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Secondary Sanctions: An American weapon or a European Tool?

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Abstract

This article explores the differences in the use of primary and secondary sanctions between the European Union (EU) and the United States, the position that the European Union has historically taken to resist these sanctions, and what they might consider doing to strengthen their current position. I will first discuss the United States' use of primary sanctions, specifically against itself and the EU to demonstrate the broad powers possessed by the executive branch. Then, I will explain how those primary sanctions lead to secondary sanctions with the use of cases. I will then discuss the initial position of the EU regarding the Blocking Statute and the strengths and weaknesses of the document offering recommendations in certain aspects. Finally, I compare the two jurisdictions on their use of extra-territorial jurisdiction and how the EU might use it more effectively.

Keywords: secondary sanctions, primary sanctions, European Union, United States, blocking statute, Iran, regulation

Introduction: What are Secondary Sanctions?

A State imposes a primary sanction when it creates any economic restriction within its own territory, against its own nationals, against foreign nationals residing in that state, or against corporations of the same nature.[1] These types of economic sanctions fall within a State's sovereignty. However, sovereignty has been increasingly challenged due to the use of secondary sanctions, which pose questions about extraterritorial reach and the application of domestic jurisdiction abroad. Secondary sanctions arise mainly as effects of broad primary sanctions.[2] Defined, a country that is not involved in dealings in the sanctioning country will face negative effects that arise as a consequence of business in the nation. These measures often deter third-party companies from dealing with primary sanctioned countries. The most prominent example, and the one hereinafter used to compare the US and the European Union (EU), are the primary sanctions placed against Iran by the United States

[1] Sara Krulikowski, Economic Sanction: An Overview (US International Trade Commission Executive Briefings on Trade 2014).,

[2] Ibid., 1.,

and the subsequent secondary sanctions produced against EU Member States and EU companies.

1. Primary & Secondary Sanctions: International Emergency Economics Powers Act

It is important to first understand the controversy around these extensive primary sanctions in the global community to demonstrate how these secondary sanctions arise and what effects they have on EU Member States. The International Emergency Economics Powers Act (IEEPA) gives broad powers to the President of the United States in regard to foreign trade in the realm of currency and real property.[3] The president may 'investigate, regulate, or prohibit any transactions in foreign exchange' so long as they are of 'interest of any foreign country or national."[4]

The IEEPA also extends these powers to any acquisition, transfer, or use of any foreign property and subjects it to US jurisdiction so long as there is 'any interest by any person' between the property and the United States.[5] This nexus between foreign entities and the US is often accepted when property interests lie in the United States or money passes through US institutions in US dollars, making the scope of application sufficiently broad.[6] A recent example is that of *Epsilon Electronics v. US Department of Treasury* (2017).[7] The D.C. Circuit court ruled that a company can be liable for a violation of primary sanctions against other countries, in this case Iran, when they ship to third-party companies with reasonable suspicion that the receiving company intends to export to a sanctioned county. What is especially interesting about a case like *Epsilon* is its demonstration of how far-reaching the scope of primary sanctions is.

Epsilon Electronics was found to violate 31 C.F.R. § 560.204, which states:

> The exportation, reexportation, sale, or supply, directly or indirectly, from the United States, or by a United States person, wherever located, of any goods, technology, or services to Iran or the Government of Iran is prohibited, including the exportation, reexportation, sale, or supply of any goods, technology, or services to a person in a third country undertaken with knowledge or reason to know that.[8]

The court affirmed there are two faces to this crime '(1) the exportation of goods to a person in a third country and (2) knowledge or reason to know that the third-country recipient plans to send the goods on to Iran."[9]

[3] International Emergency Economies Power Act Title 50, §§1701–1707,
[4] Ibid., 372.,
[5] Ibid.,372.,
[6] As noted in the BNP Paribas case in which the mere use of US dollars granted the US with the ability to initiate action against BNP Paribas, even when dealings were not in direct relation with the US.,

[7] Epsilon Electronics v. US Department of Treasury, No. 16-5118 (2017).
[8] 31 C.F.R. § 560.204.
[9] *Epsilon Electronics* (n 7) 10.

This is a civil violation of strict liability, thus, the conduct is punished regardless of whether there was intent to violate the law or regulation; there is no reason to prove that the goods actually ended up in Iran, even when sending to a company's general inventory. This means that any company covered under 560.204 will be charged even when the products have not actually arrived in a sanctioned country.

The broad scope of sanctions that derive from the IEEPA, like *Epsilon*, instil fear into third-parties, such as companies located in the EU. Sanctions deriving from the IEEPA are applicable to companies that fall within the US jurisdictional reach, and as previously mentioned, this includes any companies that deal in US dollars. As the US dollar is the most traded currency internationally, accounting for 55% of all foreign currency claims and 60% of all liabilities, this includes a range of global stakeholders.[10] Companies must use US dollars in a way that does not violate any laws or sanctions of the United States.

The IEEPA also provides the executive with a buffet of powers, many contested by US companies as well as non-US companies for their implications. The President will apply at least five of thirteen restrictions:

1. The denial to extend any credit or guarantee in the exporting of that good or service;
2. The denial of the US government to issue any permit that is required under US law to export specific goods or services;
3. The denial of any US financial institution to issue a loan of ten-million dollars or more in a twelve month period;
4. In the case the institution is a financial one, the denial to designate the financial institution as a primary dealer;
5. In the case the institution is a financial one, the denial of that financial institution to act as an agent of the US government;
6. The denial of the US to enter into any agreement with the person for reasons of procurement;
7. Prohibiting of any transaction in foreign currency that are subject to US jurisdiction;
8. Prohibiting of any transactions between or through US institutions or any institutions subject to US jurisdiction;
9. Prohibiting of the transfer, sale, or use of any property subject to US jurisdiction as well as the exercise of any property rights in respect to the interest of the sanctioned person;

[10] Carol Bertaut, Bastian von Beschwitz, and Stephanie Curcuru, *The International Role of the U.S. Dollar – 2025 Edition* (Federal Reserve 2025).

10. Prohibiting of any US person from investing or purchasing equity from the sanctioned person;
11. Denial or revocation of a visa from a corporate officer;
12. Application of any of these sanctions on corporate officers, or those who perform duties in a similar fashion;
13. Application of any of the sanctions inline with the powers described in the IEEPA.[11]

1.1 The US and the EU: Primary Sanctions

In 2014, BNP Paribas, a French bank subject to EU and domestic French law, was sentenced in the US in connection with dealings with Iran, Cuba, and Sudan.[12] One of the services of BNP Paribas is to provide credit clearing. By providing these services to countries sanctioned by acts under the IEEPA and other relevant acts, BNP had not broken EU nor domestic law, but as many of these dealings were conducted in US Dollars, and the IEEPA gives explicit powers to extend US jurisdiction to any credit clearing performed in US Dollars, this was thus extended to BNP Paribas.

The bank transferred over 8.8 billion dollars in the name of adversaries of the US upon its guilty plea. This is a clear demonstration of, not only the extraterritorial exercise of US jurisdiction, but also the support of companies. Even when the EU specifically prohibits EU companies to adhere to US sanctions, EU companies still feel inclined to do so as the financial burdens under the sanctions are just too harmful for international business.

1.2 The US and The EU: Secondary Sanctions

Secondary sanctions are difficult to quantify as they are not explicit like legislation or directives. Thus, specific cases provide light into the situation, like French company Total SA.[13] As has been asserted in the case of BNP Paribas, there had been some primary sanctions placed on Iran by the EU and Member States. However, these sanctions were lifted upon the signing of the JCPOA in 2015.[14] Total SA, a French oil company, entered into joint agreements with Iranian and Chinese oil companies over the course of 20 years to redevelop the South Pars/North Dome gas field. In 2017, Total SA entered the agreement, but shortly after in May 2018, the US government withdrew from the JCPOA citing it 'enriched the Iranian regime and enabled its malign behavior' and sanctions were to resume in August of that year.[15]

The primary sanctions were reinstated against Iran and remain in place today, but what does this mean for third-party countries and businesses? This is the question that still lingers in non-US economies. For Total SA, it

[11] Iran Sanctions, 1996 (P.L. 104–172; 50 U.S.C. 170)., 13-14.
[12] United States Office of Public Affairs, *BNP Paribas Sentenced for Conspiring to Violate the International Emergency Economic Powers Act and the Trading with the Enemy Act*. (Office of Public Affairs 2015).
[13] Nasser Karimi, *Iran Oil Minister: French Oil Giant Total Pulls Out of Iran*. (AP 2018)
[14] See EU Commission's adoption of UN Resolution 2231/2015.
[15] Trump, Donald J. "President Donald J. Trump is Ending United States Participation in an Unacceptable Iran Deal" 2018.

meant withdrawing from the South Pars deal quite abruptly. They announced almost immediately that they could not 'afford to be exposed to any secondary sanction' as well as any access to US financial institutions, some of which include the loss of property, freezing of fiscal assets, loss of access to US financial institutions, and expulsion of executives from national US territory.[16]

The current and anticipated effects of secondary sanctions on EU companies led to an immediate response by the European Commission. On 7th of November 2018, the US sanctions placed on Iran resumed and EU Regulation 2018/1100 went into effect later that day, updating and reinstating the 1996 blocking statute protecting EU businesses from the US' extraterritorial reach.

2. The Blocking Statute

2.1 In Theory

The original blocking statute, EU Council Regulation No 2271/96, was put in place to counteract the effects of extraterritorial jurisdiction, namely US sanctions placed against Iran, Cuba, and Libya. The goal of the blocking statute was to empower persons to resist enforcement of extraterritorial laws. Under Article 4, no decisions or rulings from administration, tribunals, or courts will be enforceable or recognized on members of the EU in regards to the acts listed in the annex.[17] All of the acts in the annex are US legislative acts, including:

1. The National Defense Authorization Act for Fiscal Year 1993, Title XVII 'Cuban Democracy Act 1992, sections 1704 and 1706 that denies the importing of any goods originating from Cuba or any goods with material that originate from Cuba; and

2. The Iran and Libya Sanctions Act.[18]

Similar to the US, all persons who do not comply with the blocking statute face sanctions that may include fines.[19]

2.2 The Blocking Statute: In Practice

Interestingly enough, the possible damages of sanctions against Iran and Libya concern access to US financial institutions, rather than access to entrance of goods and EU persons into the United States. When considering some of the consequences of sanctions under the IEEPA, especially those 'blocked' by the blocking statute, the EU focuses on prohibiting companies from complying with certain extraterritorial restrictions. However, the EU cannot ensure access to financial institutions based on the US, as this is a matter for US domestic law. These sanctions are to be imposed by Member States at their own discretion. However, it is very uncommon that Member States actually do so.[20] This is in contrast to the US, which takes a much more aggressive approach.[21] One of the

[16] Statement from Total SA (May 2017)
[17] Council Regulation (EU) 2271/96, [1996] OJ L 309.
[18] Ibid.,
[19] Ibid., Article 9.
[20] Tamás Szabados, *Building Castles in the Air? The EU Blocking Regulation and the Protection of the Interests of Private Parties*. Cambridge Yearbook of European Legal Studies 25 (2023): 64–80.
[21] As seen in the cases of BNP Paribas and Total SA (no 12 and no 13, respectively).

reasons why it is so difficult to enforce lies in this very fact. There is an obligation of notification under the regulation that requires any person to report when they have been affected by an extraterritorial statute. However, it is likely that the lack of enforcement stems from what is called the enforcement paradox.[22] In this regime, the desire of the EU is to cancel the effects of extra-territorial jurisdiction, but the enforcement stems from a 'fear factor' where EU persons are punished for failure to comply with the statute. One possibility that can be explored by the EU would be the introduction of a centralized system that enforces violations of the statute more seriously.[23] The EU rarely ever interprets the blocking statute, but it could benefit from a more intense regime as established by the US precedent.[24]

2.3 It Quakes Like A Duck Therefore It Isn't

It would be more effective to pinpoint the strengths of the US inside the EU jurisdiction and target them; this is evident from the Digital Marketing Act (DMA), an EU act that designates a set of large tech companies as gatekeepers, requiring interoperability with other brands, transparency among their marketing practices, and prohibiting non-parity clauses.[25] While the DMA cannot be named as an explicit response to the secondary sanctions, it is important to note that the companies affected by the DMA are US based. They face special legislation that appears more competition based than the promotion of 'fairness,' which is the ultimate goal. Perhaps the EU should introduce more restrictive measures to force the US' hand by punishing its best performers.[26] Afterall, the DMA is not explicitly competition law and will not be chained by the typical regime under 102 TFEU.

3. 'The Brussels Effect'

While the extraterritorial exercise of jurisdiction is much narrower in the EU, they enact constant action in the name of 'territorial extension.'[27] While the US disincentivizes third parties to contract with sanctioned countries through punishment and revocation of access, the EU incentivizes companies to meet regulation by offering awards in the form of lesser demands.[28] They also award entire countries for complying with certain stipulations by offering breaks in regulation or trade. For example, the GSP+ program encourages developing countries to comply with 27 conventions that focus on labor rights and human rights.[29] Countries that comply with certain conditions and ratify the 27 conventions will maintain a dialogue with the EU to monitor that compliance, and they will be given a complete suspension in 66% of all EU product lines. In contrast to the US IEEPA, the EU maintains focus on offering companies incentives. This could be a very successful

[22] Szabados, *Building Castles in the Air* (2023).
[23] Bank Melli Iran v Telekom Deutschland GmbH, C-124/20 ECR 2021.
[24] Ibid. In this case the CJEU issued a preliminary ruling interpreting the blocking statute suggesting to national courts to exercise more discretion in application.
[25] Natalia Moreno Belloso, *The EU Digital Markets Act (DMA): A Summary*, European University Institute (2022)
[26] Geoffrey Manne, Lazar Radic, Dirk Auer, *Regulate for What? A Closer Look at the Rationale and Goals of Digital Competition Regulations*, (Berkeley Business Law Journal 2025)
[27] Joanne Scott, *Extraterritoriality and Territorial Extension in EU Law*, The American Journal of Comparative Law, Volume 62, Issue 1, Winter 2014, Pages 87–126,
[28] Ibid., 109.
[29] Council Regulation (EU) 978/2012, [2012] OJ L 303.

avenue for establishing confidence in the Euro as a global trade currency. Perhaps specific provisions under the GSP+ programs could establish more incentive to use Euro in GSP+ countries for third-party trading in public utility sectors. This increases dealings in Euros outside of the Community.

However, what adds teeth to the practices of the US is the enforcement of the sanctions. For example, persons are strictly prohibited from dealings with Iran and lose their access to US financial institutions. In contrast, those persons who wish to benefit from EU regulation by submitting to them, do so on their own accord. The US takes a much more aggressive approach. Now, the EU could explore a similar avenue by mirroring the US, but this would subject the EU to international scrutiny regarding their historic 'rule-following' regime.[30] It is likely stronger for the EU to focus on Euro strength and blocking statute enforcement so as to not violate provisions of the WTO, specifically the principles that do not allow discrimination of companies based on their home nation.[31]

What Now?

The EU enjoys the global status as a 'rule-follower.' It is entirely possible that the EU maintains this image while pushing back against the US. First, they might implement more policies and organs under 114 TFEU like that of the DMA. This would effectively target US businesses in the EU, similar to the US targeting EU businesses with US jurisdiction. Second, while the shortcomings of enforcement proceedings under the blocking statute have been noted, it could still be effective to bend the arms of the US. Finally, focus on Euro strengthening, especially in those countries already covered by GSP+, will allow for an increase in the support of emerging markets, giving the EU strength over time.

[30] European Union External Action, *The EU As A Global Actor* (2023).
[31] General Agreement on Trade in Services, Apr. 15, 1994, Marrakesh Agreement Establishing the World Trade Organization, Annex 1B, 1869 U.N.T.S. 183, 33 I.L.M. 1167 (1994).

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