
A Great BRIC Wall?

Emerging Trade and Finance Channels Led by Non-Western Nations Could Curtail the Global Reach of U.S. Law

The [announcement](#) of U.S. criminal charges against FIFA officials thrust into the mainstream what many in foreign government and banking circles have known—and bemoaned—for some time: the long arm of U.S. law is muscular, well-traveled and relentless.

How could the United States, a notoriously *soccer* apathetic nation removed from the sport's main centers of activity, take the lead against the impervious FIFA? FBI Director James Comey provided part the answer, and a mini lesson in U.S. jurisdiction, when he [said](#): "If you touch our shores with your corrupt enterprise, whether that is through meetings or *through using our world class financial system*, you will be held accountable for that corruption."

U.S. Dollar and Financial System-Tied Jurisdiction

Indeed. The United States is singularly positioned (and willing) to leverage its economic and financial strength to enforce its laws and policies globally. The U.S. dollar is the preeminent reserve and transactional currency. The U.S. financial system is the world's deepest. And, through Bretton Woods institutions like the World Bank and IMF, the United States influences global policy and the access and of other nations and currencies.

American economic and financial heft facilitates the extraterritorial reach of U.S. law.¹ For example, global transactions that are denominated in U.S. dollars and processed through the U.S. financial system "touch" the United States, come within its jurisdiction and create a jurisdictional nexus to foreign parties, property and events associated with those transactions.

European Concerns, An Evolving Challenge?

Recent cases against European banks illustrate some of the mechanics, and consequences, of U.S. dollar and financial system-tied jurisdiction. European officials have raised concerns about the [fairness](#) of U.S. enforcement and its potential impact on European banks' [stability](#). Some European banks have [considered](#) alternatives to dollar clearing through U.S. platforms. Such responses address the effects of U.S. jurisdiction, rather than its foundations.

A functional challenge to U.S. dollar and financial system-tied jurisdiction may be coming from unlikely sources. China, other BRICS nations, and non-Western states are—individually and together—developing trade, finance, and governance channels removed from the U.S. dollar and financial system, and the Bretton Woods framework. If successful, these initiatives will create new avenues for trade and finance that will operate, partially or more, outside of the prevailing system, and beyond the grasp of U.S. law.

U.S. Sanctions Enforcement Against European Banks

Between 2009 and 2015, eight European banks—including HSBC, BNP Paribas, Standard Chartered, and Credit Suisse—were assessed combined penalties of over \$14 billion for, among other offenses, violating various U.S. sanctions programs, including against Cuba, Iran, Sudan, Libya, Myanmar and certain “blocked” parties associated with sanctioned countries, terrorism, weapons of mass destruction proliferation, and narcotics trafficking.

Many of the transactions that led to U.S. sanctions liability involved U.S. dollar payments on behalf of foreign parties in relation to foreign business. For example, [according](#) to U.S. authorities, a BNP Paribas branch in Paris maintained an account for UAE company that was part of an energy group ultimately owned by an Iranian citizen and resident. The same Iranian individual beneficially owned the Paris bank account, through which the UAE company received payments from its sales of “Turkmen liquefied petroleum gas to Iraq.” Related to those sales, BNP Paribas processed, through U.S. banks, about 114 transactions worth \$415 million. To evade U.S. sanctions, the bank concealed in its payment messages to U.S. banks the links between the UAE company and Iran. The transactions violated U.S. sanctions because the benefits of the transactions processed through U.S. banks were received in Iran.

For these and numerous other violations, BNP Paribas paid an unprecedented \$8.9 billion penalty, pled guilty to sanctions-related criminal charges, and had certain of its U.S. dollar clearing privileges suspended for one year. The UK’s Standard Chartered Bank and HSBC paid, respectively, \$977 million² and \$1.9 billion for sanctions, anti-money laundering, and related violations.³ In the most recent of the cases, Germany’s Commerzbank admitted U.S. sanctions and anti-money laundering breaches and agreed to a \$1.45 billion penalty.

Emerging Governance, Trade and Finance Channels

Trade and investment between emerging and developing jurisdictions has gained in recent years, both in real terms and in interest levels in South-South cooperation. Such trade and investment flows will likely be reinforced by concerted efforts to develop new commerce channels that, given their pedigree, are detached from the U.S. dollar and financial system.

Challenges to Bretton Woods Institutions

It was striking that on the same day, March 12, that U.S. authorities [announced](#) the Commerzbank settlement, the United Kingdom announced its intent to [join](#) the new China-led, U.S.-opposed, Bretton Woods institutions rival Asian Infrastructure Investment Bank (AIIB) as a founding member. “Joining the AIIB at the founding stage,” Britain’s Chancellor of the Exchequer [explained](#), “would create an unrivalled opportunity for the UK and Asia to invest and grow together.”

In its bet on China, and by extension Asia, Britain was not alone. Within a week, G-7 members Germany, Italy and France announced that they would join the \$100 billion AIIB.

By April 15, [57 nations](#)—including Middle East rivals Saudi Arabia and Iran, the remaining BRICS nations, and stalwart U.S. allies South Korea and Australia—had become prospective founding members. The United States, Japan and Canada are, to date, notable holdouts.

The AIIB is but one piece of an evolving, non-U.S. centric global economic and finance landscape. Brazil, Russia, India, China, and South Africa (BRICS) have agreed to form a \$50 billion (initial capital) multilateral development bank that, while thus far lacking the momentum of the AIIB, is also outside of the Bretton Woods framework.

New Silk Road: Population 4.4 Billion

To facilitate its outward reach and connectivity, China is building trade and physical (land and sea) links to Europe, Central and South Asia and Africa through its “One Belt, One Road” project, expected to be backed by up to \$100 billion in Chinese state bank [loans](#) and a \$40 billion New Silk Road [fund](#). The belt and road project, [according](#) to Chinese officials, will reach 4.4 billion people across 65 countries, and produce \$21 trillion in economic activity. In March, China’s President [expressed](#) hope that the One Belt, One Road project would yield trade volumes exceeding \$2.5 trillion in “a decade or so.”

Renmibi (RMB) Internationalization

Through bilateral currency swap agreements, offshore RMB clearing centers from Toronto to Sydney, limited reforms to bolster RMB usability, and other measures, China has taken steps to internationalize its currency (some have questioned the efficacy of these measures). In November 2014, the RMB became, for the first time, a top five world currency (2.17% of global payments by value) [according](#) to SWIFT (the Society for Interbank Worldwide Interbank Financial Telecommunication).

While the U.S. dollar (and behind it the Euro) eclipses the RMB as a payment currency—45% of global payments are USD denominated according to the same SWIFT data—the entry of the RMB into the top five is noteworthy, given that its share of global payments in January 2013 was 0.63%. In May, SWIFT [reported](#) that the RMB had become the number one currency used in Asia for business with Greater China (including, notably, Hong Kong).

The AIIB and New Silk Road projects, and others, will likely facilitate greater cross-border RMB use—for example, China has [reportedly](#) indicated its interest in having the AIIB issue RMB denominated loans.

Diffusion of Global Economic and Financial Power

If successful—even if not entirely—the individual and combined initiatives of non-Western states will facilitate direct and follow-on non-dollar finance and trade, including for countries that, like Russia, require alternative channels of commerce to blunt the impact of sanctions.

As many have opined, the U.S. dollar is not likely to be dethroned anytime soon. And the U.S. financial market is too well developed to be seriously rivaled in the foreseeable future—ironically, the sophistication and predictability of U.S. law is key to the U.S. market’s global appeal, particularly for capital inflows.

But the U.S. dollar and financial system need not be displaced to diminish the global reach of U.S. dollar and financial system-tied law enforcement. In a world in which global economic and financial power is growing more diffuse, significant alternative trade and finance channels may be enough to curtail the reach of U.S. law.

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NOTES

¹ A distinction should be made between the bases for, and the effects of, U.S. jurisdiction. In the case of the kind of U.S. dollar and financial system-tied jurisdiction discussed here, the basis for U.S. jurisdiction is territorial—transactions processed through the United States financial system “enter” U.S. territory. The effects are extraterritorial, to the extent that parties, property, and/or events outside of the United States are affected or implicated.

² Standard Chartered was fined twice. First, in 2012 by federal and New York authorities for sanctions, anti-money laundering and related violations. And second, in 2014, by the New York Department of Financial Services following the regulator’s determination that SCB had failed to remediate anti-money laundering compliance deficiencies identified in the 2012 actions. The 2012 and 2014 penalties total \$977 million.

³ The discussion of cases herein is concerned only with U.S. sanctions enforcement and relevant jurisdictional dimensions (not merits), and not with any anti-money laundering or derivative state law breaches. The enforcement of U.S. unilateral sanctions against non-U.S. parties is particularly controversial, given that unilateral sanctions arguably further U.S. policy objectives, rather than multilaterally agreed policies or the integrity of financial systems. While certainly interesting, these issues are beyond the scope of this publication.