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Extraterritorial Sanctions as a Challenge in the US-EU Relations

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Abstract. The United States of America is a subject of international relations which took the leading position in application of unilateral sanctions, especially extraterritorial restrictive measures. The main target of the US extraterritorial sanctions are legal entities and individuals which are in the jurisdiction of third countries, namely member states of the European Union. The increasing sanction pressure against Iran in the 2nd half of 2010s has brought the problem of American extraterritorial measures in the US-EU relations to the fore. Consequently, the aim of this research is to reveal the contradictions between the USA and the EU due to the strong influence of secondary sanction on the European business and examine the main countermeasures taken by the EU authorities in this regard.

Key words: economic sanctions, extraterritorial sanctions, the USA, Iranian nuclear program, JCPOA, the EU business, Blocking Statute, INSTEX.

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Экстерриториальные санкции как вызов в отношениях между США и ЕС

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Аннотация. Соединенные Штаты Америки являются субъектом международных отношений, который занял лидирующие позиции в применении односторонних санкций, в особенности, экстерриториальных ограничительных мер. Основной мишенью американских экстерриториальных санкций становятся юридические и физические лица, находящиеся в юрисдикции третьих стран, а именно стран-членов Европейского союза. Нарастающее санкционное давление в отношении Ирана во второй половине 2010-х годов вынесло проблему американских экстерриториальных санкций в отношениях между США и ЕС на первый план. Следовательно, цель данного исследования – выявить противоречия между США и ЕС ввиду огромного влияния вторичных санкций на европейский бизнес и рассмотреть основные ответные меры властей ЕС в данной связи.

Ключевые слова: экономические санкции, экстерриториальные санкции, США, ядерная программа Ирана, СВПД, бизнес ЕС, Блокирующий статут, INSTEX.

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The United States of America is a leader in the application of unilateral economic sanctions, which are an important tool of foreign policy. No other country can compare with the United States in terms of the number of initiated sanctions. Belarus, Iran, Cuba, Russia, South Sudan and many others have repeatedly become targets of American coercive measures. Support of terrorist organizations, violation of human rights, proliferation of weapons of mass destruction (WMD) or development of a nuclear program in a target country can be reason for the USA to impose sanctions against the state. The economic superiority of the USA over other countries and the dominance of the dollar as the world reserve currency allow it to actively use sanctions and impose their will on other states. The National Security Strategy (NSS) of the United States of America (2017) underlines that the purpose of American economic sanctions is to deter and coerce US opponents. The emphasis is on the fact that sanctions are intended to isolate states and their leaders who threaten the national interests of the USA and whose actions do not meet American values [1].

Secondary measures which have an extraterritorial nature play a special role in the sanctions policy. They allow to influence the economic and political behavior of entities under the jurisdiction of third countries. In fact, they serve as a tool to punish foreign legal entities and individuals for cooperating with the ob-

ject of existing American sanctions regimes. The main methods of punishing «violators» are including them in the «blacklist» (Specially Designed Nationals and Blocked Persons List, SDN-list) and imposing monetary fines for illegal activities. The active use of secondary sanctions is explained by their effectiveness as they contribute to the isolation of the state under primary sanctions. Extraterritorial sanctions are especially widely used by American authorities against the business of the European Union, which is heavily dependent on American markets and the US dollar. In this regard, Washington can strongly influence EU companies, threaten to impose secondary sanctions, and exclude them from the global financial system. Consequently, under US sanctions EU entities are more likely to make concessions or comply with requirements because member-states have too much to lose due to close economic ties with the United States.

The problem of extraterritorial sanctions in relations between the USA and the EU originated back in 1996. In this year the result of the activities of the US Congress was the right to impose secondary measures against third-country entities which cooperated with Iran's sanctioned companies or individuals [2]. Subsequently, the United States has used secondary sanctions many times against European entities in order to isolate the Islamic Republic. First of all, the contradictions between the USA and Iran were based on the development

of the Iranian nuclear program. The use of extraterritorial sanctions against the EU allowed the USA to achieve political goals in the Iranian direction during the presidency of Barack Obama (2009-2017). Firstly, the American authorities moved from primary sanctions to more severe secondary measures. Secondly, the White House has achieved the collective enforcement of Iran thanks to accession of the European Union and the United Nations to sanctions. Thirdly, extraterritorial sanctions affected the oil and gas sectors, which are strategically important for the Iranian economy. This has led to the withdrawal from the Iranian market of many European giants – French Total, Norwegian Statoil, Italian ENI and the Dutch branch of Royal Dutch Shell [3]. The American authorities have made every effort to reduce Iran's revenues from the sale of oil and gas, which were spent on the nuclear build-up. According to the World Bank, Western sanctions seriously affected Iran that the country's GDP decreased by \$75.5 billion, and exports of goods diminished by \$21.5 billion [4]. For example, after disconnecting Iranian banks from the payment system SWIFT, inflation in the country amounted to 30.5% from March 2012 to March 2013 [4]. Thus, the deteriorating social and economic situation in Iran together with tough sanctions regime forced the Iranian government to come to the table and make concessions on the nuclear program in exchange for the lifting of sanctions. Thus, thanks to im-

posing extraterritorial measures, USA has achieved its goal of signing a Joint Comprehensive Plan of Action (JCPOA).

During the presidency of Donald Trump (2017-2021) main contradictions in relations between the USA and the EU were revealed. In the early 2010s European countries followed the American sanctions policy against Iran. But then situation has changed. D. Trump's withdrawal from the JCPOA and the reimposition of large-scale sanctions forced the EU to change its strategy. Firstly, Brussels' discontent was caused by the collapse of multilateral efforts in the field of nuclear non-proliferation. Secondly, the trend towards the use of extraterritorial measures reached its peak: European companies were unable to continue their business in Iran, which they resumed after the conclusion of the nuclear deal. This has led to the fact that «E3» represented by British Prime Minister Theresa May, German Chancellor Angela Merkel and French President Emmanuel Macron did not support the US return to sanctions. Furthermore, E3 has expressed commitment to the JCPOA [5].

As a result, the problem of extending American sovereignty to entities under the EU jurisdiction was brought to the fore. European countries have raised the question of the legitimacy of US extraterritorial measures. The EU considers extraterritorial sanctions illegal as they have no jurisdictional justification and can hardly be justified by the provision of a threat to the national interests

of the USA. Extraterritorial measures are an attempt to regulate the persons' behavior of other states according to national legislation. Moreover, secondary sanctions have caused disputes within the WTO between the USA and the EU because they violate the most-favored-nation regime and lead to abuse of «security exceptions» by Americans [6]. The EU view on the legitimacy of extraterritorial sanctions has become a problem in relations between Washington and Brussels.

Extraterritorial sanctions also have a negative impact on the activities of EU companies. First of all, European banks are forced to pay huge fines for making illegal transactions due to the lack of well-oiled compliance system with sanctions. For example, the Office of Foreign Assets Control (OFAC) in 2014 imposed an immense fine of \$9 billion on the French giant bank BNP Paribas [7]. Another striking example is UniCredit Bank whose three branches – German, Austrian and Italian – had to pay a fine about \$1.3 billion [8]. Furthermore, the British bank Standard Chartered was fined \$639 million in 2019 [9]. The reasons of fines were providing illegal assistance to Iranian sanctioned persons through the US financial system. In addition, EU companies have to leave the Iranian market, as they do not want to risk being excluded from the American financial system, on which their international activities depend.

Consequently, European companies lose millions of dollars due to broken

ties with Iran. For example, Airbus lost 17 billion euros, PSA Group and Renault lost 850 million euros. Total lost 4.25 billion euros due to the cancellation of participation in the gas field development in Iran [10]. The total costs of European business may exceed 100 billion euros. Nevertheless, these calculations do not take into account additional costs that could be caused, for example, by the break of international logistics chains [10].

This forced the EU member-states to take several measures to protect the economic interests of business. Firstly, the European Union decided to enact a Blocking Statute of 1996 prohibiting EU entities directly or indirectly to comply with requirements and follow prohibitions based on foreign laws. Secondly, a special mechanism of trade exchanges with Iran called INSTEX was created. It is a very important step for Europe not only from the point of view of preserving the JCPOA and fulfilling obligations under this agreement. Moreover, it has a significant function of reducing the dollar dependence of EU countries on the USA. INSTEX, unlike SWIFT, is a barter trading tool via which Iranian goods are traded in exchange for European goods, technologies and services without making a basic financial transaction. So, the absence of direct payments between countries allows to circumvent US sanctions. However, in practice, everything is not so optimistic. The Blocking Statute was ineffective as it did not provide real protection from

pressure from the American authorities, and even encouraged a loyal attitude to US sanctions. According to Art. 5 of «Council Regulation (EC) No 2271/96 of 22 November 1996 protecting against the effects of the extra-territorial application of legislation adopted by a third country, and actions based thereon or resulting therefrom» the European Commission may issue a permit for compliance with American restrictive measures in exceptional cases if the non-compliance may cause serious damage to the interests of European business or the entire European Union [11]. As for INSTEX, it did not meet Tehran's expectations because it allowed only humanitarian transactions and did not concern the oil and gas sector. On the other hand, NSTEX still had an important significance - it became the initial step towards de-dollarization, which worry the USA.

European activities have caused concern in Washington. Despite the fact that INSTEX is still only a trial step in the new EU strategy, but in the future such major players as China may join it. It will increase the number of transactions without dollar. Many politicians and researchers have criticized D. Trump's «maximum pressure campaign» as it led to contradictions with the EU and forced Europeans to act decisively. An interesting assessment of D. Trump's policy is given by Adam Smith, a former sanctions officer under President B. Obama, and Richard Nephew, program director of the Center for Global Ener-

gy Policy at Columbia University. They note that the President resorted to such measures because they satisfied his desire to «do something impulse», to make a quick decision without additional consultations, especially when it came to unsolvable foreign policy problems [12]. It forms an opinion that the sanctions were imposed by Donald Trump aggressively, haphazardly, they used as censure and very often had no rational justification.

As a result, it has become necessary to revise the sanctions policy that US President Joseph Biden is trying to implement today. The Presidential administration decided to return to a multilateral approach, and rounds of consultations on the restoration of the JCPOA began in Vienna in spring 2021. This was caused by the concern of Western countries about uranium enrichment in Iran, the level of which reached 60% [13]. Nevertheless, so far there have been no significant changes in the Iranian direction as the negotiations have reached an impasse due to many contradictions between the USA and Iran. Spiritual leader Ayatollah Ali Khamenei stated that they are in no hurry to conclude a new deal because Iran is ready to return to its obligations under the JCPOA only after the USA lifts all imposed sanctions [14]. But the demands of the United States are opposite: they initially insist on compliance with all obligations under the JCPOA by Iran, and only then they will be ready to lift restrictive measures [15]. Mutual skep-

ticism of the parties has led to this situation: Iran does not trust the USA after unilateral withdrawal from the nuclear deal, and Washington insists that Tehran secretly increased its nuclear forces and did not comply with the JCPOA. On June 23, 2022, at a press conference with Russian Foreign Minister Sergey Lavrov, Iranian Foreign Minister Hossein Amir-Abdollahian underlined Iran's serious intentions in reaching a nuclear deal in order to lift economic sanctions [16]. However, it is not yet clear whether the parties will be able to overcome their disagreements and find an acceptable compromise during the Vienna talks.

Today, the Iranian sanctions regime has not undergone significant changes since the Trump's administration. Consequently, the European entities remain the targets of extraterritorial measures. However, Vienna negotiations to conclude new nuclear deal give the reason to believe that sanctions can be relieved in the near future. Current changes of the existing world order and the question of the forthcoming place of the USA in international relations allow suggesting that Washington will exert the strongest pressure on Teheran to re-sign the JCPOA on their own terms. Moreover, after the lifting of sanctions Iran could become a good source of gas and oil, especially for Americans and Europeans. Although, there is no certainty that Iran will bend to the US requirements. Therefore, there is a possibility of another scenario: sanctions

against Iran will exist for many years and tensions in the US-EU relations due to extraterritorial measures will remain.

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