

## Nota Bene Podcast Ep. 131

### U.S. Sanctions Against Russia: Valid or Ineffective Economic Policy? with Fatema Merchant and Mario Torrico

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U.S. - Russia relations have been complicated, to say the least. Given Russia's recent cyberattacks on SolarWinds and the government-directed attempts to influence the 2020 U.S. presidential election, the Biden administration is stepping up and issuing sanctions against the Russian government to curtail harmful foreign activities. But do these sanctions make a difference? We are joined by attorneys Fatema Merchant and Mario Torrico to discuss the efficacy of U.S. sanctions against Russia.

#### Guests:

Fatema Merchant is a partner in the Government Contracts, Investigations and International Trade and White Collar Defense and Corporate Investigations Practice Groups in Sheppard Mullin's Washington, D.C. office. Fatema focuses on supporting clients in their international business and global transactions to mitigate risk and address trade and regulatory issues. Her practice includes compliance counseling, investigations and cross-border transactional work related to anti-corruption, export controls, economic sanctions, anti-money laundering, foreign investment (CFIUS) and tariff and import regulations.

Mario Torrico is an associate in the Government Contracts, Investigations, and International Trade Practice Group in Sheppard Mullin's Washington, D.C. office. Mario focuses his practice on compliance counseling, investigations, and cross-border transactional work concerning international trade matters including customs, trade remedies, export controls, economic sanctions and embargoes, the Foreign Corrupt Practices Act (FCPA), and other areas of international trade law.

#### Transcript:

Michael P.A. Cohen:

Welcome to Sheppard Mullin's Nota Bene, a weekly podcast for the C-suite, where we tackle the current national and international legal headlines affecting multinationals doing business without borders. I'm your host, Michael P.A. Cohen. Let's get started. Welcome to episode 131 of the Nota Bene podcast. And thank you so much to all of our listeners in more than 100 nations around the planet.

Michael P.A. Cohen:

We so appreciate your continued participation in our ongoing conversations and your feedback. Please keep it coming. It directly helps to influence our programming. Before we get started with our show today, I wanted to give a special plug for a new podcast that has been launched called The French Insider, produced by Sheppard Mullin. The French Insider has a special focus for French companies doing business in the United States.

Michael P.A. Cohen:

The French Insider podcast will feature interviews with business executives on topics related to just that, French companies doing business in the United States, on a monthly basis. The podcast launched June 1st with three episodes that include interviews with Julie Myers Wood, the CEO of Guidepost Solutions, and Paula Clozel, the Plant Manager for Creapharm CS USA. As I said, the podcast will air monthly, so if you are a French multinational or French multinational affiliate interested in sharing expertise and listening to other expertise about doing business in America from the French perspective, this podcast is for you. Please don't miss it -- the French Insider with monthly interviews.

Michael P.A. Cohen:

Back to our podcast today that I am super excited about. My guests are Fatema Merchant and Mario Torrico here to talk about Russia, Russia, Russia title that they have given to some recent talks and writings. Fatema is a repeat guest on the show. She obtained her undergraduate degree from Al-Jamea-Tus-Saifiyah Arabic Academy, which has multiple campuses, in Karachi, Nairobi and Mumbai. She'll tell me which she attended, if she cares to.

Michael P.A. Cohen:

She obtained her Juris Doctorate degree in the United States at American University Washington College of Law in Washington, DC. She is fluent in Arabic, Gujarati and Urdu. I may have mispronounced all of those, if not some of those. I think I got Arabic.

Fatema Merchant:

I'm impressed that you tried Michael. That's great.

Michael P.A. Cohen:

I think trying at least goes halfway, so I so appreciate that. Fatema is resident in Washington, DC, where she represents multinational businesses in the areas of government contracting and international trade. She chairs the firm's Washington, DC, Diversity Working Group, and co-leads the firm's worldwide Diversity and Inclusion Attorney Network. Fatema, welcome back to the podcast.

Fatema Merchant:

Thank you so much, Michael, for having me. And I have to say, Michael is on our Diversity Working Group with me, so thanks for your participation on that tip.

Michael P.A. Cohen:

I wish I could actually do something meaningful to contribute to that group. I have enjoyed being part of it and certainly enjoyed the unbelievable work that you all have done both in Washington, Fatema, as well as seeing a lot of those experiments taken globally. Really great stuff, we could probably do a whole show on it, but really commend you for all of your efforts in that regard. And boy, we sure have heavy lifts to go.

Michael P.A. Cohen:

I think that's one thing we can all come out and say we know globally. Not just at the firm, I mean, just generally. Mario Torrico, my second guest today accompanying Fatema, obtained his undergraduate degree from Central Connecticut State University, where he graduated

Magna Cum Laude. He obtained his master's from Clark University. I'd love to hear Mario what you concentrated in with respect to that master's degree.

Michael P.A. Cohen:

He obtained his Juris Doctorate degree from George Washington University Law School in Washington, DC. Mario is fluent, in addition to his American English, fluent in Portuguese and Spanish. He is also resident in Washington, DC, where he specializes in cross-border transactions and international trade matters, which by definition are in fact a subset of cross-border transactions. Mario, welcome to the podcast for the first time. It's so wonderful to have you on the show.

Mario Torrico:

Thank you, Michael. It's great being here. You asked me what I concentrated at Clark University, and I developed a great interest in infrastructure projects in Latin America. So I studied a lot of the impacts of road expansion and how they interrelated with the extractive industries in Latin America, and that was my specialization at Clark.

Michael P.A. Cohen:

That's super interesting. China's Belt and Road Initiative actually runs to Latin America and South America, which I find fascinating, because otherwise it's simply just the historical pan-Eurasian trade route. But it makes a giant leap across the Atlantic Ocean or Pacific Ocean, depending on which way the road goes into Latin America. And maybe offline sometime, Mario, you and I could talk about China's investment in Latin America and South America infrastructure, which actually seems to be a super interesting topic right now in the world.

Michael P.A. Cohen:

Anyway, I really appreciate you being on the show. Thanks for joining me, and Fatema. By way of some staging, you all have been speaking and writing, as I said, about Russia, Russia, Russia. And lo and behold, we have a summit with now President Biden and Mr. Putin occurring, I think it may be within the next two days from the recording of this show. And seemed an opportune time to kind of visit US-Russia trade relations, if you will, particularly given recent events and the imposition of sanctions.

Michael P.A. Cohen:

Mr. Biden, of course, knows Mr. Putin at least from meeting with the Russian president when Mr. Biden was vice president. And my historical take on the context of those meetings is that they were not exactly engaging between the two. They say there's no love lost between these two world leaders. We've had all kinds of things happen in the Trump administration and leading into our current administration that could impact that. And that's probably enough for me.

Michael P.A. Cohen:

Fatema, why don't I just start with you to give us a little bit of backdrop to our moment in time between these two world super powers, but really only single economic power. I mean, Russia is just not one, but it hits above its belt for all kinds of reasons that you may even be about to describe. Talk to us about what we should know leading into this world environment between these two nations.

Fatema Merchant:

Sure. Absolutely it's an interesting time for US-Russia relations, given the Biden-Putin Summit, which from a high level is going to look very different than the summit we saw between Trump and Putin. But in terms of Russia's activities and malign, malicious activities, there's a historical context there, right? And we right now are seeing increased cyber aggression, we're seeing human rights issues, we're seeing aggression on the border of Ukraine, we're seeing election interference, we're seeing disinformation.

Fatema Merchant:

There's a whole host of activities you can point to. But one of the starkest things we've seen recently is Biden got into office in January, and on April imposed sanctions. Kind of his first foreign policy action against Russia, imposed sanctions on Russia. And that was in part due to the SolarWinds hack. For your listeners who didn't follow exactly, they probably heard the term SolarWinds, but may not have followed it really super closely. But you know those routine software update notices you get, you think about that normal top part of your technological life where you get the pop-up that says, "This is to fix the bug."

Fatema Merchant:

And you click on the link and then your software update happens. Well, in the Spring of 2020, SolarWinds, which is the Texas-based software company, they made a routine software update to its network management software called Orion. So it turns out that SVR, which is the Russian Foreign Intelligence Service, also known as Cozy Bear, which is the super cuddly nickname name for a Russian intelligence service, it had planted malware into that update.

Fatema Merchant:

So if you downloaded the tainted update, and you were connected to the internet, then the hackers could have full access to your whole network. This went undetected for months and then was publicly reported in December of 2020. Now, SolarWinds had 18,000 customers, including federal agencies like DOJ, NASA, DHS, and SVR had access to that many networks, so potentially could have inflicted a great deal of harm.

Fatema Merchant:

Apparently, they were only able to access 100 or 150 customers to be compromised. So Biden gets into office, imposes these sanctions on April 15. But in addition to the SolarWinds hack, which seemed to be the most egregious of Russia's behavior, also named other categories, election interference, corruption, the targeting of dissidents and journalists. You probably remember the poisoning of Alexei Navalny and harming the security of US allies.

Michael P.A. Cohen:

And so talk to me a little bit about the sanctions themselves. I want to come back to the topic of the cyberattack, but we'd love to hear a little bit more about the sanctions as well, because I have some questions, I think, or some thoughts actually percolating that tie the two together a little bit. And I'd love to get the thoughts of both of you on some of those things by way of foreshadowing. But perhaps first I'd like to hear a little bit about the sanctions, if you would.

Mario Torrico:

Sure. I think in order to discuss the sanctions imposed on Russia recently, let's just take a step back to describe the different types of sanctions, because not all sanctioned programs are the same. So we have, first, the comprehensive sanctions, and these are broad-based trade restrictions that prohibit commercial activity with the entire country. And a good example is Iran and Cuba. And then second, we have targeted sanctions, which are directed at particular persons, individuals and entities to deter certain behavior.

Mario Torrico:

And then we have a third type of sanctions that are sectorial sanctions. And these are a little bit similar to the targeted sanctions in the sense that we target certain entities, but within certain economic sectors. And these sectors tend to be the financial energy and defense sectors. On April 15th, Biden imposed what we call targeted sanctions. And Biden used AIPPA, which is that statutory authority to authorize the imposition of sanctions.

Mario Torrico:

AIPPA is the statutory authority that most modern era sanctions rely on for their authority. What the sanctions do, it provides a framework and empowers the treasury and state departments to impose certain sanctions. And these departments have continuing authority to make additional designation. So when the Russia sanctions came out in April, it simultaneously sanctioned six tech companies that provided support to Russian intelligence in carrying out cyber activities.

Mario Torrico:

Two, it expelled 10 Russian diplomats. And three, it prohibited US financial institutions from dealing in Russian sovereign debt. These were the broadest economic sanctions we have seen. However, we caveat that by saying the prohibitions were limited to new debt in transactions in the primary market. And then in addition to these sanctions, the White House came out with two additional measures in the executive orders.

Mario Torrico:

One is efforts in promoting a framework of responsible state behavior in cyberspace, in cooperating with our allies and partners to counter malign cyber activities. And the second one was efforts in bolstering cybersecurity to respond to malicious activities targeting infrastructure.

Michael P.A. Cohen:

Thanks, Mario, for that description. Let's just pause for a minute before I move forward. There's a lot of cyber activity that's state-sponsored. A lot of cyber activity is state-sponsored by the United States. And much of the west has famously used the cyber world for intelligence gathering, right? And we kind of are operating, it seems to me, in a world that is very mixed in its national wealth, right? Meaning that there is no wealth of nations. It never manifested itself.

Michael P.A. Cohen:

The reason I state all of that is that every nation has a massive incentive to commit constant cyber war just to stay even on the competition for information, right? I'm just wondering, is it really even realistic to expect quote unquote, "responsible behavior in this arena"? I mean, I just kind of think that, that expectation is so far off the mark because it assumes economic and military equanimity in a world that has none of any of those things, and is becoming more

fractious and distant in those areas than equanimous. So why is that a reasonable or even rational expectation for any presidential administration, by the way?

Fatema Merchant:

Yeah, I completely take your point about the economic disparities and the power disparities here, and take your point as to the cyber espionage point, right? Everyone is engaged in cyber espionage, that is a routine part of intelligence gathering state actors, and we accept some amount of that. But I push back, there are some super powers, right, presumably as we call them super powers still in the world, that we would expect some degree of responsible state behavior in cyberspace that are on somewhat of a level playing field.

Fatema Merchant:

Now, earlier you said, "Are we on a similar playing field as Russia?" No, not really, but we think of a nuclear power and we think about that, the history of the relationship between the United States and Russia, and then broaden that out to what we've seen in terms of actors that the US feels is a national security threat, China, Iran, North Korea.

Fatema Merchant:

I will say, as to this point, you raise a very good point. What can we expect? Can we expect some responsibility in terms of cyber activity from Russia, and where was the line here? You raised the point about cyber espionage. And that was a very good point that was raised by a lot of national security policy analysts, lawmakers, other really smart people that debated this idea.

Fatema Merchant:

Was the SolarWinds attack routine cyber espionage on a very large scale, or can we consider it a cyberattack or an active war such that sanctions should be triggered? And on that point, there's not clarity. Like, what was the line that they crossed? Where's the red line? And are we going to be consistent? Is the US government going to be consistent with that red line or holding countries accountable that cross that red line?

Michael P.A. Cohen:

Yeah, it gets to me to where was the red line? And I don't know. I'm out here on Hatteras Island, North Carolina, we run out of gas all the time. Sometimes that's just the jobbers don't get down here, man. But with the Colonial Pipeline hack recently, we were out of gas on this island for quite some time, and all up and down the East Coast of the United States. And that seems to cross a line to me.

Michael P.A. Cohen:

You're messing with the infrastructure and the wellbeing the, actual wellbeing of people. I mean when you're messing around with gasoline, you're talking about like ... There's serious stuff. I mean, cop cars need gas, ambulances need gas, rescue airplanes need gas, many Coast Guard vessels run on gas. I mean, it's not a joke. There's real stuff that can go wrong. It's not just people who can't get to the mall that day. We're still a mobile fuel society, and that really messed with the wellbeing of the East Atlantic. That's a big deal.

Michael P.A. Cohen:

Then there's commercial stuff, but I'm going to get to the sanctions for a second. Does any of it matter? I mean, I kind of look at sanctions in Iran the same way. The United States has had all

of these sanctions in Iran, and all it's doing is hurting the Ukrainian people until China comes in, and one swoop of a pen gives Iran \$70 billion, that more than makes up for all us sanctions against the country and puts it in a positive position going forward with a new trade partner.

Michael P.A. Cohen:

I mean, the US has some, I don't know, kind of ideal of itself that it can flex economic power and muscle in a world where it no longer is an economic hegemon. And so I'm kind of just wondering sanctions as we have come to understand them don't seem to be something that really cuts it in the modern world that we're in.

Fatema Merchant:

That is a good question, because these economic sanctions that were imposed, it seems like the pressure is not working. At the end of the day, you're saying, "The pressure is not working. Whatever tools you've been using in your toolbox, the outcome that we want is not happening," right? Russian aggression, rush behavior is not being deterred. I will say we kind of talk about all these activities lumped together, and I want to get Mario's thoughts on this.

Fatema Merchant:

Think about these two kind of type categories of activities. We have the hacking, the collection of information, breaching of our systems by Russian intelligence agencies, where the threat is real and the White House said critical infrastructure. Again, that is a really, that's an important part of why these sanctions were triggered, the fact that software supply chain is so critical to our critical infrastructure in the US. But when you think of that Colonial Pipeline, that is a ransomware attack, right, by a Russian criminal group, which is not directly a state actor, even though Putin harbors these criminals in the country.

Michael P.A. Cohen:

Yeah, but how can we say that? I mean, these people are just living the life on the Crimean peninsula, completely allowed to do whatever they want and protected, literally protected by the Russian government. And to say that they're not an arm of the state is ... I mean, isn't that affection?

Mario Torrico:

I think so. But it's interesting because Putin has taken the stance that, "They are not related to us. We have no connections with them. Therefore, we don't have responsibility as a state." Now, you could think of Russia and its history with its malign behaviors in the cybersecurity world and disinformation, and you know that these groups have close tie to the Kremlin.

Mario Torrico:

And you know that these groups are not acting without a wink and a nod from the Kremlin. So they are condoning their behavior because Russia does benefit from their activities. They are deriving benefits from their malign cyber activities. But there is a line, right, where as a country, I think, we can't just hold the whole state accountable for criminal groups, because then you start blurring lines between what is state activity and what is activity from arguably yes or no independent organizations. And I think we have to be clear on the criteria that we use to determine what that line is and what that criteria is in order to hold Russia accountable.

Michael P.A. Cohen:

Mario, doesn't that just mean any authoritarian government can wave a wand and say, "No, they weren't with us," and get away with it? If we're not going to hold nations accountable for harboring, supporting, endorsing, fostering criminal activity by organized groups that they are attracting and protecting, then there's not going to be responsibility. I mean, it just does it seems we're kind of mapping out a Western form of state action in a world that doesn't have those lines. What are your thoughts on that? What's your reaction to that?

Mario Torrico:

I think there's differences between Russia and other countries. And Fatema touched on this earlier, but Russia is a nuclear power and it is an economic power. So I don't think the US has to be measured in its approach to Russia, in my opinion. I don't think we can just impose broad-based sanctions, because what would be the impacts of those? If we go too far, we could be disrupting the global economy, supply chains that rely on Russia.

Michael P.A. Cohen:

How about we do to them what they did to us?

Fatema Merchant:

So that's really important, right? Because, well, Biden has publicly said that Putin bears the responsibility for harboring these criminal groups, providing a safe haven and basically telling them like, "Go, as long as you don't attack the motherland, go on about your way. Because everything that you're doing is benefiting Russia, right? It's benefiting the Kremlin." At the same time, what historically we've done hasn't worked, right?

Fatema Merchant:

The FBI historically has gone after these criminal groups individually with indictments and like, when are you ever going to get a Russian criminal into a US court? Never. Economic sanctions, not working. But you're right, now the idea is like, what can we do from a cyber perspective to actually harm the tools that they're using to hack us? You touched on this with the Colonial Pipeline issue, is it's clear that their targets are getting higher level critical infrastructure.

Fatema Merchant:

The ransom they're demanding is getting higher and higher in terms of dollar values and resources that companies have to expand in order to mitigate, right, the damage they're doing. So the threat is getting greater. We're not mitigating the threat, it's getting bigger and bigger. And you mentioned Colonial Pipeline, JSB, the meat processor, same kind of dynamic there, right?

Fatema Merchant:

They process 25% of America's meat industry, and that really harmed millions and millions of Americans, and potentially could disrupt the lives of millions and millions of Americans. For the US government to say, "Okay, don't pay that ransomware. We're going to deal with that in a different way," is also a very tough position because of the impact that it has on US citizens.



Michael P.A. Cohen:

Yeah, I just find it interesting, because I mean, I know the subject of our show is sanctions, and I wanted it to be, and Mario got through them pretty quickly. But we've all defined or used that term super power today. And we haven't defined it by economics, right? We've defined it by military might actually. So if one of those powers is now flexing muscle by way of cyber war, and whether you call that ...

Michael P.A. Cohen:

Queen Elizabeth very effectively attacked the Spanish for her entire reign under the skull and crossbones of Sir Francis Drake saying he wasn't quote unquote, "English and he wasn't in the Navy," but he was completely sponsored and sanctioned by England to attack the Spanish and the Caribbean. I mean, it was just organized piracy.

Michael P.A. Cohen:

And we're now seeing the ability and the anonymity in the cyber world in cyber wars to come to fruition. And I just wonder whether if you're in a cyber war, you don't have to fight with cyber weapons, whether economic sanctions are just something that is completely misapplied, certainly for a nation who doesn't care and for whom they don't matter, they just don't hurt. What's your reaction to any of it?

Fatema Merchant:

I think it goes back to playing based on two sets of rules, right? If we use cyber weapons, there's still going to be a policy discussion in the White House between a lot of policy experts about whether that is escalating a conflict, whether that would be considered an act of war, when those conversations are not happening in Kremlin.

Michael P.A. Cohen:

How do we know that?

Fatema Merchant:

We don't know that, because even when you look at the SolarWinds hack, they had access to 18,000 networks, but only stole information or compromised 150. Right? Was that specifically designed in a way to not be seen as an act of war, or was it just that's all they could get? We don't know whether ... and Putin's not an unintelligent man.

Fatema Merchant:

Like, he's probably had the same conversations, "What would be considered escalation? What is on the line? How far can I go up to that line before there is escalation by the US government?" But I mean, there will be a difference, I think, in this administration fundamentally about rhetoric, right? What the White House is putting out publicly and what they're discussing privately versus compared to the last four years.

Michael P.A. Cohen:

The United States is ripe for cyberattack, because there are great economic incentives given the size of its economy. But I don't see cyberattacks shutting down industry in China. I don't see cyberattacks shutting down industry in other major economies, and perhaps there is no other

economy to compare the US to other than China, that could be, but Europe as a whole, potentially.

Michael P.A. Cohen:

And I kind of asked the question in the back of my own mind, whether the United States has lost a step in the cyber world. And whether or not China and Russia are actually ahead of the United States in both cyber security and cyber warfare. That doesn't mean that the United States can't catch up.

Fatema Merchant:

Is what do you think?

Michael P.A. Cohen:

I don't know.

Fatema Merchant:

When you think about China, which is ... well, I mean, I'm asking your opinion when it comes to China, for example, the fact that there's not a million private actors that are involved in this vulnerability, does that make a difference on why we're not seeing the same scale of attacks there?

Michael P.A. Cohen:

Well, I think it very well could. It could also make a difference that China has more mathematics majors in college than all people in college in America. And it could also be the fact that they learn calculus in China in the seventh grade, and are already into theoretical mathematics by the time they're in the ninth grade. But it is not at all inconceivable to me that China is far ahead of America in connection with its cyber policy and cyber capabilities.

Michael P.A. Cohen:

And in part, some of that does relate directly to what you're talking about, Fatema, meaning that the state gets the benefit of those mathematics majors and computer science majors. In America, what benefit is there to going into the United States government versus going to get paid a nice handsome salary from Google, Apple, Amazon, or any number of other places that you can go into the private sector?

Michael P.A. Cohen:

And we're entering a new world in the 21st century, and there's a new playing field out there that is being engaged in war-like matters. I mean, you've used the term act of war. When is something an act of war? That very question, right, suggests that there's a playing field out here where some aggression is being undertaken that is coming close to those questions.

Michael P.A. Cohen:

And it does seem to me that governments that are sponsoring computer science and harnessing their populations in that field may be ahead of the ball game because they see that, that's the new arms race. And is America equipped to be in that arms race? Have we been sponsoring education in computer science and recruiting folks to government from the top institutions in an organized and systematic way? And so I do, I think it's a legitimate question to

raise. I think to hear whether economic sanctions matter against a cyber superpower and whether or not the United States is behind in the cyber warfare.

Fatema Merchant:

And one of the biggest piece of evidence to your second question, that we are behind, is the fact that the only bipartisan measure that was able to be passed in recent history was to give money, a quarter of a trillion dollars, to science and technology and emerging technologies, right? We're basically admitting by doing that, that China is ahead.

Fatema Merchant:

And so to that point, absolutely, we are behind and we have to catch up. Otherwise, you're right. There's no economic sanctions to the extent they are not deterring. The only way is to get up to speed, get our capabilities up to the level of China, Russia, other threat actors that may pose threats to the United States.

Michael P.A. Cohen:

That's a salient summary. I find that to be just 100% right. There's no argument around any of those points. Here's my second question for you both, and it relates to your international trade background and Russia as an example, for sure, but probably a more broad question. In this new 21st century world where we have sort of empowered the rest of the world to understanding that economic dependency on the United States is not a good thing, and also not a real thing for most people anymore, there's an alternative out there and they're certainly willing to fund you.

Michael P.A. Cohen:

Is the United States historical 20th century sanctions policy, I'll call it, relevant in a world today? I mean, aren't we just isolating a nation from US relationship, but driving them to a relationship with authoritarian regimes that are now equal, if not greater, economic powers, particularly China? I mean, I take the Iran example or Venezuela. Sanctions. Sanctions. Sanctions. So what? Are we outdated?

Michael P.A. Cohen:

That was built for a world where the US was the trade hegemon and sanctions mattered. But nowadays, the US imposes sanctions and somebody just looks to China, and they get protection, and they get economic benefit and they get a willing partner who couldn't be happier about the US cutting off an economic relationship with someone that they could start now. And that's not just true with just China, by the way. So I wanted to get your reactions to that thought I had. And by that, I mean, I'm just positing the question. I have no real answer to that question.

Mario Torrico:

I'm glad you're asking this question because Fatema and I often discuss how, because we raise the same issue. We look at Venezuela, for example, and how that when we impose sanctions on Venezuela that created an opening for Russia and China to go and make dealings with Maduro, and how it's empowered the Maduro regime in a certain sense. And it has really impacted poor people in Venezuela, right? And the people at the bottom who can't have access to US dollars.

Mario Torrico:

And we have internal debates as to what is the right action to take. Are sanctions working? With Russia, we've seen only a moderate impact. Economic study is showing that there's only a moderate impact in their economy. So you're right, these are the types of conversations, I think, we should be having, especially our administrations. And I think just reading the executive order, there is an indication of that, right?

Mario Torrico:

There's a suggestion that we need to do something more. This is the first time, I think, we've actually come out and said Russia bears responsibility through the cyberattacks. Russia is behind this, and we need to do something. And I think, not to get political, but I think we're in a different political era now, where under Trump, our foreign policy was very unclear towards Russia and very dysfunctional because our intelligence agencies would say, "Russia is a threat to the US. Russia has engaged in election interference," and we would have our own president undermining our intelligence agencies.

Mario Torrico:

And when we need to rely on the president and top officials to kind of shape what that relationship is going to be like and what the response is going to be like. And under the Trump era, we had aggressive responses to China, for example, with Section 301 duties and all these other measures taken in response to China, but we didn't see that same reaction towards Russia. I think we're in that point where we're still trying to formulate a policy towards Russia, and formulate and devise a plan to respond to Russia that we saw a vacuum in the last four years

Fatema Merchant:

And Michael, to your point about whether the sanctions, whether they're outdated. I agree completely, especially when it comes to Iran sanctions, like the impact on just regular people in Iran versus what we're trying to accomplish with the Iran sanctions. This is where sometimes secondary sanctions can be useful, because the idea of secondary sanctions or sanctions that are imposed with our allies, right, in a more collaborative, cooperative way.

Fatema Merchant:

Now, because maybe we by ourselves, the United States does not have the economic power, but with the EU and other allies you have more heft. But absolutely, to your point, like, are we just creating a world where these authoritarian states can just have their own relationships and then the west is completely isolated? Yes, that's what it would appear to be.

Michael P.A. Cohen:

But that's what's happening. I mean, I look at Myanmar. It's a coup against a democracy that used to be one of those things that mattered, and now it's not even an active story on the BBC morning news anymore, it's just an afterthought. Why have a democratic government? It used to be dependency on America. Well, there's no dependency on America anymore for most of the world.

Michael P.A. Cohen:

How many Americans are working in Africa? How many Chinese are working in Africa? I mean, it's a massive difference. America's withdrawal from the world may be an intentional policy, but if you're going to do that, then you have to recognize that there's no longer an economic dependency and that your old tactics don't really matter.

Fatema Merchant:

There's one part of it about actually deterring behavior and impacting, but there's also a statement, a political element to sanctions, right? There's a statement against certain types of behavior. Now, I totally agree, whether they're working is a separate question. But if you see human rights abuses, for the US government not to do anything, right, that's our alternative to sanctions. That's the diplomatic tool to express at least our disagreement with certain types of activity around the world.

Michael P.A. Cohen:

Well, but it's just a statement, it's just a mouse that roared. And I just kind of get the sense that the cyber warfare we're experiencing or cyberattacks that we're experiencing are another sign of aggression against America, because America is weakened and rather than America is strong. And I kind of see this area of sanctions as representing that. When you are now just imposing sanctions for statements, without any real expectation that they matter, that's kind of desperate gasps for a declining state, not very powerful in my mind at protecting its citizens.

Michael P.A. Cohen:

I find this to be an interesting era for America and was anxious to talk to you both about sanctions, because I really wanted to have a discussion about whether sanctions is even a valid economic policy at this point in America's history or whether it's not just hurting ourselves and hurting the wrong people overseas. And that's kind of a bigger question, but I don't expect any of us to tackle it on this show, but it's one to maybe ask. What do you think about that?

Fatema Merchant:

No, absolutely. And as you were talking, I was just thinking about a lot of our sanctions are targeted towards oligarchs or like the top, right, the masterminds and the people behind the state action, and they just get more sophisticated in hiding their money.

Michael P.A. Cohen:

Right. And I read in the press about the latest Russian oligarch who's having a great time at a London club. I mean, it's like the sanctions are supposed to keep these people from traveling around, but that doesn't even seem to be happening. If you have a yacht and an airplane, you can pretty much go wherever you want in this world, at least if you're an Russian oligarch, that's for sure.

Fatema Merchant:

I agree with you completely, rethinking the way sanctions policy works in this modern world. Are we stuck in an era where we were the one superpower or had a lot of other countries being economically dependent on us? But whether in a vacuum, theoretically, the concept of sanctions as a foreign policy tool maybe a different question and different discussion.

Michael P.A. Cohen:

Fair enough.

Fatema Merchant:

Right? You have to have the power for your sanctions to work. And if our power is declining, using those tools may not make sense any longer.

Michael P.A. Cohen:

That's interesting. Because if we all believe that the sanctions aren't working, then that is actually evidence of a decline in our economic power.

Fatema Merchant:

Yes. Or the capabilities of other countries, yeah, surpassing us, right? But at the same time, as a diplomatic tool, what do you do? There's a spectrum of action that you can take. And as a diplomatic tool, we're probably not going to give up on it in our toolbox, right? But there is this idea of like, how do you make them more effective, and how do you target them so they're not impacting people around the world who are most vulnerable in society? Which is something that I think about a lot in terms of our comprehensive sanctions, for sure.

Mario Torrico:

Just to tackle on what Fatema said, I think there's also a political element of sanctions, and why perhaps we might not see. We're going to see the continued use of sanctions because there's a political element to it, right? And we've seen that, I think, in the Trump administration, even before that, just the symbolism of a sanction, right? Everyday Americans won't know the nuances, but will see that the administration has imposed tough sanctions on Venezuela and think, "Okay, we're doing something about this. There's going to be a response," and not understanding that we could have done something more, or was it the right measure to take, or is it appropriate?

Mario Torrico:

But just the fact that a president will impose sanctions sends a strong message and a signal, I think, to a lot of people who are living now in the United States, like Venezuelan Americans and Florida Cuban-Americans in Florida that a large swath of that populace supports the use of sanctions, independent of whether they're effective or not, just by mere symbolism. Right? I think we're going to still, whether they're effective or not, I don't think we're going to see presidents continue to use sanctions.

Michael P.A. Cohen:

Yeah. When you said sanctions are political, I first thought, "Well, of course they are." I mean, it's a political message to the sanctioned country being flexed through an economic muscle, but it's a political message, right? It arises from some political dispute or some act that is, I would call political, meaning like SolarWinds, that we consider something in there, right?

Michael P.A. Cohen:

But you raised a really interesting perspective, I think, Mario, that was a bit different, which is that we'll see a continued use of trade sanctions by America for its domestic political message

and vote getting, even if it's mere sophistry, meaning a clever argument with literally no guts, the very bane of Socrates, meaning he detested the Sophist for just these kinds of reasons.

Michael P.A. Cohen:

You're doing something for show, but it means nothing at the end of the day. You've answered nothing, but you've got to vote. But that's an important part of America, frankly. So long as sanctions remain popular with voters, we're likely to continue to see them used by American politicians, regardless of their impact, and will be a continued complicating factor at least with trade.

Michael P.A. Cohen:

It probably matters more for our trade partners in many ways than it does sort of the bottom line impact. Meaning, our trade partners now, including national trade partners, have a whole set of criteria that they're subjected to, right, that they have to navigate because of the American politics at issue. And that's kind of an interesting question as well. What do you think about that?

Fatema Merchant:

Oh, absolutely. Our trade partners, I mean, often, that's where we see the real tension, is our trade partners now have a whole host of compliance obligations and things that they have to do to make sure that they're complying with US sanctions. And for other trade partners, they are economically dependent, or we have a business relationship that they don't want to see harmed. And that still begs the question of whether the underlying conduct. If it's to deter or punish, is it doing that? In a lot of cases, no.

Michael P.A. Cohen:

Why do you all think that we're seeing things like SolarWinds and the Colonial Pipeline? I mean, is it just for the 5 million Bitcoin? Is it really all economic ransomware or is it for ... Are we seeing a new world where folks are sending messages about who is relevant and how relevant they are?

Fatema Merchant:

That's interesting. Yeah. I mean, for the individual criminal groups, I mean, just thinking about the trajectory of what we saw in ransomware attacks historically and what we're seeing now, there's probably a combination of both, right? Like exercising, exerting power to show who has dominance in cyberspace. But \$5 million, when 10 years ago it would have been 25,000, it's a chunk of change for a criminal group. And now we're just funding them to continue more attacks in one sense.

Michael P.A. Cohen:

Right. Yeah. It's not like they need the funds. I mean, it's really pretty much pure profit if they get away with it. But I do wonder whether we're seeing all this activity recently because the world is shaking out to figure out who's relevant in this new world of cyberattack. Take a country like Israel, which is cyber advanced, I would call it. And it has had to be for some time, at least by its own belief, that it has had to have the cyber capability to prevent not just cyberattacks against it, but the development of weapons that could be used against it and other types of things.

Michael P.A. Cohen:

And it hits perhaps above its bell here. I mean, I don't see a lot of cyberattacks directed to Israel because their sponsors is very Israeli. It's usually going to take out a whole lot more, and their response is cyber, right? And it's efficient, and it's immediate. And they don't care about public opinion or what happens afterwards, because they're implementing it for different reasons.

Michael P.A. Cohen:

It is interesting to me that all of this cyber activity that we're talking about has come out of Russia again. And I wonder whether Russia is showing the world that it remains relevant in this 21st century, that these are punches, literal punches to say, "Hey, we're still a heavyweight."

Fatema Merchant:

Yeah. And well, it's showing its relevance by essentially exposing US weakness. Right? So there's a lot of other countries that enjoy that part, the exposure of US vulnerabilities and US weakness. I don't know, I can't speak too about that. Even when you think about a lot of the conversation or messaging, and a lot of what comes out of Russia, whether it's misinformation, it's kind of showing the US where all of its vulnerabilities lie, whether it comes to election interference or these types of cyberattacks or ransomware attacks, right? It's on all aspects of our critical infrastructure. And meanwhile, China enjoys that, Iran probably enjoys that, other countries tangentially benefit from the exposure of those weaknesses.

Michael P.A. Cohen:

But let's bring it back to this summit that we're about to see, right, between Mr. Putin and Mr. Biden. I mean, absent the cyberattacks of the past two years, what would Russia really have to say or bargain with or leverage in a conversation with Mr. Biden? And why would that be an important conversation? It's only important perhaps arguably because of their cyber aggression and capability. And what else is there to be gained?

Michael P.A. Cohen:

We've gone long ways now. Everybody knows no one's going to launch nuclear missiles at each other. Now it's really just about keeping them out of the hands of fanatics. There's no nuclear arms race going on anymore. Russia has no navy to speak of. There is no cold war under the oceans. Russia may be economically significant to folks geo located to its natural resources, but it's completely economically insignificant to the United States.

Michael P.A. Cohen:

It is not a needed trade partner in any way, manner, shape or form, in any aspect of the American economy. And Russia has no financial institutions that are necessary to underwrite any part of the American economy. So other than the cyberattacks leading to this meeting, what wouldn't make that meeting kind of on all one way meeting for America? And perhaps that's a little bit of motivation. I don't know.

Mario Torrico:

I can speak as to what the Biden administration's approach is to the meeting. I think they've made it very clear that the major topics that Biden wants to raise is elections interference, cyberattacks, human rights in Ukraine. Biden is coming in with an agenda and wants to see what Putin's reaction is. I think there's a stark contrast between this meeting versus the 2018



meeting where there was a lot of US condemnation for Trump not raising certain issues, and where it was clear that he needed to at least signal to Putin that we weren't going to stand by those acts, right?

Mario Torrico:

So I think on the one hand, yes, we do have a lot of clarity on the US side as to what the agenda is and what matters for Biden. And I think Biden has come out publicly being very strong against the Kremlin and keeping kleptocrats, putting them on notice he's going to go after them and they're going to be held accountable. But there's clarity. In some, there's clarity on the US side. I'm not sure as to what Putin intends to raise or what the political agenda behind that meeting is for them.

Fatema Merchant:

It's really hard to know exactly what this new era of US-Russian relations is going to look like, right? Because of exactly what we've talked about, Russia's capability in cyber space and America's vulnerability in that same arena. And the kind of the broad range of what it seems like Russia's policy goals are in terms of not just cyber warfare or cyberattacks, but also disinformation campaigns and just weakening US's position in the world. I think we'll get a sense after this meeting a little bit about what Biden's agenda or what his responses will be going forward if Russia's aggression continues. It's hard to know.

Mario Torrico:

We describe it as taking the temperature on US-Russia relations. But I don't think we've talked about this extensively with Fatema, and kind of seeing where, what the practical outcome of that meeting is going to be. And we don't see that there's going to be any major policy agreement. I don't think, unless we're completely off here, I don't think there's going to be any major policy agreements there. It's probably going to be Biden raising these issues and we'll see Putin's response. But seeing anything concrete, I highly doubt that.

Michael P.A. Cohen:

Yeah, I think about all these topics for what they mean to our multinational audience, and they do, they actually mean a lot. When we're talking about sanctions, generally, we're talking about a reflection of a transitioning world when it comes to economic power and impact. And we're currently in a world where there is indeed a lot of political stratosphere that a multinational has to straddle, right?

Michael P.A. Cohen:

And that world is quickly dividing up into two halves, that are West, East. And that's happening even in the East for historical Western allies. I mean, China is the number one trade partner for almost every nation in the world, even Germany now. And we are seeing the balance. I mean, it's just a fact, again. The balance of economic power around the world is shifting. It's not stabilizing, it's shifting. It's continuing to shift.

Michael P.A. Cohen:

And I think this area where you all play economic sanctions is one that not only are multinationals are going to have to straddle with more and more frequency, but also interestingly to me is almost evidence in some way of the shift in powers that is occurring and the rebalancing of the power around the world economically. I really thank you both for all your time

today. It's been such a pleasure to speak with you. It's been such a pleasure and such a gift to have it. Thank you so much for all your time today, coming on the show. Any last thoughts that we ought to cover that we may not have hit before we all wrap this up?

Fatema Merchant:

I think we covered everything and more. Thank you so much, Michael, for the invitation. And we hope that your listeners enjoy this conversation as well.

Michael P.A. Cohen:

That they will. That's probably why my producer will keep all of it, because I do think it's actually probably pretty darn relevant to our multinational audience. Mario, any last thoughts on your end?

Mario Torrico:

No, I echo what Fatema said. Thank you so much for having us here. We really enjoyed our time and our discussion with you.

Michael P.A. Cohen:

Thanks, likewise. I wish I could have spoken to either one of you in any of your other fluent languages, but alas, I am an American mutt and a Californian at that, and I speak California Spanish to get by. And given the fact that the Spanish founded the Western world part of that state, and then limited English because it's American English, as my friends from the United Kingdom like to make very clear to me every time I actually understand their command of the language and how far it exceeds my own.

Michael P.A. Cohen:

But it was wonderful to have you both today. I look forward to our next chance to chat together. That's it for this week folks. Next week we'll tackle Section 363 bankruptcy with San Francisco's Ori Katz, moving from something that is evidentiary in the world balance of stage, to something that is an American business phenomena creating quite a business stir in this all new American 21st century economy. So please stay tuned. And as always, thanks so much for listening.

## Resources Mentioned:

["Russia Russia Russia! The Biden Administration Imposes Tough Sanctions on Russia,"](#) Global Trade Blog Post, April 15, 2021

## Contact Information:

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