

Is Europe being unfairly targeted by US Sanctions?

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*Fighting corruption and terrorism is, most people would agree, a Good Thing.
But what if the measures used to combat crime are also used to gain unfair
commercial advantage over one's rivals?*

That is what some European officials are beginning to suspect of America's use of sanctions and fines.

Taking firms and individuals to task for crimes such as corruption, bribery, money laundering and tax evasion is only right, of course. But what if the prosecutor is in one country, say, America, and both the - non American - culprit and the crime, another, say, Europe? Well, er, yes, you might say: one should still condemn corruption. But what if, in addition to this, the "crime" is violating US sanctions against Iran, which is not illegal outside America?

This is what seems to be happening. People and firms, acting completely legally in their own jurisdictions, are accused of committing purely American crimes. America's creeping extraterritoriality is an ever more expansive interpretation of who is subject to American law, where questionable arguments, for example that some American service, such as Gmail, are being used to claim jurisdiction to prosecute firms and individuals who are neither American nor live in the US, for actions that are perfectly legal where they took place.

Punishments range from simple fines to criminal prosecution, but can also entail barring access to the USD payments system and the American domestic market. Some firms have had to agree to US monitors within their walls, reporting to the American authorities, such as those accepted by HSBC in 2012 to avoid a \$1.9 billion fine; and which could allow the US authorities access to sensitive commercial information that can then be used to favour US rivals. Even without imposing monitors, America has unique access to information about international transactions, because most are conducted in US dollars.

This bias is hard to prove, of course: American firms may indeed be more wary than European ones of dealing in tricky parts of the world. Yet so far it is European banks and firms - often the most effective competitors to their US counterparts - who have been hit hardest. Over 75% of the \$25 billion of fines for money-laundering, sanctions-busting and related offences have been against European banks, 15 of which have paid over \$100 million each, according to Fenargo, an Irish business data provider. US banks meanwhile have been fined less than \$5 billion for similar offences. Of the ten biggest Foreign Corrupt Practices Act (FCPA) fines, only two have been on American companies. This leads European policymakers to suspect motives beyond pure enforcement of laws and sanctions. "European companies are increasingly impacted by the extraterritoriality of US sanctions. Moreover, these are increasingly instrumentalised to promote economic interests" says Pierre Gattaz, head of BusinessEurope.

America's long reach may have, for example, helped General Electric in its purchase of Alstom in 2014, according to a report in The Economist on 19 January, 2019.

American sanctions against Iran, by which firms doing business with Iran are denied access to the USD payments system, effectively penalised Total and Siemens, while leaving the door open to Russian firms who anyway had limited USD access.

They were also used to favour US firms' advance into the Iraqi market. The Economist reports, on 12 January, 2019, that in 2018, Iraq was given half the time of other countries to comply with re-imposed US sanctions on Iran. As Iraq negotiated for extensions, American companies made a push for Iraqi contracts. General Electric, for example, won a big contract to upgrade Iraq's electricity grid, despite a prior, more competitive bid by Siemens. American companies have also signed deals to supply Iraq with grains and poultry, while Chevron and Exxon circumvented normal bidding processes by negotiating directly with Iraq's oil ministry to gain large concessions. Meanwhile, Exxon's bid to help boost Iraq's oil export capacity and build a desalination plant was given new priority.

One oil man remarked: "It was a matter of quid pro quo: you give us priority and we'll give you an extension." It seems to have worked: in December 2018, Donald Trump gave Iraq 90 more days to comply with America's sanctions.

Corruption is OK if its your side doing it, it seems.

America's extraterritoriality can be used to political advantage too:

Ms Meng Wanzhou, Deputy Chairwoman and Chief Financial Officer of Huawei and daughter of its founder, Ren Zhengfei, is in Canada fighting extradition to America to face a range of charges, including breaching sanctions against Iran. Mr Trump has linked her fate to trade talks between China and America.

In 2018 US regulators accused the Chinese firm ZTE of violating US sanctions on Iran and North Korea and lying about it. There were also concerns about its being controlled by the Chinese state. The firm was barred from doing business in the US, effectively a death blow, given its reliance on US technical inputs. The firm saved its neck by paying a fine of US\$1 billion, promising to change its board and executive team and submitting to oversight by a compliance team chosen by the US. President Trump tweeted that the ZTE talks were "part of a larger trade deal" being negotiated with China.

Some point out that European regulators have their own biases. The main aim of Europe's General Data Protection Regulation (GDPR) may indeed be to protect people's privacy, a sensitive issue for Europeans, especially Germans and Poles, who suffered intrusive surveillance under the Soviet umbrella. But it also can be said to favour European firms over American ones, who at home are subject to much lighter data privacy rules. The EU is also accused of targeting the commercial practices of US tech giants, although these relate to activities within, not outside Europe, and the penalties are proportionately much smaller than those imposed by the US on European firms. Importantly, they are transparent, following

existing laws, whereas the US authorities seem to making up the fines as they go. American firms' access to the European market is not threatened.

How are countries and firms responding?

Some countries are taking the course of least resistance by cooperating with US investigators in return for a cut of the fines levied. If you can't beat them, join them, as they say.

But inevitably large economies, such as the EU and China, will not sit still for long, and in fact are already looking for other ways to do business, for example by conducting transactions in yuan or euros instead of USD, or by developing other markets and alternative sources of supply for high-tech components and services. In time this could back-fire on the US: alternative sources of supply can and do grow to become powerful competitors.

In time, the US may find that it has shot itself in the foot.

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