Soap opera in high places

By Fredrik Erixon - Today, 03:40 CET

Europe's aggressive regulatory unilateralism will not achieve anything good

Europe's best chance to revive its economy is to tap the emerging economies better. Yet Europe's approach to these markets verges on betraying a split personality. Barring Europe's self-harming behaviour vis-à-vis China, its trade policy is increasingly geared towards clinching deals with big economies and growth markets, both of which are necessary for trade policy to have a meaningful impact on growth in Europe. Yet Europe's Dr Jekyll – worldly, co-operative, and problem-solving – is all too often undermined by its Mr Hyde, a bureaucrat of primitive regulatory convictions whose mission is to expand Europe's regulatory dominion.

Europe's regulatory policy is increasingly aggressive. It uses access to Europe's market to force other countries to follow Europe's example. It is unilateral, offering little or no opportunity to negotiate joint approaches. And it is flavoured by hidden protectionism, conflicting with trade rules in the World Trade Organization, intended to support domestic producers at the expense of foreigners.

A case in point is Europe's biofuel policy. Espousing green ambitions, it is based on a notion that market access for foreign biofuel can be denied if the production process does not follow a gamed rule (going soft on biofuel produced in Europe) invented by Brussels. Offered a chance to rectify its policy, the European Commission recently took the opposite route by suggesting a reform even less transparent and evidence-based, now designed to force suppliers to report the carbon emissions from so-called indirect land-use change. A technical concept, it means that a biofuel supplier should report an ‘unknown unknown' – the emissions of other farmers in the world that increase food-crop production as a consequence of a farmer starting to produce the same crop for energy use.

Or take the controversial proposal to overhaul Europe's data-protection policy in a way that risks breaking apart the modern digital economy. While one wing of the European Commission is trying to negotiate free-trade agreements with big economies like the United States and India, another wing is busy defending a new privacy concept that, in its current form, may deny companies in these economies data portability rights. If these countries do not adopt new laws similar to Europe's, it is curtains down for anyone transporting data about an individual between Europe and these countries.

Europe's new regulatory drive is aggressive because it targets regulations abroad as much as regulations at home, often by applying laws and regulations extra-territorially. For instance, the new financial-transaction tax proposed by the Commission would apply on trade in European financial products, even if a transaction takes place outside the border of those countries participating in this tax scheme.

Another example is the EU's controversial carbon aviation fee, which will be applied extra-territorially and not only on travel in Europe's air space. No wonder other countries have reacted furiously to this fee, because it basically means that Europe will tax commercial behaviour in other countries.

Not that long ago, the European Union attacked attempts to apply regulations extraterritorially. The EU executive said in one statement, concerning the US's infamous Helms-Burton Act embargoing trade with Cuba, that “such laws represent an unwarranted interference by the US with the sovereign right of the EU to legislate over its own citizens and companies, and are, in the opinion of the EU, contrary to international law”.

Quite so! But what made Europe change its mind on such a fundamental principle of law? And what made it think now is a good time to flex its shrinking muscles of market power?

Twenty years after the United States, the EU (but not all its member states) is caught up in its own relative economic decline. It is suffering from what economist Jagdish Bhagwati once called the “diminishing giant syndrome” in global economy policy – a declinist condition breeding desires of power rather than plenty. Charged with decades of low growth rates in Europe, the prevailing notion is that other countries have gamed the system of open markets to benefit themselves by social, environmental or other forms of dumping, eroding Europe's capacity to compete fairly. The response has not been to impose traditional protectionism, but to unleash its platoons of regulators.

Europe's aggressive regulatory unilateralism will not achieve anything good. It is soap opera in high places; it only serves to comfort minions of befallen powers. As with the old aristocracy, the poorer and less influential Europe has become, the more obsessed it is by its own exclusivity. Europe now needs to improve its access to other markets, not shrink it by dumb regulatory moves that will provoke retaliation. The past decade has witnessed an enormous equalisation of market power in the world; other countries are no longer willing to dance to Europe's tunes, if they ever were. In an open and inter-dependent global market economy, power cannot be used in a market-closing way without inflicting huge harm on oneself.

Europe is still a big economy in the world, certainly one with capacity for leadership. But such leadership can only be exercised in co-operation with other economies of systemic or growing importance for the world – not in opposition to them.

Fredrik Erixon is the director of the European Centre for International Political Economy (ECIPE), a world economy think-tank based in Brussels.

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