Quest Journals
Journal of Research in Humanities and Social Science
Volume 6 ~ Issue 4 (2018) pp.: 10-19
ISSN(Online) : 2321-9467
www.questjournals.org

Research Paper

A New Policy Instrument In International Trade: "Tax Terror"

Fevzi Rifat Ortaç[*] Hilmi Ünsal[**] Selin Ertürk Atabey[***]
Correspondence to Fevzi Rifat Ortaç

ABSTRACT: *IN the post-1980 period, along with the rapid growth of global trade developing countries attracted heavy foreign investment as well. In multinational corporations' decisions on which country to invest in the tax benefits offered by the prospective host country figure prominently.*
Tax subsidies given by their country of origin and by the country in which they operate and invest, raise multinational corporations' profits significantly, but they also result in problems in terms of international competition and the protection of national economies. Furthermore, multinational corporations are often dragged into the fray of global politics. A recent high-profile example is the taxation crisis between the United States and the European Union. When the European Commission imposed tax penalties on firms based in the United States, the United States, imposed retaliatory tax penalties on European firms operating in the US. These tax fines were more political than economic in nature and involved a strategic dimension that arguably have existed since the inception of the EU. Some described the spat as a tax war, but, perhaps, 'tax terror' is a better description.
This study first discusses the concept of "tax terror" as a new policy instrument in international trade, followed by a review of the major tax fines faced by multinational corporations. The conflict is then evaluated from the perspectives of tax and commercial law. The conclusion discusses the economic effects that resulted from the mutual tax penalties and recommends solutions to the problem.
KEY WORDS: *International Trade Policies**,** Multinational Corporations, Tax Heaven, Tax Burden, Tax Terror.*

Received 23 March, 2018; **A**ccepted 09 April 2018 © The Author (S) 2018. **P**ublished With Open Access At **Www.Questjournals.Org**

I. INTRODUCTION

Many developed country corporations, with budgets larger than those of developing economies they invest in, are an important force in the global economy today. As a result of rapid capital accumulation in developed economies, these corporations continue to expand in number and in scope. The main factor behind this phenomenon is a new manufacturing model known as global manufacturing. The transformation of developed economies into information societies, pro-environmental attitudes, insufficient demand within their countries of origin, the need to lower manufacturing and marketing costs, and above all, the desire to maximize profits, gave rise to the global manufacturing model.

Another factor that added momentum to this process was the capital needs of developing economies. Subsidies provided by governments in developing economies to attract foreign investment resulted in a rapid surge in international economic activity and/or the growth of international corporation investments in these countries. First and foremost, among these were tax subsidies. Often international corporations enjoyed tax subsidies both in their country of origin and in the country in which they operated, experiencing record increases in their profits. As this rapid growth created problems in terms of international competition and the protection of local economies, multinational corporations also became entangled in global politics.

A prominent case in point is the recent taxation crisis between the United States and the European Union. In retaliation against the tax penalties imposed by the European Commission on firms based in the United States, the United States engaged in similar practices against firms based in Europe. These events were more political in nature than economic. Often described as a "tax war," the crisis can be seen as a manifestation of the tacit strategic competition between the European Union and the United States. However, from the perspective of the multinational corporations, "tax terror" can perhaps be a more fitting description.

This study will first discuss the concept of "tax terror", followed by a review of the major tax penalties faced by multinational corporations. In addition, the practice will be evaluated from the perspectives of tax law

and commercial law. Finally, the economic effects that resulted from these tax penalties will be discussed, and solutions will be recommended.

II. 'TAX TERROR' AND AGGRESSIVE TAX PLANNING

Tax penalties imposed by the United States and the European Union on one another's corporations are described by most authors as "tax terror" (Burns, 1917: 17). However, we are of the opinion that what transpired was not war. The Merriam Webster dictionary defines war as "*a state of usually open and declared armed hostile conflict between states or nations*". This definition may be the military definition of war, however, from a sociological perspective, the concept of war is used in a different sense. War also refers to a struggle with the aim of achieving certain ends. In the phrases "war on smoking" and "war on tuberculosis", for example, the word 'war' is used to express a struggle aimed to achieve social ends. Such struggles involve legislation and social norms.

Terror or **terrorism** is defined as "the use of force, intimidation or violence against civilians or officials, or local or national authorities in order to achieve political, religious and/or economic goals". (Best and Nocella, 2004: 6) The United Nations defines acts of terrorism as peacetime equivalents of war crimes (Dedeoğlu, 2016: 3). In 1999, the United Nations defined terrorism as "criminal acts intended or calculated to provoke a state of terror by pressuring the general public, a group of persons or particular persons for political, philosophical, ideological, racial, ethnic, religious or any other reasons". Illegal practices and methods covered by this definition are considered to be acts of terrorism (Walter, 2003: 11).

This quick review of the concepts of war and terror can help elucidate why the imposition of penalties on multinational corporations by the countries in which they invest is more aptly considered an act of tax terror rather than war, since intimidating or deterring the other by means of pressuring non-governmental actors seems to have been the primary motivation. Fines were imposed by the EU on US parent companies with subsidiaries operating in the various EU countries. Was this done with the aim of reducing their operations or market share in these economies? If so, this of course raises the question, why a country that provides subsidies to attract foreign investment in the first place would want to impose tax penalties to make life difficult for a multinational corporation investing in that country. The so-called 'Double Irish with a Dutch sandwich' technique gives an idea why.

The accounting and tax experts of multinational corporations keep a close eye on any tax advantages that their international investments can take advantage of. This process culminates in what is called, aggressive tax planning, which ultimately gives rise to the tax terror phenomenon as it causes countries to lose tax revenue rapidly, forcing them to take countermeasures in the form of tax penalties as domestic political tensions mount.

2.1. Aggressive Tax Planning as the Ultimate Cause of Tax Terror

The main goal for private companies is to survive in a competitive market environment by minimizing their costs and maximizing their profits. To this end, companies take measures to reduce or avoid taxes, which can make up a significant portion of their costs. In this context, tax planning is the general term given to companies' tax avoidance efforts whilst remaining in compliance with the law (Ariffin, 2013: 209). In other words, tax planning is basically tax avoidance through legal means, and refers to all operations and strategies undertaken by taxpayers -multinational corporations in particular- to achieve that end (Demir and Gökçen, 2014: 18), weather it is national or international in scale. When such activities are undertaken, from the perspective of individuals, organizations and states, not within national boundaries but in the international arena, they are called international tax planning. From this perspective, international tax planning arises from different tax systems in different countries (Rohatgi, 2002: 5).

Tax planning consists of three stages: planning (setting goals and developing strategies), implementation (forming a team and implementing plans) and assessment (comparing expectations and outcomes in order to measure performance) (Amadasun and Igbinosa, 2011: 54). Feedback is necessary at every transition between these stages.

Multinational corporations pursue tax planning aggressively to minimize their tax obligations (Fuest et al. 2013: 12). Aggressive tax planning exploits discrepancies between tax systems in different countries at the international level, and legal loopholes within the tax system at the national level. A significant loss of tax revenue is the invariable result for both home and host countries.

Some of the instruments used for aggressive tax planning are as follows (İbiş, 2004:78):

- *Restructuring of the international corporation and its group of subsidiaries through transfers, mergers or purchases,*
- *Utilizing companies spending policies,*
- *Reviewing company sales and marketing activities,*
- *Utilizing double taxation agreements,*
- *Utilizing subsidy and deduction practices,*

- *Establishing overseas companies and utilizing free trade zones, technology development policies and offshore banking.*

A commonly used method of aggressive tax planning is the so-called "Double Irish with a Dutch sandwich". This technique works as follows: Multinational corporations open branches in countries with the lowest tax rate for a given type of activity. Thus, earnings are moved from countries with higher tax rates to countries with lower tax rates, which can be as low as zero in some cases. Many US corporations such Google, Apple and Facebook, among others, use such aggressive tax planning methods.

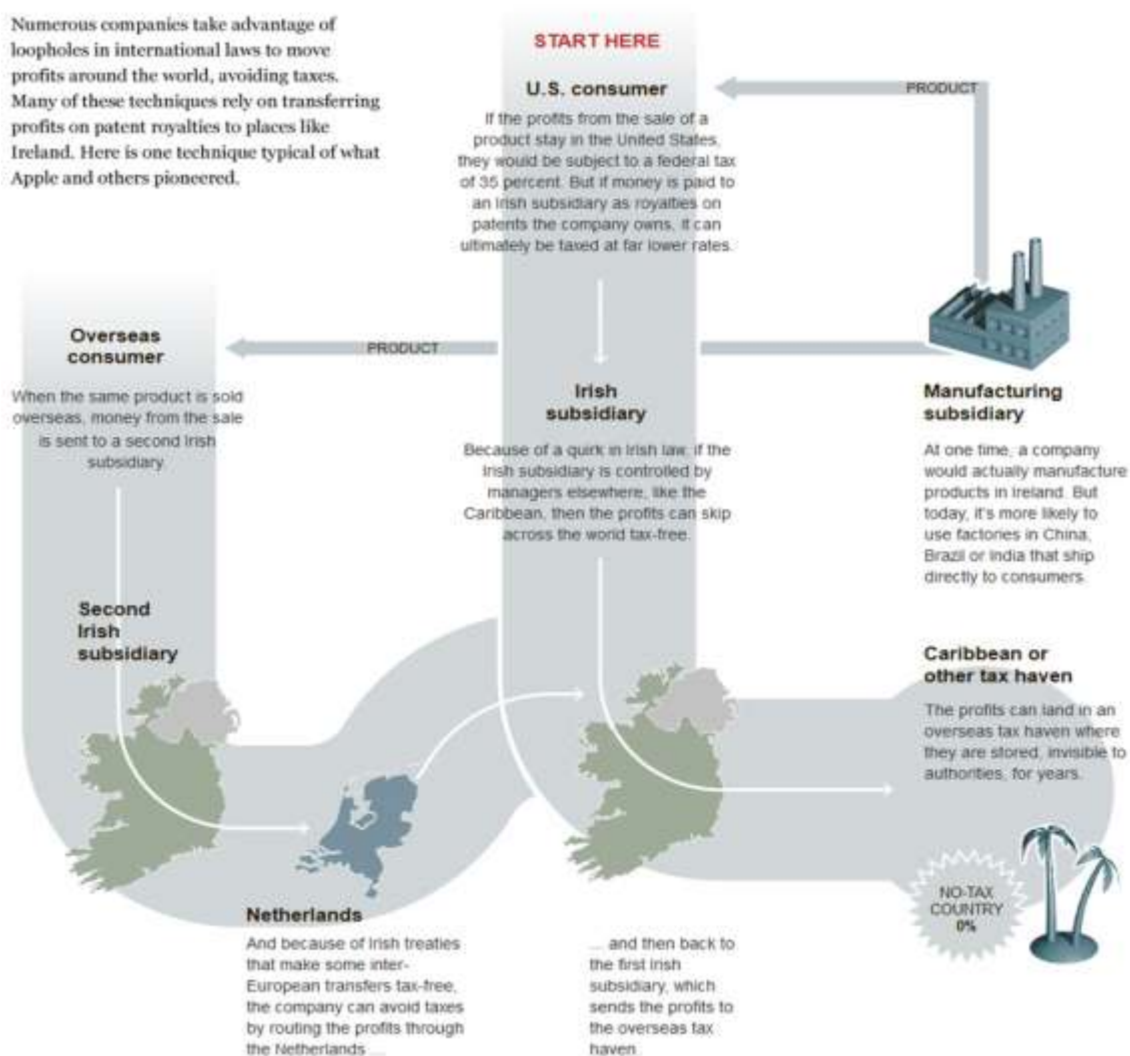

Figure 1. Example of Double Irish with a Dutch sandwich

Source: http://www.paraanaliz.com/2016/genel/applea-13-milyar-euro-vergi-cezasinin-perde-arkasi-1822/

Figure 1 demonstrates how the method works. First, two companies are established in Ireland. Then, revenues from US sales are transferred to Company X in Ireland under the guise of royalty payments. Revenues from non-US sales, on the other hand, are collected by Company Y, the second company in Ireland. Then, to benefit from tax advantages offered in the Netherlands, these revenues go back and forth between there and Ireland. All these earnings are kept within the company using any offshore banking center and circulates between international subsidiaries without ever returning to the US as profits.

The host countries in which branches or subsidiaries are established lose tax revenues, but in return get more jobs, higher growth and technology transfer. Given these benefits, then, why would they impose tax

penalties? The important point here is that the country of origin can have significant influence over the global networks its corporations establish. Thus, the point of the tax penalties imposed is to put pressure the country of origin to exert influence on their corporations to curtail practices deemed harmful to competition in the host country.

2.2. Multinational Corporations as an Agent of Tax Terror and Their Share in International Trade

The profitability ratio for multinational corporations was 5.5% in 2012, 5.8% in 2013, 6% in 2014 and 4.5% in 2015. To get a sense of the size of multinational corporations’ revenues, these figures should be compared with the countries’ average GDP growth. The average GDP growth was 1.8% in developed economies and 3.8% in developing economies, giving an idea of how profitable multinational corporations are (UNCTAD, 2016: 26).

We were unable to find detailed information on the capital structures of individual multinational corporations, or their international trade share, in official statements or reports. Therefore, in order to identify general trends, foreign direct investment (FDI) data included in reports prepared by UNCTAD were used in this study.

The latest (2016) “World Investment Report”, annually published by UNCTAD, shows that 40% of international corporations were multinational corporations, operating, on average, in three jurisdictions. The report also states that prominent corporations have 500 affiliates in 50 countries, and 60% of these affiliates have cross-border connections with the parent company (UNCTAD, 2016: 30).

These structures in international trade have different effects on national economies and investors, but they also expand the scope of international agreements. National governments, when shaping their investment policies, should take into account that 30% of companies can benefit from megadeals due to their «multiple passport» structures (UNCTAD 2016: 30).

Reports by various international organizations note that multinational corporations sometimes violate certain management standards and procedures to gain a competitive edge in an international trade environment characterized by intense competition and capital mobility (Ministry of Economy, 2016: 1).

The top 10 countries that attracted the most foreign direct investment in 2015 (US, China, Ireland, Netherlands, Switzerland, Singapore, Brazil, Canada and India) received 66% of all FDI. The second 10 countries that follow (France, UK, Germany, Belgium, Mexico, Luxembourg, Australia, Italy, Chile and Turkey), on the other hand, attracted 16% of FDI (UNCTAD, 2016: 21). What is noteworthy in these lists is that Ireland and the Netherlands had better rankings than countries such as Germany, France and the UK. The dispute between Apple and the EU makes this case even more interesting. It is also important that in 2015, in particular, multinational corporations’ investments in the EU increased by 85%, making them the largest investors. Given that Germany, France, the UK and other European countries did not make the list of top 10 FDI receivers, this data indicates that the increase in the EU region is mostly due to investment flows into Ireland and the Netherlands. The improvement in the rankings for Ireland, Switzerland and Belgium resulted from cross-border purchases (UNCTAD, 2016: 23).

The top 10 countries that made the highest foreign direct investment in 2015 (US, Japan, China, Netherlands, Ireland, Germany, Switzerland, Canada, Hong Kong and Luxembourg) invested a total of 1,097 billion dollars (UNCTAD, 2016: 23). This made up 73% of all investment from the top 20 countries. The second 10 countries invested a total of 304 billion dollars, making up 27% of all investment from the top 20 countries.

These FDI inflow and outflow figures show significant economic differences between the EU and the US. As long as this asymmetry remains in place, it is reasonable to assume the US share of international trade will continue to increase. It might not then be surprising that the EU is trying to use tax leverage against multinational US corporations that are resident in EU member countries such as Ireland and the Netherlands. The next section looks at tax penalties from the vantage point of commercial law.

III. LOSS OF TAX REVENUE CAUSED BY MULTINATIONAL CORPORATIONS AND TAX TERROR

At a time when integration with international markets is relatively easy, there are many advantages for multinational corporations to operate in countries with attractive profit opportunities. First and foremost, among these is the ability to pay lower, or zero taxes. Aggressive tax planning by multinationals involves the erosion of their tax base through shifting profits and utilizing tax loopholes so that their profits are taxed in low-tax or zero-tax jurisdictions. Such jurisdictions are called tax havens.

Tax havens are economic and fiscal islands within countries that offer all sorts of tax and audit exemptions on capital (Öztürk and Ülger, 2016: 238). The main type of activity is base erosion via profit shifting mechanisms between countries. When multinational corporations sell to unassociated second parties, they do so through their branches in a tax haven country such that profits accrue there.

To get a better understanding of the practice, this section examines the financial structures and tax burdens of multinational corporations using different types of data. Table 1 reports the top 30 companies of US origin with the largest deposits in offshore banks in tax havens.

Table 1. Top 30 Companies with the Most Money Held Offshore

Company	Amount Held Offshore (millions $) (2015)	Amount Held Offshore (millions $) (2016)	Number of Tax Haven Subsidiaries (2016)
Apple	181,100	214,900	3
General Electric	119,000	104,000	20
Microsoft	108,300	124,000	5
Pfizer	74,000	193,587	181
International Business Machines	61,400	68,100	16
Merck	60,000	59,200	125
Johnson & Johnson	53,400	58,000	62
Cisco Systems	52,700	58,000	56
Exxon Mobil	51,000	51,000	35
Google	47,400	58,300	1
Procter & Gamble	45,000	49,000	35
Citigroup	43,800	45,200	140
Hewlett-Parckard	42,900	47,200	95
Oracle	38,000	42,600	5
PepsiCo	37,800	40,200	135
Chevron	35,700	45,400	8
Coca-Cola	33,300	31,900	15
J.P. Morgan Chase & Co.	31,100	-	4
Amgen	29,300	-	8
United Technologies	28,000	29,000	31
Eli Lilly	25,700	26,500	33
Qualcomm	25,700	28,800	3
Goldman Sachs Group	24,880	28,550	987
Bristol-Myers Squibb	24,000	-	22
Wal-Mart Stores	23,300	26,100	75
Intel	23,300	26,900	14
AbbVie Inc.	23,000	25,000	38
Abbott Laboratories	23,000	-	91
Dow Chemical	18,037	-	92
Caterpillar	18,000	-	72

Source: http://america.aljazeera.com/articles/2015/10/6/top-us-companies-keep-21-trillion-in-tax- havens-abroad.html and https://taxlinked.net/blog/october-2016/fortune-500-companies-tax-havens-a-study

Overall, the amount of deposits the companies hold in offshore banking is on the increase. These companies are corporations with global networks. To avoid the taxing of their profits, they establish subsidiaries in tax havens, and the number of such subsidiaries keeps increasing every year. Some (such as Apple) keep large amounts of money in few offshore branches, while others (such as Goldman Sachs) use many such branches with relatively smaller amounts of money in each. These practices appear to be influenced by the sectors in which the companies operate. Table 2 presents a similar picture.

Table 2. 28 Corporations That Increased Offshore Profits By $2 Billion or More In 2015 and 2014

Company	**Unrepatriated Income (millions $)**			
	2015	**2014**	**Change**	**Change (2014-2015)**
Apple	200,1	157,8	42,3	26,81
Pfizer	193,587	175,798	17,788	10,12
Microsoft	108,3	92,9	15,4	16,58
Gilead Sciences	28,5	15,6	12,9	82,69
Danaher	23,5	11,8	11,7	99,15
Google	58,3	47,4	10,9	23,00
Chevron	45,4	35,7	9,7	27,17
Medtronic	27,837	20,529	7,308	35,60
International Business Mac	68,1	61,4	6,7	10,91
Oracle	38,1	32,4	5,6	17,28
Cisco Systems	58	52,7	5,3	10,06
Sealed Air	5,1	-	5,1	-
Johnson & Johnson	58	53,4	4,6	8,61

Hewlett-Packard	47,2	42,9	4,3	10,02
Goldman Sachs Group	28,55	24,88	3,67	14,75
Intel	26,9	23,3	3,6	15,45
J.P. Morgan Chase & Co.	34,6	31,1	3,5	11,25
Amgen	32,6	29,3	3,3	11,26
Cameron International	8,3	5,1	3,2	62,75
Qualcomm	28,8	25,7	3,1	12,06
ConocoPhilips	3,3	293	3,007	1,03
Morgan Stanley	10,209	7,364	2,845	38,63
Priceline.com	9,9	7,3	2,6	35,62
Becton Dickinson	7,5	4,9	2,6	53,06
PepsiCo	40,2	37,8	2,4	6,35
National Oilwell Varco	8,187	5,874	2,313	39,38
Celgene	9,667	7,541	2,216	29,39
Abbvie	25	23	2	8,70
28 Şirketin Toplamı	1,233,637	1,033,779	199,857	-

Source:http://ctj.org/ctjreports/2016/03/fortune_500_companies_hold_a_record_24_trillion_offshore.php#.WL_lbW-LSUk

Table 2 shows that multinational corporations have succeeded in significantly increasing their profits, though at varying levels. The multinationals' annual growth rate of profits compares quite favorably with the economic growth rates experienced in different regions and globally during the same period: The world economy grew by 3.2%, OECD countries grew by 2.1%, East Asia-Pacific grew by 7.2%, Europe-Central Asia grew by 3.5%, Latin America grew by 2.9%, Middle East-North Africa grew by 2.8%, South Asia grew by 5.7% and Sub-Saharan Africa grew by 5.3% (Ministry of Customs and Trade, 2016: 1).

This data shows that while multinational corporations achieved spectacular levels of growth, the world economy grew at a much slower pace, implying a global concentration of capital in the hands of multinational corporations.

Table 3. 27 Companies Disclose Paying Less Than A 10 Percent Tax Rate On Profits Booked Offshore, Implying That Most of Those Profits Are In Tax Havens

Name of Company	Amount Held Offshore ($ Millions)	Estimated Deferred Tax Bill ($ Millions)	Implied Tax Rate Paid on Offshore Cash	Statutory Tax Rate (%)
Owens Corning	1.400	511	0	37
Safeway	180	65	0	36
Amgen	29.300	10.500	0	36
Qualcomm	25.700	9.100	0	35
Giead Sciences	15.600	5.500	0	35
Wynn Resorts	412	144	0	35
Advanced Micro Devices	349	122	0	35
AK Steel Holding	27	10	0.1	35
Biogen Idec	4.600	1.550	1.3	34
Western Digital	8.200	2.700	2	33
Apple	157.800	51.615	2.3	33
Microsoft	92.900	29.600	3.1	32
Nike	6.600	2.100	2.5	32
PNC Financial Services Group	77	24	3.8	31
American Express	9.700	3.000	4.1	31
Oracle	32.400	10.000	4	31
FMC Technologies	1.619	492	4.7	30
Baxter International	13.900	4.200	4.8	30
NetApp	3.000	896	7.2	30
Symantec	3.200	918	7.2	29
Wells Fargo	1.800	513	6.5	29
Group 1 Automotive	17	5	6.9	28
Jacobs Engineering Group	26	7	7	28
Leucadia National	171	46	8.1	27
Clorox	186	50	8.5	27
Citigroup	43.800	11.600	8.5	26
Bank of America Corp.	17.200	4.500	8.8	26
TOPLAM	470.639	149.951	Ave: 3.1	Ave: 32

Source: CTJ, Dozens of Companies Admit Using Tax Havens, 2015:2. and http://ctj.org/ctjreports/2015/04/dozens_of_companies_admit_using_tax_havens_1.php#.WL_1tm-LSUk

The fourth column of Table 3 gives the tax rates applicable to income recorded in tax havens, which are extremely low. This is the main reason tax havens attract multinational corporations. Data reported under the

fifth column shows the tax revenues lost by countries of origin because of revenues that are kept in tax havens instead of being returned to countries of origin. This data shows that countries of origin lose an average of 32% of tax revenues due to earnings kept in tax havens.

Taken together, these tables give an idea about the extent of loss of tax revenues governments suffer from aggressive tax planning by multinational corporations and how that can create pressures for the imposition of tax penalties.

IV. EXAMPLES OF TAX TERROR BY THE EU AND THE US

Multinationals have traditionally formed international corporate structures that act like local firms in the countries they operate in order to benefit from the subsidies offered by their host countries. The aggressive use of tax subsidies by multinational can end up undermine the national economy of their host country and hinder international competition, prodding a backlash. In some cases, the backlash has come not from the EU member state in which the multinational corporation operates but the European Commission. For instance, in the case of Apple and Ireland the Commission imposed a tax penalty on Apple to be paid in the host country in question, all the while threatening sanctions against Ireland as well in the event of non-compliance (European Commission, 2016:1).

A cursory look at their country of origin tax obligation of the largest 78 firms and investment funds, some of which are among those fined by the EU, shows that they enjoy relatively low tax rates in the US. A 2015 report by the Credit Suisse, a financial services company, shows that technology companies like Apple paid an average of only 24% of their profit in taxes in the decade between 2004 to 2014. According to the report, health and technology companies, thanks to lower tax rates overseas, added an extra 266 billion dollars to their profits over a decade. In other words, these companies earned about 20% more profit. The US Government Accountability Office found that in 2012, one in five US companies did not pay any corporate tax (GAO, 2016: 2).

Though US effective tax rates are far from excessive, the US firms are still incentivized to move to countries with lower tax rates than the US. Lowering taxes seems to be their main motivation, but the reality can be more complex. Once they move in, these companies also acquire a capacity to exert significant influence in the host country, region or even the whole EU economy, with a potential to distort conditions of competition. This in turn gives rise to perceptions of strategic competition where the US is seen to be aiming at establishing economic and political advantage if not supremacy, especially for its big technology and pharmaceutical companies.

As a major political and economic power, the European Union imposes hefty tax penalties to check the power and influence of such US companies. To this end, their intent appears to be to intimidate, deter and otherwise put pressure on US multinational corporations to limit the clout of their brand value. In other words, here, strategic competition between the EU and the US rather than considerations of simple tax arbitrage seems to be at stake. Hence, the recent reciprocal imposition of tax and trade penalties on international corporations by the EU and the US can be seen more a case of "tax terror" than a "tax war".

4.1. Tax Penalties and Trade Penalties Imposed by the US

Almost all penalties imposed by the US on companies and organizations of EU origin are trade-related, or political in nature. They concern violations of legislation other than the tax code, or trade relations with countries facing US sanctions. This is not surprising since the EU capacity for strategic completion with the US via taxation is limited. The EU is not only relatively weaker in terms of capital mobility, but its companies are relatively disadvantaged by the tax advantages offered by the US to its own companies in the US. Thus, much of the US tax penalties imposed on European companies appear to be retaliatory in nature, tit-for-tat for what is happening in Europe rather than the result of efforts to prevent tax evasion. Few examples are listed below.

Table 4. EU Companies and Reasons for Penalties

company and its origins	tax penalty	The reason for penalty
Germany-Deutsche Bank	14 million $	On the grounds that he gave wrong ?? credit in the global crisis – not clear
Germany-Volkswagen	15 million $	Due to an emission violation
Germany-Commerzbank	Approximately 1 million $	On the grounds that the US violated the embargo and money laundering laws it had imposed
France- BNP Paribas (Bank)	Approximately 9 million $	On the grounds that it violated the sanctions imposed on the countries as Iran, Sudan, Cuba ((This punishment is the heaviest punishment for a foreign financial institution in US history)
Swiss- Credit Suisse, (Bank)	2 billion 600 million $	On the grounds that US citizens help tax evasion 20.05.2014

Source: http://www.haberturk.com/ekonomi/is-yasam/haber/1297361-abdden-deutsche-banka-14- milyar-dolarlik-ceza (17.09.2016),
http://www.bbc.com/turkce/haberler/2016/06/160627_vw_abd_emisyon (30. 06.2016),
http://www.dw.com/tr/commerzbanka-a%C4%9F%C4%B1r-ceza/a-18124596 (12.12.2016),
http://www.milliyet.com.tr/bnp-ye-8-9-milyar-ceza/ekonomi/detay/2054215/default.htm (05.05.2015),
http://www.dw.com/tr/credit-suissee-26-milyar-dolarl%C4%B1k-ceza/a-17647412(21.06.2015)

In addition, the US mortgage firm Fannie Mae brought a case against nine banks, including the Deutsche Bank, seeking damages for losses resulting from the manipulation of the Libor interest rate.

As mentioned above, none of these penalties were concerned with tax evasion or violations of the tax code, but instead were political in nature as they concerned violation of trade laws, or US sanctions.

Trade penalties are imposed for two main reasons. First, the objective can be to compensate the loss of tax revenue the US treasury suffers due to penalties imposed by the EU on American companies. According to the US corporate tax system, tax penalties imposed by the EU are deducted from the corporate tax payable in the US, and can add up. The second objective appears to be more strategic: sending the message that the US is standing behind its companies operating in the EU.

4.2. Tax Penalties and Trade Penalties Imposed by the EU

Table 5 reports the trade penalties and tax penalties imposed by the European Commission.

Table 5. Trade Penalties or Tax Penalties Imposed by the EU

Companies and Origin	Quantity	Reason
Apple (USA)	13 billion €	On the grounds that the companies Apple has established in Ireland are illegal in Ireland
Mc Donalds (USA)	500 milllion $	Due to the transactions in Finland, additional tax payment was decided.
Google (USA)	Prohibition by court decision	Using "Torrent" in Autocomplete in France.
Google (USA)	150.000 €	France Data Protection Authority Commission Nationale de lâ- Informatique (CNIL),
Starbucks	27.1 million €	Due to its activities in the Netherlands
Fiat Chrysler	30 milllion €	Justification for low tax pay in 2015
Microsoft	2.1 million $	Because of competition violation
İntel	1.2 million $	Because of competition violation ekabeti ihlal nedeniyle

Source: http://www.teknotalk.com/apple-cezaya-doymuyor-ab-applea-rekor-vergi-cezasi-kesti-48151/ (30.08.2016)
http://www.sozcu.com.tr/2016/ekonomi/vergi-savasi-kizisiyor-mcdonaldsa-560-milyon-dolar-ceza-1403200/ (21.09.2016)
https://turk-internet.com/portal/kategoriyazilari.php?cat=57&ytur=3&start=330 (20.07.2016)
http://www.sabah.com.tr/dunya/2015/10/22/starbucksa-hollandadan-30-milyon-euro-ceza (22.10.2015)
http://uzmanpara.milliyet.com.tr/haber-detay/gundem//56200/ (02.09.2016) http://www.birgun.net/haber-detay/abd-den-deutsche-bank-a-rekor-ceza-128585.html (19.09.2016)

These trade penalties and tax penalties include only those imposed by the European Commission. Apart from the European Commission, Turkey and Russia have also imposed tax and trade penalties on international corporations.

V. EVALUATION FROM THE PERSPECTIVE OF COMMERCIAL LAW

In free market economies certain practices that result from the profit motive can have adverse effects on social welfare in the absence of an effective institutional regulatory framework that can deter them. The prevention of unfair competition is an important case in point. Therefore, economic activities and markets should be well regulated and governed by effective laws. The legal framework to be created should be in line with the structure and objectives of economic activities, such that economic activities that can be socially harmful are suppressed.

The protection of competition is a crucial prerequisite for the well-functioning of a free market economy. Otherwise, efficient resource allocation and economic stability cannot be ensured.

The relationship between law and economy, briefly explained above, holds not only at the level of national economy, but also at the level of international level as well.

The disappearance of competition in world trade, the emergence of international monopolies, multinational corporations being subject to multiple jurisdictions, and countries having different levels of

economic development create significant problems. Common solutions and legal arrangements that would be accepted by all countries are needed to deal with these problems.

Arrangements needed at the international level can be grouped under four main categories: anti-dumping, double taxation, unfair competition, and profit shifting by multinational corporations.

There are various anti-dumping measures taken to solve the current problems, and relevant legislation in every member country of the World Trade Organization (WTO) should be compliant with the "Agreement on Implementation of Article VI of the GATT 1994" (WTO Anti-Dumping Agreement), which is the main reference.

Law and economy should complement each other to make economic welfare a reality. The healthy functioning of the economic system requires, in addition to meeting people's needs, the existence of an effective legal system. Developments in the last two decades, in particular, have resulted in the frequent use of concepts of legal origin in many areas of economics, and the entry of economic concepts into legal terminology (Journal of Ankara Bar Association). On the other hand, it should be kept in mind that legal rules can regulate economic life in a desired manner, whether they are statutes, or other legislation, only when they are realistic. Otherwise, legal norms become unenforceable and thus useless, and even harmful to society. For the economic system to function, its needs have to be met. This, in turn, requires the presence of an effective legal system and the making of laws that are in line with economic life. In particular, at a time when more and more aspects of economic life come to be controlled by legal norms, it is very important to think about the goals of legislation, which instruments to use in which cases, and what the costs would be of such legislation. When evaluating whether a legal norm is appropriate for a given goal, behavioral theories in economics can be of use. In this case, the priority should be given to protecting competition through appropriate legal arrangements.

With the rules they make, governments try, on the one hand, to encourage competition and remove barriers to entry so that the market economy functions more efficiently, societal welfare increases, and a more equal distribution is achieved, and on the other hand, they fight monopolistic behavior and ideals. On the one hand, they try to make businesses competitive and ensure that prices are set by competition, and on the other hand, they try to prevent individual enterprises from dominating the market, or creating inefficiencies in the distribution of goods and services, in an effort to eliminate behavior that damages perfect competition. Protecting the consumer is another goal that requires the state to intervene in the market.

However, to achieve higher levels of growth and development, governments also engage in practices and activities that run counter to the behaviors specified above, so that capital originating from their country can increase its share of international trade. They sometimes do not tax revenues from international trade, or tax them at a lower rate, they defer the payment of taxes on income earned overseas, or engage in other practices of this kind. This results in a lack of legal regulation in international trade. There is no international organization that would assess the negative consequences of governments' tax practices for international trade, or defend the rights of parties that suffer these consequences. There is no impartial international organization that could hear the complaints from multinational corporations, or from governments that have sustained damages as a result of trade and tax penalties imposed by the EU and the US.

VI. CONCLUSION

Taxes are instrumentalized by the governments in order to increase their share of international trade, attract foreign direct investment, or provide competitive advantages to their own companies. Creating unfair competition in international trade by using taxes as a means of dumping, or imposing tax penalties of dubious legality to remove such unfair competition is not harmful tax competition but "tax terror".

The trade war between the EU and the US has negative consequences for both sides, but the EU is more affected. These consequences have reached the point where they now create divisions between EU member states, namely Ireland and the Netherlands vs. the others. The response from countries' to the tax penalties ordered by the European Commission, and to the Commission's insistence that the penalties be collected, will be very important in terms of the future of the EU. This is a case of conflict between national interests and EU interests.

This "tax terror" phenomenon is something that developing or transition economies face on a regular basis. However, because they do not have the political and economic power that the EU and the US have, these countries are unable to retaliate. Multinational corporations of EU origin certainly play the same game in these countries.

Another important factor that limits international trade is the fact that there is no organization that could defend the rights of companies facing tax penalties, or even hear the case in an impartial manner. Such an organization is unlikely to emerge in the short term either.

REFERENCES

[1]. Amadasun, A. B. and Igbinosa, S. O. (2011). Strategies For Effective Tax Planning, *Franklin Business & Law Journal*.

[2]. Arriffin, Z.Z. (2013), "Tax Planning of Company Operating Foreing Activity in Malaysia, *International Journal of Trade, Economics and Finance, Vol. 4, August.*

[3]. Best, S. and Nocella, A. (2004), "Defining Terrorism", *Animal Liberation Philosophy and Policy Journal*, Volume 2, No. 1.

[4]. Burns, R. Easton, C.A. (1917), *The Income War Tax Act 1917 A Digest*, Reprint from The Canadian Charterede Accountant Continental Life Building Toronto, Canada.

[5]. Credit Suisse (2015), *Securities (Europe) Limited Annual Report 2015.*

[6]. CTJ (2015), Dozens of Companies Admit Using Tax Havens.

[7]. Dedeoğlu, B. (2016), "AB, Türkiye Terör Tanımı", *AB Haber Brüksel, EU-Turkey News Network EU, Cyprus News,* http://www.abhaber.com/ab-turkiye-teror-tanimi/ (13.01.2017).

[8]. Demir, V. and Gökçen, H. B. (2014), "Stratejik Yönetim Muhasebesi ve Vergi Planlaması İlişkisi: Vergi Planlamasına Dayalı Maliyetleme", *Muhasebe ve Denetime Bakış Dergisi,* 13(41).

[9]. Ekonomi Bakanlığı (2016),

[10]. https://www.ekonomi.gov.tr/portal/content/conn/UCM/path/Contribution%20Folders/web/ (09.11.2016).

[11]. European Commission (2016), Press Release Database, http://europa.eu/rapid/press-release_IP-16-2923_en.ht (12.09.2016).

[12]. Fuest, C. vd. (2013), "Profit Shifting and "Aggressive" Tax Planning by Multinational Firms: Issues and Options for Reform", *Discussion Paper No. 13-078*, ZEW, Centre for European Economic Research.

[13]. GAO (2016), *Corporate Income Tax Most Large Profitable U.S. Corporations Paid Tax but Effective Tax Rates Differed Significantly form the Statutory Rate*, United States Government Accountability Office, Report to the Ranking Member, Committee on the Budget, U.S. Senate.

[14]. General Directorate of Risk Management and Control, Ministry of Customs and Trade (2016), http://risk.gtb.gov.tr/data/52f10a6f487c8e539010a0b0/D%C3%BCnya%20Bankas%C4%B1_K%C3%BCresel%20Ekonomik%20Beklentiler_Ocak2014_v.pdf (01.08.2016)

[15]. http://www.haberturk.com/ekonomi/is-yasam/haber/1297361-abdden-deutsche-banka-14- milyar-dolarlik-ceza (17.09.2016).

[16]. http://www.bbc.com/turkce/haberler/2016/06/160627_vw_abd_emisyon 30.6.2016).

[17]. http://www.dw.com/tr/commerzbanka-a%C4%9F%C4%B1r-ceza/a-18124596 (12.12.2016).

[18]. http://www.milliyet.com.tr/bnp-ye-8-9-milyar- ceza/ekonomi/detay/2054215/default.htm (05.05.2015).

[19]. http://www.dw.com/tr/credit-suissee-26-milyar-dolarl%C4%B1k-ceza/ar 17647412 (21.06.2015).

[20]. http://www.teknotalk.com/apple-cezaya-doymuyor-ab-applea-rekor-vergi-cezasi-kesti-48151/ (30.08.2016)

[21]. http://www.sozcu.com.tr/2016/ekonomi/vergi-savasi-kizisiyor-mcdonaldsa-560-milyon-dolar-ceza-1403200/ (21.09.2016)

[22]. https://turk-internet.com/portal/kategoriyazilari.php?cat=57&ytur=3&start=330 (20.07.2016) http://www.sabah.com.tr/dunya/2015/10/22/starbucksa-hollandadan-30-milyon-euro-ceza (22.10.2015)

[23]. http://uzmanpara.milliyet.com.tr/haber-detay/gundem//56200/ (02.09.2016)

[24]. İbiş, C. (2004), "İşletmelerde Vergi Planlaması", *Mali Çözüm Dergisi*, İSMMMO Yayınları, Sayı: 68.

[25]. Öztürk, S. and Ülger, Ö. (2016), "Vergi Cennetlerinin Küresel Finansal Kriz Üzerine Ekonomik Etkileri: Vergi Kaçırma, Vergiden Kaçınma ve Kara Para Aklamadaki Rolü", *Niğde Üniversitesi İktisadi ve İdari Bilimler Fakültesi Dergisi,* Yıl: Ocak 2016, Cilt-Sayı: 9(1).

[26]. Rohatgi, R. (2002), Basic International Taxation: Second Edition Volume 1: Principles. London, New York: *Kluwer Law International*.

[27]. UNCTAD (2016), Dünya Yatırım Raporu, Yased Uluslararası Yatırımcılar Derneği, 22 Haziran 2016, İstanbul.

[28]. Walter, C. (2003), "Defining Terrorism in National and International Law", Walter, C., Vöneky, S., Röben, V., Schorkopf, F. (eds.), *Terrorism as a Challenge for National and International Law: Security versus Liberty?*, Berlin/Heidelberg, Springer.

Fevzi Rifat Ortaç." A New Policy Instrument In International Trade: "Tax Terror"" Quest Journals Journal of Research in Agriculture and Animal Science, vol. 06, no.4, 2018, pp. 10–19.