuals, of certain backgrounds into Canada. Those kinds of things also come into play in this context when you're looking at the suite of tools that the government has available to it to deal with this issue.

Mr. Marc-Yves Bertin: I might add that it's important to note that SEMA, the current legislation, can allow sanctions in relation to human rights violations. As we've mentioned previously, that's either where one of the organizations or associations of states that we're party to calls upon its membership to take action or where the Governor in Council deems there's a serious breach of international peace and security that has or may result in an international crisis. It's not a theoretical construct. We've done so in the case of Burma, Zimbabwe, and Syria. Canada also imposes UN sanctions to the UN Act, which may include sanctions for violations relating to human rights.

Should consideration be given to amending SEMA to include an explicit human rights justification, a number of considerations would need to be examined, for example, what specific circumstances would warrant a sanction in response to human rights violations, and what the implications of such a mechanism would be if it were to be used, whether that's, from a diplomatic, an operational, legal, or other...including for the public. Human rights is a broad concept.

Mr. Michael Levitt: Thank you.

The Chair: Thank you very much, Mr. Levitt.

Before we go to Mr. Allison, we may as well get to the question in a formal way.

Does the order in council allow for individual sanctions as it relates to gross human rights violations?

Mr. Marc-Yves Bertin: As I just mentioned, I think the short answer is that SEMA, as currently structured, does enable sanctions to be taken, when the two tests, if you will, the thresholds, have been met. Under those conditions sanctions can be taken for human rights-related situations. As I mentioned, that existed in the case of Zimbabwe, Burma, and Syria more recently.

● (1645)

The Chair: But again, go back to the question. Those are entities. They are states and those are easily defined. They could and should be considered a security...and that would make some sense. But to have an individual sanctioned, from whatever country, based on a human rights violation, would not meet the test of that particular definition under SEMA. Correct?

Mr. Marc-Yves Bertin: What SEMA currently enables you to do —“you” being the Government of Canada—is to identify states. As mentioned in some of the examples, you can identify individuals under those regulations. There's nothing in the current legal construct precluding you from identifying individuals, whether because of the actions they play as agents of a foreign state or because of their associated nature to some form of violation that the Governor in Council has deemed to meet the tests.

The Chair: In the sense of getting to this issue a little more in-depth, what were the human rights violations that brought in the sanctions for Burma?

Mr. Marc-Yves Bertin: That is a very good question, and I'm looking at Hugh to see whether or not he might....

Mr. Hugh Adsett: I'll have to look at my notes, Chair. It's a while since they were put in place in Burma, but at the time there would have been a concern that the situation was of such magnitude that it was a grave breach of international peace and security. That would have been the rationale for imposing sanctions.

Mr. Marc-Yves Bertin: We'll come back to you in writing, Chair, but if memory serves there was a significant human rights dimension in the form of internally displaced and internationally displaced people.

The Chair: Go ahead.

Mr. Michael Levitt: We studied it in our Subcommittee on International Human Rights. It was the treatment of the Rohingya in Burma.

Mr. Marc-Yves Bertin: Thank you.

The Chair: Maybe what would be useful for the committee, from a hypothetical point of view, is this. If we were to sanction an individual for human rights violations in Russia, how would we go about it procedurally under SEMA as it's currently structured? This is so we can better understand the laws we have. There is a strong sense by the committee that we do not have, as a government, the power to sanction individuals for gross human rights violations under SEMA. Obviously, FACFOA is not part of that. We do understand the United Nations Act, and how it functions.

But if that's not correct, it would be very important for you to correct the record for all of us here.

Mr. Hugh Adsett: I will do my best to assist.

Again, without trying to be too specific, as Marc-Yves was saying, the tool that is available to the government under the Special Economic Measures Act essentially has the two different.... We call them triggers, the two different triggers. One is the association of states, of which we're a member, and that really is quite broad. That could potentially be used in a number of different circumstances, as long as it's an association, which Canada is a part of, that has agreed that it's appropriate to impose sanctions. As I was saying, that was the case with the former Yugoslavia. That was a G7 statement or resolution that was made at the time.

The second trigger is the one that most are probably familiar with, and that is the grave breach of international peace and security. There can be situations of gross violations of human rights that might be such that they would be considered by the Governor in Council to be a grave breach of international peace and security. That was the case in Burma. It was the case with Syria, as well, and Zimbabwe was the other situation.

I guess it's very much a contextual analysis. It depends on the circumstances that the Governor in Council views as being sufficient to be considered a grave breach of international peace and security. But under that second trigger, if you meet that threshold, it could very well be a situation of gross violations of human rights that might lead you to that particular conclusion. It's contextual. It's going to depend on the situation.

● (1650)

Mr. Marc-Yves Bertin: I'm trying to think why you're asking this question in the way you're asking it. It may be, to my mind, a point of confusion insofar as what you may be asking is, can we target individuals—and that is only individuals—as opposed to targeting a state and then individuals?

The current legal construct is that you identify the state as well as individuals.

The Chair: That's right. Then to simplify it even further, the U.S. has brought in the Magnitsky act with the objective of dealing with individuals, not the states and/or with the UN and the Security Council structure we are very familiar with.

The question we're asking is that if we broaden it to individuals, does the legislation allow us to do that now? If not, then obviously there is a need to rethink whether we are going to recommend that or change that as a government. We're trying to get a sense of how we would do that under the present structure.

I'll leave it at that for now, and we'll let some of the other committee members ask some questions. I was just trying to get to the point of.... A little earlier, you made it sound as if, in fact, we do have the legislative structure in place to do it. That certainly has not been the case of anyone who has come to the committee so far.

I'll turn it over to Mr. Allison for the continuation.

Mr. Dean Allison (Niagara West, CPC): Thank you, Mr. Chair.

As a matter of fact, I was going to continue along this line anyway. You asked half my question, so I'll simply keep going from there.

What is it that we could do? Do we need to try to broaden it out, if that were the case, because it would seem, instead of.... The recommendation isn't a whole new piece of legislation that stands alone and we have to fit in somewhere; it's that we broaden the recommendations under SEMA. My question would be, is there a way, then, that instead of looking at the countries or the gross...we could look at something from an individual point of view? Would that make some sense? SEMA, it would seem, would be the most logical place for it to stand, if that were the case.

Mr. Marc-Yves Bertin: You're basically asking us for advice as to how we should amend the act, and I don't know that we're in a position to do that. Given our roles as public servants, we're here to explain the facts as they exist, in terms of what they currently are.

As I mentioned a moment ago, individuals are listed under the current SEMA. That is done only once the country that is deemed to be an offending state, if I can put it that way, has been identified, as well, under the act. That's what our current statutes enable us to do.

Has that been used in the context of human rights violations? Absolutely. I mentioned three.

Mr. Dean Allison: One of the other things that was said in testimony is that maybe we should look at that from a global perspective, not just targeting certain countries, as we might do. I guess what I'm hearing you say is that although it does provide the opportunity, maybe it's sufficiently vague and it's hard to do at this point in time. Maybe one suggestion is to look at a way to make it more definitive. Would that be helpful, then, if we were to make some recommendations in terms of trying to be more definitive under SEMA?

Mr. Marc-Yves Bertin: Perhaps I'll make an observation on what has gone on south of the border. Obviously, you're talking about a Magnitsky act, which they have in the United States. What's interesting in its application is that it has been met with retaliation that you might characterize as being of a surprising nature. The Russians went after, of all things, a class of individuals in the United States, parents trying to adopt young children. They basically retaliated in what I would call a delinked and surprising manner. There are implications to that.

The other observation I would make is that there are statutes in play in the U.S. Congress to modify the Magnitsky act. Without characterizing what they feel to be their experience with that statute, clearly there's action being taken south of the border to evolve that statute. Where that ends up remains to be seen.

Mr. Dean Allison: One of the things we did hear was that we should at least make it global in nature, versus trying to target specific countries that may have that issue.

I have one last question. You indicated and we understand there could be RCMP or other charges. We've seen that there's been only one successful charge under SEMA since 1992. In terms of how to enforce any of these things—we're also looking for recommendations—it always seems that.... I understand silos, and that certain departments have certain responsibilities. One of the things that was said to us is that this may not have any effect, because people aren't really going to put money in Canada, etc. Nothing's happened; there have been no charges.

There was article written by Mr. Leblanc about the fact that, with some investigation going on.... Does this go back to resources again, in terms of looking at how we can find out if people are abusing, or not doing what they're supposed to do if we don't tie in resources? If that's one of the recommendations as well, maybe it's something we also need to look at. It seems that when we introduce legislation it's for a moment in time, and then we don't go back to it again unless it's relevant. We seem to forget about it.

My question to you is whether the resource piece—and it was talked about before—is also one of the missing elements in how we can try to make some of these sanctions more effective, or have them stick or have meaning.

● (1655)

Mr. Marc-Yves Bertin: You mentioned that other departments and agencies have key roles to play on the enforcement side, the RCMP, CBSA, and so forth. I don't know that we're in the best place to comment or that it would be appropriate for us to comment in terms of their resourcing levels. The expenditure management system, being what it is in Canada, involves a number of players. That said, we obviously have faith in our colleagues in these other organizations to prioritize resources as appropriate to meet the priorities and the challenges this country faces.

The Chair: Thank you very much, Mr. Allison.

We'll go to Mr. Fragiskatos, please.

Mr. Peter Fragiskatos (London North Centre, Lib.): Thank you very much, Mr. Chair.

Ms. LeClaire, you said something earlier that I found quite striking. You were talking about the states. You said that whenever you do something, you can certainly expect a response. So if state A takes an action towards state B, state B is going to respond. I think of that and I think of regime types. I think of authoritarian states and how they might respond. The way they'll respond will be dictated by the nature of the regime, the nature of the political culture in that regime, the nature of the leadership.

This committee has heard testimony from a number of experts. Last week I mentioned Kim Richard Nossal, who's one of the foremost experts in Canada on sanctions legislation. This week I want to talk about Daniel Drezner, who's based in the United States, at Tufts University. He's a widely recognized expert. He told this committee that when sanctions are imposed, "usually the authoritarian state becomes even more authoritarian in nature in response to any sort of external acts of economic coercion", "economic coercion" meaning, of course, sanctions.

I read that quote and I think of the proposed Magnitsky act that has been tabled as a private member's bill and has been the subject of much debate. If Canada were to enact a Magnitsky act of the type that's been suggested, doesn't that give carte blanche...or if not carte blanche, doesn't that open up the door to a very difficult response, from a human rights perspective? Doesn't that allow Russia to take actions that would go contrary to very basic democratic principles and lead to human rights abuses getting even worse in a state like Russia?

Ms. Alison LeClaire: Thank you for that question, which ended in a different place than I was expecting.

When I referred to a response, I was referring to one directed at the country imposing the sanction. If we impose sanctions on Russia, there is a response directed at Canada. Marc-Yves gave the example of what happened in the U.S. with their Magnitsky act, what happened with the—

● (1700)

Mr. Peter Fragiskatos: Whether the response is directed at Canada or at Russian citizens, there will be a response either way. I want to ask you and any members of your department who are testifying with knowledge of Russia, if Canada were to enact a Magnitsky act, wouldn't Russia respond, simply because of the nature of the regime, in a way that goes contrary to what we would hope for? Wouldn't the human rights situation get even worse?

Mr. Marc-Yves Bertin: Let me field this one, perhaps.

We're well aware, as you are, that there is legislation moving through Parliament that mirrors a lot of the attributes of the U.S. Magnitsky act. The government has yet to pronounce itself publicly on statutes such as those. I'm thinking in particular of Bill S-226, where the government continues to consider its position. It would be perhaps prejudicial for us to comment and speculate in a context of this nature.

Mr. Peter Fragiskatos: Okay. I'm just trying to take advantage of your expertise. I think if Canada were to put in place a Magnitsky act, based on the testimony we've heard from a number of academics, namely Kim Nossal, Canada's leading expert, and Mr. Drezner, one of the leading experts in the United States, if not the leading expert when it comes to sanctions, that those who are concerned about human rights violations in Russia would be even more concerned because Russia would respond by violating human rights even further as a retaliatory measure to the international community—in this case, Canada. At least that's plausible. That's what the evidence would suggest.

I have another question here. The targeted sanctions consortium has found that sanctions achieve their stated goal less than 30% of the time. With that in mind, I think it's fair to say, at least from my perspective, that sanctions are at best a tool, one tool in the tool kit, so to speak. What other tools do we have to address activities of concern, human rights violations or other issues of concern, the development of ballistic missile technology, or to encourage even changes in behaviour, having a state withdraw from a particular area that it shouldn't have been in, in the first place? I think you know what I'm talking about there.

Speak to that, please, because while sanctions are an important mechanism to enact, I think there is a great deal of faith placed in their ability to suddenly, with a magic wand, change a situation. Sanctions are not magic wands, as this committee has heard.

Mr. Hugh Adsett: Perhaps that's a question on which several colleagues would wish to share, but certainly there are a number of different tools available to a state to express its displeasure. They include the usual diplomatic tools. I think the Iran resolution was mentioned today, for example, the resolution that Canada has led at the United Nations for a number of years to condemn the human rights situation in Iran. They can include Security Council resolutions, if you can get consensus at least amongst the permanent members of the council.

I will turn to my colleagues to add to that list as well.

Mr. Mark Glauser: I have just a couple of other quick points. One of the things we haven't touched on today is the import-export control system in place, which the Minister of Foreign Affairs obviously has authority over. There are a variety of other international fora, for lack of a better term, where there are conversations among like-minded states about proliferation-related activities—the missile technology control regime and the Australia group, among others—all of which are designed for like-minded states to get together to look at the problems they see in the world and to identify ways in which they can help reduce those problems through things such as coordination on how we deal with exports of sensitive goods or other forms of diplomatic pressure, which can be placed to address the international peace and security issues we are looking at.

There are constant conversations about how to improve those processes to achieve better ends, but there's a lot of time spent on those processes as well.

● (1705)

Mr. Peter Fragiskatos: I have one last question, and it actually picks up on a point the chair originally raised.

Can you tell the committee what measures are in place to deal with—take a specific situation—the abuse, torment, even murder of a human rights and democracy advocate? If that happens, what measures are in place for Canada to respond? How can Canada respond to that? For example, if the abuser, and ultimately the murderer, wishes to come to Canada, what can Canada do? If that abuser and murderer has assets in Canada, what can Canada do? Tell the committee. Surely there is existing legislation in place that allows us to address those concerns.

Mr. Hugh Adsett: I'm going to start at the very beginning with the question of the person coming to Canada.

I think one of the most immediate tools is the Immigration and Refugee Protection Act, that is, the ability to prevent individuals from coming to Canada. Again, it's another department that would need to speak in detail to this, but there are provisions in the act to prevent people from coming to Canada, to render them inadmissible because of violations of "human or international rights". I think that's the language. That's, I think, one of the first aspects of the legislative framework.

Depending on the circumstances, if you were talking about an individual, and it's a situation where the country is already under sanctions under the Special Economic Measures Act.... Again, we've talked about listings. Listings of individuals are possible under the Special Economic Measures Act as long as you've reached that threshold of it being a situation of a grave breach of international peace and security.

For individuals who are responsible for wrongdoing in some manner or another, the usual processes of law are available as long as you can make the necessary connections to Canadian jurisdiction. That would be a question, I think, better put to the Department of Justice. As I said, I know that one of the questions that came from the chair was to get a sense from the Department of Justice of the range of legal instruments that might be available.

The Chair: Thank you, Mr. Fragiskatos.

Monsieur Kmiec, you're up.

Mr. Tom Kmiec (Calgary Shepard, CPC): Thank you again for coming in today.

To start, I want to focus on page 11 of your notes. It talks about sanctions in each case where an exemption to the regulations is requested. On humanitarian grounds, someone can make an application for the non-imposition of sanctions. Can you explain how that request is made and who can make a request?

Ms. Sarah Taylor: Basically any Canadian organization or individual can make a request. The case here is in relation to North Korea. Any individual or organization that wanted, for whatever reason, to export to North Korea or to have some financial transaction or any other activity that's precluded could apply to the government through our department to make that request.

We look at these on a case-by-case basis. We would look at each individual request to see what's being proposed and whether we think it matches with the allowed exemptions under the act and the regulations, so if, for example, it seemed like these, genuinely, were goods that would be primarily humanitarian in nature. For North Korea, in particular, we are looking also at the possibility of diversion. One of the concerns is whether anything you're exporting could be diverted for use by, let's say, the military or the government.

We're looking—again, case by case—at the nature of what is being proposed. If it seems to be acceptable on humanitarian grounds, then an exemption would be granted.

Mr. Tom Kmiec: Who makes the final decision? Does the minister have the final decision-making authority for an exemption, or is it cabinet?

Ms. Sarah Taylor: It's the minister.

Mr. Tom Kmiec: It's the minister for the exemption. Okay.

You said any organization or any individual Canadian can also make the request through the minister to the department.

Ms. Sarah Taylor: As far as I know, I don't think there's any.... Yes. There's no particular restriction on who could—

● (1710)

Mr. Tom Kmiec: How many of these types of exemptions have been granted for the DPRK, for instance?

Ms. Sarah Taylor: There have been 12 since the regulations were put in place.

Mr. Tom Kmiec: Were these Canadians or NGOs? Were they some other types of organizations?

Ms. Sarah Taylor: I can't give you too much detail on them because the individual requests are private. That's because, in some instances, there might be commercial considerations. However, I'd say that in almost all instances these are around humanitarian goods. In most cases, we are talking about organizations that were involved in humanitarian assistance in North Korea.

Mr. Tom Kmiec: This committee has heard, from Professor Charron that some of the unintended consequences of more punishing measures would only harm innocent civilians. The professor was saying that when it comes to Russia, Syria, Zimbabwe, and some other countries, the policy calculations of their leaders there, and the regime, don't take into account Canadian sanctions, whether multilateral or unilateral.

However, we heard from Andrei Sannikov, who was an opposition leader in Belarus, that this is the case, that prison guards, prison administrators, the people who actually carry out the orders of the political leadership, do take it into account. They don't want to see their names popping up on a sanction list.

Does any of that come into the calculation by the department when you make a recommendation to the minister on whether or not to levy the sanctions, that kind of coercion, not so much on the political leadership but on the people carrying out the orders to oppress political leaders, human right activists, and NGOs?

Mr. Marc-Yves Bertin: Our current approach to sanctions reflects a significant evolution in terms of learning over the past 25 years. It used to be that state practice looked at embargoes, basically sanctions, being a rather blunt instrument. The main driver behind the shift away from using sanctions as a blunt instrument was basically humanitarian considerations, that we were potentially harming vast populations as opposed to shifting state behaviour in a more targeted manner through a more targeted approach.

The international practice today.... I think you've heard this from various witnesses, including from Dr. Thomas Biersteker, who have spoken to this notion that we've very much honed in on tailored messages and on decision-makers and their associates in a specific country. That approach is seen to be perhaps a more effective way to bring about that behaviour that we're trying to shift, particularly in—

Mr. Tom Kmiec: If I could just interrupt you, because I don't have a lot of time, wouldn't that more selective approach on sanctions to target specific groups of people or individuals avoid some of the harm that could potentially be done to a broader population? Something like the Magnitsky act would then make sense. You could specifically target groups of people, put them on a list, and make it easy for businesses to access the list, so that they know that prison administrators in these specific prisons are being targeted for sanctions in order to protect political opposition leaders, political prisoners, and civil society in general. It is a way to put pressure on the regime. It's not to punish them, but it's either to coerce them into stopping their oppression or to entice them into different actions.

Of course, there's always that power consideration, with large countries, superpowers, quasi-superpowers, and then smaller countries. However, wouldn't it make sense to do it in tandem with our allies?

Mr. Marc-Yves Bertin: If you take a look, including at the Russia sanctions, for example, that is precisely what we've done. We've targeted individuals, decision-makers and their associates. We've done so because of the learning over 25 years of application, which is to avoid harming broad populations and to focus targeted measures on decision-makers and their associates.

This approach is not only good for the populations, but it's also more effective in terms of operationalizing these sanctions, insofar as we're mitigating the potential implications for third countries. Also, by mitigating the implications for third countries, we're mitigating the desire to circumvent the sanctions. From that perspective, the approach of targeted select measures toward individuals, decision-makers, and their associates is very much the current practice.

Mr. Tom Kmiec: If I still have time, Mr. Chair, I'd like to move back to DPRK for a moment.

In the notes, it mentioned that unilateral sanctions were imposed on them. It was unilateral sanctions that Canada imposed that were later mostly copied in the United Nations security resolution, which I have noted and now can't find it here.

Were those unilateral sanctions that Canada imposed effective? Have our sanctions been effective?

● (1715)

Ms. Sarah Taylor: Just to clarify maybe a little, there have been a suite of UN Security Council resolutions and sanctions associated with those. With each resolution, we've then implemented measures under the UN Act. We've been implementing that as they go along. Those all relate to non-proliferation concerns basically. I'd say on those, in terms of effectiveness, it's hard to separate out the Canadian piece from the broader piece. I think you'd have to look at how effective the UN sanction regime has been as a whole.

Your main question was about the unilateral one, though. Those were under SEMA. Those were in response to that specific incident, the sinking of the *Cheonan*, and I'd say, in purely commercial terms, they were quite effective. We didn't have very much trade with North Korea to begin with. I believe that it was in the order of about $26 million before sanctions. I don't have the exact figure, but it's now under $1 million, I would imagine. Our trade with North Korea has gone down to virtually nothing, again, outside of those small number of humanitarian exemptions. That has been very effective.

Since our trade was so small before, these sanctions probably haven't had a huge material impact in North Korea, but some of the other measures, relating to, for instance, financial transactions and transiting through Canadians ports, have perhaps had more significant impact. It's a little hard to measure those, but I'd say, in terms of the importance to North Korea economically, those may have been more important.

Mr. Tom Kmiec: Okay, thank you.

The Chair: Thank you very much, Mr. Kmiec.

We'll now go to Madam Laverdière, please.

[*Translation*]

Ms. Hélène Laverdière: Thank you very much, Mr. Chair.

I would like to take advantage of the witnesses' presence to find out a bit more about these issues.

Since 2011, 148 persons of Egyptian origin were put on the list pursuant to the Freezing Assets of Corrupt Foreign Officials Act. Currently, in 2016, no one of Egyptian origin is on that list. Since the situation in Egypt has not necessarily improved, I am wondering why that is.

[*English*]

Mr. Mark Glauser: Do you have any information on the effect?

Mr. Hugh Adsett: Thank you very much.

The Freezing Assets of Corrupt Foreign Officials Act was established in order to respond to a request from a foreign state. It's the foreign state, in particular circumstances under the act, that makes a request to Canada to actually freeze those assets. Those lists expire after a period of time. The reason that the act is set up that way is that it's intended to be a temporary action. It's not meant to be a permanent seizure of the assets, but the idea behind the act is that the foreign state will presumably make a request for mutual legal assistance.

Again, it's the context of the act itself that's important. It was initially established as a response to the events that have been described as the Arab Spring, and it was meant to deal with those situations of turmoil, of governmental change, when there is a concern of assets fleeing the jurisdictions. However, it was never meant to be anything other than a temporary response. It is to support the foreign state. If the foreign state requests that the list be extended, it can be done, but if the foreign state does not wish for the list of names to be extended, then it comes to an end.

[*Translation*]

Ms. Hélène Laverdière: That would also explain the fact that the number of people from Tunisia on that list went from 123 to 8. As for Tunisia, you will remember that a legal request was made for assets to be returned to Tunisia. I do not remember the figures—this goes back a few years and I have a short memory—but Canada intended to keep most of these assets and only remit a small part to Tunisian authorities. Is this a normal practice?

● (1720)

[*English*]

Mr. Hugh Adsett: I can't speak to the specifics of that because I'm not aware of the specific details. As I say, the Freezing Assets of Corrupt Foreign Officials Act is very much meant to be a temporary measure to be followed by a request for mutual legal assistance. Whatever rules guide mutual legal assistance would then apply to how the assets are returned and the specifics of that.

[*Translation*]

Ms. Hélène Laverdière: Would it be possible to provide the committee with the data on the request from the Tunisian government to have Mr. Ben Ali's assets turned over to them? I think that is a good example. What was given to them in the end? Could you give as much information as possible to the committee on this, in writing? That would be greatly appreciated.

[*English*]

Mr. Mark Glauser: We can return to the committee with more information on that in writing.

[*Translation*]

Ms. Hélène Laverdière: Thank you.

[*English*]

The Chair: Mrs. Mendès, please.

Mrs. Alexandra Mendès (Brossard—Saint-Lambert, Lib.): Thank you very much, Mr. Chair.

I am a guest here at the committee. I'm also very involved with the Commonwealth, so I'd like to ask a question about another jurisdiction and that would be the U.K., where there have been quite a few attempts in the courts to overturn sanctions and where the application of sanctions is being considered unconstitutional, even when required by the Security Council, and mainly the grounds are lack of due course.

Is this something that we are afraid would happen here in Canada? Is that something that there is a possibility of happening here in Canada?

Mr. Hugh Adsett: I suppose as a general answer, anybody who's affected by an aspect of Canadian law could always seek to challenge their listing under Canadian law and seek judicial review for a variety of different reasons. That's always certainly a possibility, which is why we try very hard, when we're adopting regulations and making recommendations, to ensure that we have good information on which to base those listings. It's to protect them from challenges that might otherwise be brought.

Mrs. Alexandra Mendès: You haven't had any instances of challenges to due course in Canada for the application of sanctions?

Mr. Hugh Adsett: We have not had any that have come to trial that I'm aware of.

Mrs. Alexandra Mendès: That doesn't mean that we haven't had attempts.

Mr. Hugh Adsett: That's right.

Mrs. Alexandra Mendès: Okay. Thank you for the clarification.

Can we have an idea of what kinds of metrics you use to measure the effectiveness of sanctions? Personally I could debate a long time about the use of sanctions. I think usually they do—this is a personal opinion—more harm to the population of the country targeted than changing the ways of the state, but do we have any measure or any metrics that could be shared with the committee about the effectiveness of sanctions?

Mr. Marc-Yves Bertin: I think you've heard from a number of witnesses that there are competing views around effectiveness. What was interesting in the witnesses that have appeared, in terms of the expert testimony that has been provided, is that they each, generally, have had their own methodologies.

Our sense is that the research varies, and it's case dependent. We do our own assessments. We do our own assessments on a case-by-case basis and on an ongoing basis. It's very difficult to isolate the merits of the sanction, given that they are deployed within the context of a broader diplomatic tool kit negotiation, or what have you.

Our own sense is that they are most effective when imposed universally in order to ensure an optimal impact, as well as doing so in a manner that doesn't necessarily put Canadian interest at a disadvantage, commercial interest in particular.

Our own sense as well is that setting out a clear and specific objective for the sanction also helps to ensure effectiveness, and that's generally done, as I was mentioning, as part of a broad suite of engagement tools, for no other reason than to provide the offending state the opportunity to adapt their behaviour, and therefore, de-escalate the situation.

That said, whenever we cease using sanctions within the context of a relationship, SEMA requires the Governor in Council to publish or to issue a report within 60 sitting days in terms of the operation of those sanctions. I've brought examples of that here today. I'm happy to leave those behind. They give you a sense of the assessment that has been made in terms of their operationalization.

● (1725)

Mrs. Alexandra Mendès: That should be interesting.

I'm done, Mr. Chair. Thank you very much.

The Chair: I have one last question.

As a committee, we tend to focus most of our attention on SEMA. As you know, we're here speaking to you and doing an analysis based on the requirement under FACFOA, after five years of review of its continuation, its amendment, or whether it meets the test of what Mr. Fragiskatos has asked: is it still a good tool for the Government of Canada to have at its disposal?

It would be useful if you were willing to give us a sense of whether you see FACFOA as a piece of legislation that has met the need of the Government of Canada and would like to keep it in place for an extended period of time, whether it's another five years, or whichever way we want to recommend this. It was, as you mentioned, part of a response to the Arab Spring and was intended to be, as I understand it, a temporary measure, so it would be useful if the Government of Canada and its officials would be willing to tell us whether they think it's a tool they would like to see continue.

Mr. Hugh Adsett: I think our experience with the act to date has been that it has provided a tool that we lacked. It provided a tool that allowed us to respond to those very particular circumstances for which regulations were adopted. We know from some conversations with other states that they have looked at the Canadian legislation and I think found it to be interesting. I understand, for example, that Switzerland has legislation that is different, but in some elements is similar to the Canadian legislation.

As I say, what it does is it provides us with an instrument that we didn't otherwise have to respond to a very unique set of circumstances. From our own experience, at least, it has done so and it has met those objectives of allowing for a state in a situation of some internal turmoil to reach out to try to prevent essentially asset flight by requesting a temporary freeze on assets, and to give that state time to organize itself enough to be able to make a more formal mutual legal assistance request.

The Chair: Thank you very much. I appreciate that response.

Now, colleagues, I want to take this opportunity to thank Mr. Glauser and his colleagues for coming before the committee as witnesses. It was a very productive couple of hours and we very much appreciate that. Thank you. We look forward to the responses that we did not get a chance to speak to, which have been requested of you in writing.

Mr. Glauser, on behalf of the committee, I want to thank you very much for making your presentation as wholesome as it was.

Mr. Mark Glauser: Thank you very much.

The Chair: Colleagues, I want to go in camera for five minutes. That's all it will take. I want to correct one little error that was made in the committee. With that, I'll take a 30-second time out and then we'll get right to it.

[*Proceedings continue in camera*]

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