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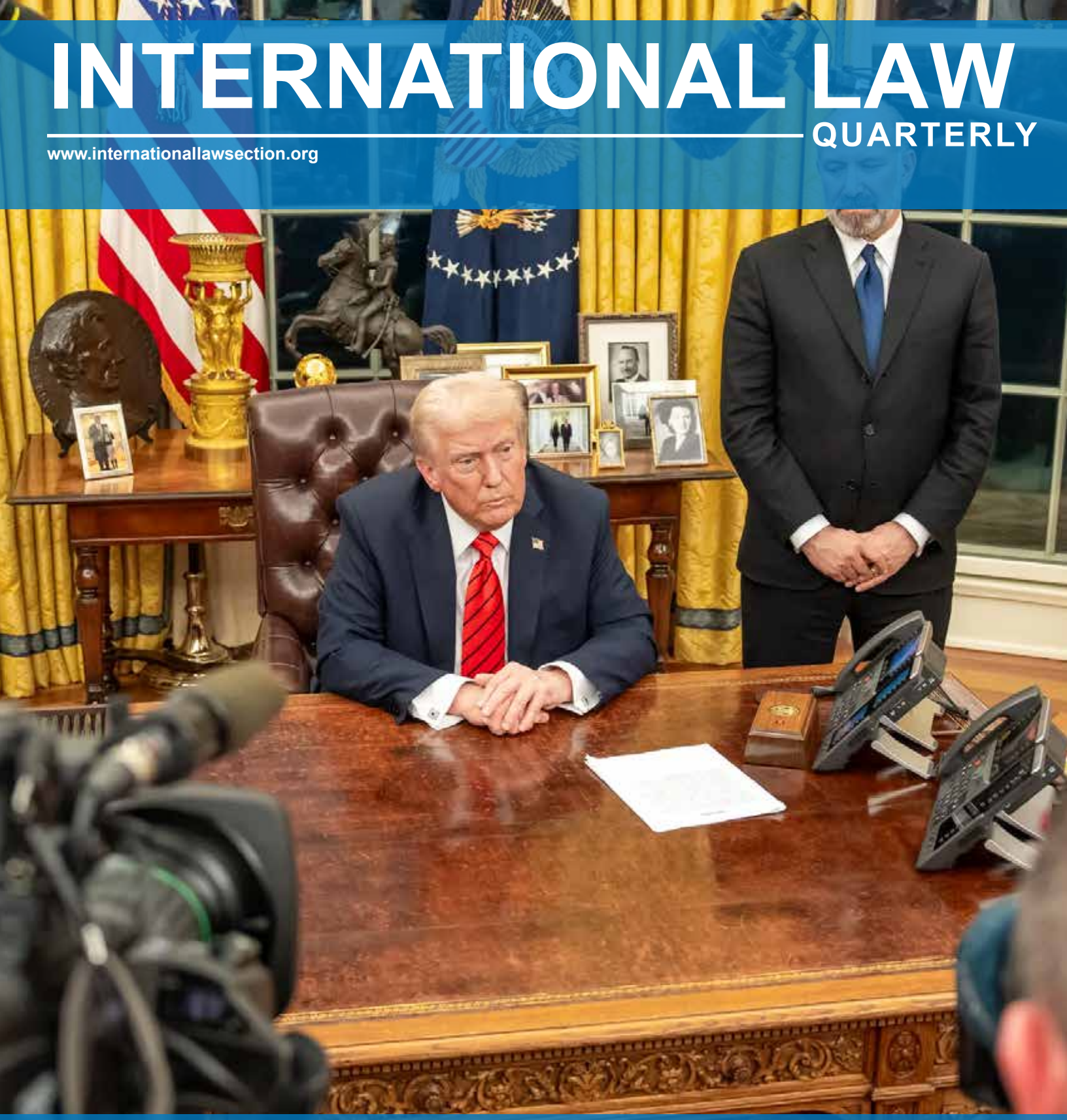

Focus on International Law Under the Trump Administration

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Contacts: Jeffrey S. Hagen at *jhagen@harpermeyer.com*
Jennifer Mosquera at *jmosquera@sequorlaw.com*

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From the Chair …

ANA M. BARTON

This edition of the *International Law Quarterly* tackles the subject matter that is at the forefront of everyone's minds: changes under the second Trump administration. Within the first 100 days of this new presidency, the consequences of the administration's policies have reverberated globally. Executive orders, trade tariffs, immigration, international aid, and war are hot button topics everyone is grappling with and watching closely. President Trump seems to have embraced unpredictability as part of his strategy and style. Now more than ever, lawyers are being called upon to help clients navigate this unpredictable landscape. As I overheard someone comment at our *iLaw* conference in February, keeping up with the fast pace of changes in decades' long legal policies is both anxiety inducing and exciting.

One thing we know for certain, however, is that significant shifts like the ones unfolding under the second Trump administration are sure to usher in a wave of legal challenges. Indeed, the limits of President Trump's executive authority are being tested in the courts almost daily. In one such case, the United States District Court for the District of Columbia quotes William Shakespeare's line in *Henry VI, Part II*, where Dick the Butcher proclaims: "The first thing we do is, let's kill all the lawyers."[1] [footnote 1: *Perkins Coie LLP v. United States DOJ*, Civil Action No. 25-716 (BAH), 2025 U.S. Dist. LEXIS 84475, at *5 (D.D.C. May 2, 2025).] This quote reminded me of a former law school professor who shared that he found this line to be inspirational because it was Shakespeare paying one of the greatest compliments he could to the legal profession. It is recognition of the important role lawyers play in upholding the law, even when it is unpopular or difficult to do so. While the ramifications of any shift in foreign policy can be daunting—especially at the rate President Trump is going—the International Law Section is the perfect forum for discussing these changes, identifying where the law needs updating versus staunch defending, and how we can help steer the course in the right direction.

As my term as chair comes to an end, I want to give my greatest thanks to the International Law Section for allowing me the privilege and opportunity to lead this great organization over the last year. The Executive Board, the Executive Council, committee chairs, and The Florida Bar have all worked hard to continue furthering the mission of the International Law Section. This was on full display at another record-breaking *iLaw* conference in February 2025, which buzzed with the energy of international lawyers from more than twenty jurisdictions joining together to exchange thought leadership. This year also marked the beginning of a wonderful relationship with FIFA's Legal and Compliance team, which moved from Switzerland to Coral Gables, Florida. As a section, we also connected with law schools across Florida, grew our CLE offerings with several webinars, and unveiled a new website full of resources. I look forward to seeing how the momentum of the International Law Section continues to grow!

Ana M. Barton
Chair, International Law Section of The Florida Bar
Reed Smith LLP

From the Editors …

JEFFREY S. HAGEN

JENNIFER MOSQUERA

The second Trump administration has ushered in a new playbook for how the United States interacts with other countries by putting America first in nearly all respects. This has occurred with haste and has had an immediate impact in several legal sectors, confounding international legal practitioners and clients alike. Despite unprecedented uncertainty, the establishment of new laws and agreements provides new opportunities for lawyers to advise clients. We hope by immersing yourself in this robust Spring 2025 edition of *International Law Quarterly*, you will be able to better guide your clients who have been impacted by the administration's policies. We are hopeful that the speed of some of these new executive orders slows down just a notch though, so that the advice provided herein is still valid once this edition prints and remains valuable to our clients for some time.

We have a near record number of feature articles in this edition. First, Special Features Editor **Li Massie** and co-author **Odette Ponce** provide information about the topic of the moment in their article "New Tariffs Rules Under Trump 2.0." Next, former Chair **Larry Rifkin** goes into depth in his area of expertise in "Immigration Practice and Policy Under the Trump Administration." Continuing with topics of great importance, **Richard Junnier's** article "America First, Aid Second: Foreign Assistance and U.S. Soft Power" analyzes intricate issues resulting from the freeze of U.S. aid. Following this article is another from a consistent contributor to *ILQ*, **Lyubov Zeldis**, as she writes about the current status of her original home in "Rebuilding Ukraine – Current Political Posture."

Continuing with excellent pieces of legal significance, **Mindy Pava's** article entitled "Notable Shifts in Federal Funding Under the Trump Administration" is didactically written and shines a light on current controversy surrounding this area of law. Directly following this piece, former chairs of the International Law Section give valuable insights in their areas of expertise under the new administration with **Robert Becerra's** article "Anti-Foreign Corruption Enforcement in the Second Trump Administration" and **Peter Quinter's** article "Export Enforcement by the U.S. Government."

Our final three feature authors also present interesting reads worthy of review. **Arthur Freyre** penned the piece "Defining Economic Security in the Trump Administration." North America Committee Chair **Nouvelle Gonzalo** and her co-author **Yunjuan Bai** collaborated on the article "Visa, Vision, Victory: How Smart Structuring Can Fuel Global Expansion Into the United States," and last but certainly not least, **Carolina Obarrio** and **Gerardo Vega** provided an article, originally written in Spanish, entitled "NGOs, Organized Crime, and Tax Evasion." This article was translated to English by TransPerfect, and we have included the Spanish version for our bilingual readers.

It should be mentioned that former *ILQ* Co-Editor-in-Chief **Neha Dagley** also submitted an article entitled "A Fictional Space Station, a Real Astronaut, and the Legal Questions We Can't Ignore," which appears as a Quick Take in this edition. Further, **Guiseppe De Palo** provided a Best Practices column for this edition, with his article "Global Negotiations: Ethical Obligations for Lawyers." As usual, we also present the ILS Section Scene, which in this edition features photos and summaries from fantastic ILS programming over the last several months, including another extremely successful iLaw conference. Also, always included is the World Roundup, providing summaries of important legal updates in different countries and regions.

Practicing international law in the whirlwind that is the second Trump administration can be exciting, disheartening, and challenging all at the same time. If anyone can navigate the interesting new questions that have arisen and laws that have been established, it's us—the international lawyers willing to pick up a publication such as this, read it cover to cover, and educate ourselves for our clients' benefit. We hope that by reviewing this edition of *ILQ* you will be better informed about our changing world to positively impact your clients and your practice.

Best regards,

Jeffrey S. Hagen
Co-Editor-in-Chief
Harper Meyer LLP

Jennifer Mosquera
Co-Editor-in-Chief
Sequor Law

New Tariff Tools Under Trump 2.0

By Li Massie, Tallahassee, and Odette Ponce, Miami

photo: iStock/aprott

President Trump's use of tariffs in his second administration signals a change in the global tariff landscape. This article will analyze the evolving use of tariff mechanisms under President Trump's second administration and examine the responsive strategies adopted by key trading partners. This analysis will focus on the legal frameworks underpinning these tariff actions and the diverse approaches employed by Canada, Mexico, and China in response to these policies.

Tariffs 101

Tariffs, duties, or customs (the words are used interchangeably) are taxes imposed by a government on goods and services imported from other countries.[1] Governments may impose tariffs for multiple reasons. Tariffs may help raise government revenue as a form of indirect tax.[2] Tariffs may also protect domestic industries by giving a price advantage to domestic-sourced goods over similar imported products.[3] Lastly, tariffs may be used as a tool for further negotiations.[4] For example, retaliatory tariffs may be imposed to pressure other countries to lower their tariffs.[5]

Tariffs are typically imposed as a percentage of the value of the imported good, not the retail price.[6] The specific tariff rates applied vary across different products and importing countries.[7] Under the framework of the World Trade Organization (WTO), member nations have committed to lowering tariffs and establishing "bound rates," which represent the maximum tariff levels that can be applied as listed in each member's schedule of commitments.[8] While WTO members can apply tariffs below these bound rates, they are generally prohibited from exceeding them.[9]

A tariff is collected at the time of customs clearance in the foreign port.[10] In general and as an example, when a product is imported into the United States from China, the tariff is collected by U.S. Customs and Border Patrol (CBP) once the

product arrives at the U.S. port for entry into the United States. The tariff is paid by the importer of record, who can be of any nationality.[11] However, typically, importers of record are owners or purchasers of the imported goods.[12]

President Trump's Additional Tariffs

Beyond standard duty rates, additional tariffs can be imposed to address unfair trade practices. For example, anti-dumping duties may be applied on imported goods that are deemed to be "dumped" (sold at less than fair value) and that cause material injury to domestic producers of competing products. These anti-dumping duties reflect the "dumping margin," meaning the difference between the cost of exporting the product and their normal, fair value.[13] Similarly, countervailing duties may be applied on imported goods to offset subsidies given to the producers or exporters in the exporting country.[14]

President Trump's administration has significantly expanded the use of additional tariffs, utilizing mechanisms such as Section 301 of the Trade Act of 1974, Section 232 of the Trade Expansion Act of 1962, and the International Emergency Economic Powers Act (IEEPA). This section will examine the application of these tools under President Trump's second administration, building upon the precedents set during his first term.

Section 301 Tariffs

Section 301 of the Trade Act of 1974 (19 U.S.C. 2411) grants the United States Trade Representative (USTR) the authority to investigate and enforce U.S. rights under trade agreements and to respond to certain unfair foreign trade practices.[15] Section 301 investigations may include violations by foreign governments that deny U.S. rights under a trade agreement, "unjustifiable" actions that burden or restrict U.S. commerce, and unreasonable or discriminatory actions that burden or restrict U.S. commerce. After a Section 301 investigation, the USTR makes a final determination. If the USTR makes an affirmative determination to take retaliatory action, the United States may impose duties or other import restrictions, withdraw or suspend trade agreement concessions, or enter into a binding agreement with the foreign government to eliminate the issue or compensate the United States with satisfactory trade benefits.[16]

Historically, prior to President Trump's first administration, the United States primarily utilized Section 301 to build cases for dispute settlement at the WTO. However, President Trump's approach has involved a more direct imposition of tariffs.

During Trump's first term, the USTR initiated six Section 301 investigations, with two leading to tariff impositions. One investigation concerning the EU's subsidies on large aircrafts led to additional tariffs of 15% or 25% on US$7.5 billion worth of U.S. imports from the EU. The other significant investigation focused on China's policies and practices related to intellectual property, innovation, and technology development, which were deemed unreasonable or discriminatory and burdensome to U.S. commerce.[17] As a result of the 2018 investigation, the United States imposed additional tariffs ranging from 7.5% to 25% on various product imports from China.[18] In 2024, the USTR released its mandatory four-year review of these Section 301 tariffs on China, and announced increases and additional tariffs for products, including battery parts, electric vehicles, solar cells, steel and aluminum products, and electrical vehicle batteries.[19] Although these changes were announced during the Biden administration, tariff increases on certain items like lithium-ion non-electrical vehicle batteries, medical gloves, natural graphite, and permanent magnets are slated to take effect under President Trump's second administration

President Trump's administration also inherited three new Section 301 investigations. One investigation concerns whether Nicaragua is engaging in repressive and persistent attacks on labor rights, human rights, and the rule of law, which may burden U.S. commerce.[20] Notably, this is the first Section 301 investigation focused on forced labor, child labor, and other labor rights abuses, with an anticipated conclusion in December 2025.

Another investigation, initiated on 17 April 2024, addresses China's acts, policies, and practices in the maritime, logistics, and shipbuilding sectors.[21] Following a petition from labor unions and a public hearing, the USTR determined on 22 January 2025 that China's targeting of these sectors for dominance is unreasonable and restricts U.S. commerce.[22] Remedies include service fees on Chinese maritime transport operations and on non-Chinese operators using Chinese-built vessels. The USTR has also announced remissions for operators with U.S.-built liquified natural gas (LNG) vessels and measures to encourage the use of U.S.-built vessels for maritime transport of a certain percentage of LNG exports, such that by 2047, at least 15% of such exports, per year, will be exported on U.S.-built, U.S.-flagged, and U.S.-operated vessels.[23]

The third investigation, initiated on 23 December 2024, concerns China's targeting of the semiconductor industry for dominance and its potential threat to the U.S. economy, domestic competitiveness, critical supply chains, and economic security.[24] The investigation initially will focus on China's manufacturing of foundational semiconductors (also known as legacy or mature node semiconductors), including to the extent that they are incorporated as

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Immigration Practice and Policy Under the Trump Administration

By Larry S. Rifkin, Miami

photo: iStock/MoleQL

Since taking office on 20 January 2025, President Trump has implemented major changes to U.S. immigration policy, marking an important shift from previous administrations. Through a series of executive orders (EO) and policy memoranda, the administration has taken significant steps to reshape immigration policy and practice. These changes have far-reaching implications for migrants, asylum seekers, persons physically present in the United States in Temporary Protected Status, and undocumented immigrants in the United States in the areas of border security and enforcement, asylum and refugee policies, legal immigration and visa policies, termination of parole programs, and mass deportations. This article will discuss the steps taken by the current administration and make recommendations on how practitioners can prepare their clients' benefits requests under the current policies.

Border Security and Enforcement

Executive Orders

On 20 January 2025, President Trump issued Proclamation 10888 that suspended the physical entry of aliens "engaged in an invasion of the United States through the southern border."[1] The Proclamation argued that illegal immigration imposes economic burdens on states, undermines public safety, and strains local resources like schools and hospitals.[2] Based on this rationale, the president suspended the entry of all aliens who failed, before entering the United States, "to provide Federal officials with sufficient medical information and reliable criminal history and background information" and restricted their "access to provisions of the Immigration and Nationality Act that would permit their continued presence in the United States, including, but not limited to, section 208 of the INA."[3] By this means, the Proclamation effectively denies asylum hearings to those who arrive in the United States without legal documentation.

On 20 January 2025, President Trump also signed Executive Order 14165, "Securing Our Borders," directing the secretaries of Defense and Homeland Security to "take all appropriate and lawful action" to deploy sufficient personnel along the southern border to ensure "complete and operational control."[4] Shortly after the issuance of this EO, Acting Secretary of Defense Robert Salesses announced the deployment of 1,500 active-duty troops to the southern border, making the total 4,000 alongside the 2,500 reservists already in place.[5] By 1 March 2025, the Pentagon had deployed a "4,400-soldier Stryker brigade combat team and a 650-troop general support aviation battalion, bringing Title 10 forces to approximately 9,000."[6] Border Patrol Chief Mike Banks reported on 4 March 2025 that unlawful crossings have "decreased from 4,800 to 285 daily apprehensions" under the new policies in place, thereby improving national security.[7]

Impact on Asylum Seekers

In light of the "disastrous effects of unlawful mass migration and resettlement," EO 14165 also directed the federal government to: establish a physical wall and other barriers monitored and supported by adequate personnel and technology; deter and prevent the entry of illegal aliens; detain such aliens; promptly remove them; and pursue criminal charges against illegal aliens who violate U.S. immigration laws.[8] EO 14165 also reinstated the Migrant Protection Protocols (MPP) in all sectors along the southern border, also known as the "Remain in Mexico" policy.[9] This policy requires asylum seekers to wait in Mexico rather than the United States for their future court hearing while their claims are processed in U.S. immigration courts. The "Remain in Mexico" policy impacted approximately 71,000 people during President Trump's first term.[10]

EO 14165 also ceased the use of the Customs and Border Protection's CBP One app, previously used to schedule asylum appointments, leaving approximately 270,000 migrants stranded on the Mexican side of the border waiting to schedule appointments.[11] On 10 March 2025, the Trump administration announced the launch of a new app called CBP Home, which replaced the CBP One app.[12] This new app serves a different purpose, as it is designed to facilitate "self-deportation" of individuals in the country without lawful immigration status by allowing aliens to notify the U.S. government of their intent to depart the United States.[13]

On 30 January 2025, President Trump issued Executive Order 14163, "Realigning the United States Refugee Admissions Program," stating that the admission of refugees under the U.S. Refugee Admission Program (USRAP) was "detrimental to the interests of the United States" and halting indefinitely any admissions under such program.[14]

Criticism and Legal Challenges

On 3 February 2025, the American Civil Liberties Union (ACLU), National Immigrant Justice Center, and other immigrant rights' advocates sued the federal government in the U.S. District Court in Washington, D.C., claiming that Proclamation 10888 was unlawful because it violated international law.[15] The lawsuit argues that the president falsely cited to an "invasion" as justification to deny asylum protections and procedures to families and individuals expressly granted by Congress's plenary power over immigration.[16] The lawsuit remains pending as of this writing.

On 14 March 2025, the Las Americas Immigrant Advocacy Center filed a lawsuit against the Department of Homeland Security, challenging the termination of CBP One appointments, arguing violations of the Immigration and Nationality Act (INA) and Administrative Procedure Act (APA).[17] The lawsuit remains pending as of this writing.

Legal analysts have also voiced legal concerns about the president's authority to deploy military troops to the southern border, as the Posse Comitatus Act makes it a crime for federal military personnel to perform civil law enforcement functions unless expressly authorized by statute or the Constitution.[18] This becomes a moot issue if President Trump invokes the Insurrection Act, which grants the president emergency powers to deploy U.S. troops domestically.[19]

The "Remain in Mexico" policy was legally challenged during President Trump's first term, and more litigation is expected to follow with its reinstatement. The reinstatement of MPP has been condemned for exposing migrants to dangerous conditions in Mexico while they await their hearing dates, including risks of kidnapping, extortion, rape, and other abuses, according to the Human Rights Watch.[20]

Enhanced Vetting for Lawful Immigration

Executive Order 14161

President Trump's administration has also implemented enhanced vetting procedures for lawful immigration, significantly impacting the visa application and admission processes. On 20 January 2025, President Trump issued Executive Order 14161, "Protecting the United States from Foreign Terrorists and Other National Security and Public Safety Threats."[21] The rationale for the EO is that in order to protect Americans, the government must be "vigilant during the visa-issuance process to ensure that those aliens approved for admission into the United States do not intend to harm Americans or our national interests."[22] In support,

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America First, Aid Second: Foreign Assistance and U.S. Soft Power Under the Second Trump Administration

By Richard Junnier, Tallahassee

photo: iStock/utah778

The second Trump administration appears to be shifting U.S. foreign aid policy away from a traditional values-based framework toward a more interest-driven and transactional model, a change that may alter longstanding development partnerships and reshape the global balance of soft power—potentially ceding influence to an increasingly assertive China.

U.S. foreign assistance is being reorganized to align strictly with U.S. interests. This policy is largely a continuation from Trump's first term but has deemphasized foreign aid's critical role in humanitarian activities—such as vital food and health programs—and previous funding intended to advance human rights. Exacerbating this, the United States has ordered USAID shuttered, defunded most of its aid to the World Food Programme (WFP), has reduced distributions to at least two other aid agencies to their statutory minimums, and has pulled out of the World Health Organization (WHO). Secretary of State Marco Rubio announced that taxpayer-funded foreign assistance will be restricted to aid that the administration believes makes the United States stronger, safer, and more prosperous, while a leaked USAID memo proposes empirical metrics—like return on investment—to evaluate those outcomes. Many experts disagree with the wisdom of the specifics embedded in this strategy and opine that, in addition to being a self-evident humanitarian catastrophe, it may cause a vacuum of U.S. soft power to be filled by China, potentially replacing U.S. influence throughout the developing world.

This article begins by outlining the strategic value of foreign assistance, including its costs and direct contributions to U.S. soft power. Then it analyzes the policies of the first Trump administration (Trump 45) and how they correlate with advice for a second term from *Project 2025: Mandate for Leadership* (*Project 2025*).[1] It also considers a proposed policy blueprint from a leaked internal memo drafted by Trump-appointed USAID officials (USAID memo).[2] Each approach is then compared with the actions taken thus far by his second administration (Trump 47). The article concludes by assessing the consequences of the abrupt halt of aid on U.S. soft power and postulates that China is poised to fill the void.

While the humanitarian consequences of these policies are potentially cataclysmic, this article addresses them only

tangentially, focusing instead on their legal, strategic, and geopolitical implications.

The Soft Power of Foreign Assistance

While many may conjure images limited to crates of food and medicine being airdropped into developing lands, the goals of foreign aid are not completely altruistic. In addition to humanitarian efforts, major rationales for aid programs also include national security and commercial interests.[3]

Presidents and national security experts axiomatically assert that foreign aid is an indispensable part of soft power. Unlike hard power—such as military force or economic sanctions—soft power relies on cultural influence, including foreign aid that reflects a culture of care, to build influence through a positive global image.[4] The United States' use of such soft power can improve (or destroy) its international reputation thereby enhancing (or diminishing) the influence of the United States abroad.[5] This influence can then be used to protect U.S. interests.[6]

As examples, foreign aid-driven soft power can reduce the influence of hostile forces, aid with counterterrorism,[7] and prevent the spread of pandemics and narcotics.[8] It can promote exports by improving the global economy creating new commercial markets for U.S. goods and services.[9] By supporting development in other countries, the United States helps create stable and prosperous markets that can become trade partners, contributing to global economic growth and benefiting the U.S. economy.[10]

In 2019, under Trump 45, the total foreign assistance budget[11] was approximately US$48.2 billion (1% of total federal budget authority).[12] Compared to a world on fire, that seems like a comparatively inexpensive investment bolstering the soft power of the United States.

The Evolution of Foreign Aid Policy in the Trump Era

On the day he took office, Trump 47 issued a flurry of executive orders that would chaotically plunge foreign assistance budgets and U.S. soft-power capacity.

Trump paused all foreign aid ninety days to realign it with the administration's new policies.[13] He also ordered the Department of State to bring operations in line with opaquely defined "America First" foreign policy,[14] and withdrew the United States from the WHO.[15] Soon after, he directed the government to sync all funding with administration goals,[16] ordered at least two other agencies that provided foreign assistance to be downsized to their statutory minimums,[17] and defunded the WFP—before reinstating some of its famine assistance.[18] Partially to effectuate this downsizing, the president created the U.S. Department of Government Efficiency (DOGE).[19] As part of these cuts, Trump agreed with DOGE to dismantle USAID early on,[20] before announcing the shuttering of the independent agency altogether.[21]

While judicial intervention has yielded mixed results as to the lawfulness of some of these actions,[22] ultimately, it was determined that USAID could be deconstructed because of the administration's later ratification[23] of DOGE's efforts to feed the agency to a "wood chipper" [sic].[24]

Crucial to understanding the administration's new foreign assistance strategy is defining what "America First" means in the context of U.S. foreign aid, how to determine if a project or policy coincides with Trump 47's goals, and what empirical benchmarks are to be used to assess if a project is sufficiently successful to justify its expense.

Exploring potential answers to these riddles requires an understanding of the policies of Trump 45 and how they foreshadowed some of the actions taken by Trump 47, the guidance offered by *Project 2025*, and the USAID memo's recommended empirical measures to determine the success of "America First" programs.

Trump 45—Celebrating USAID as the Premiere Bilateral Development Agency

Trump 45 seemed to have had a more positive attitude toward foreign assistance. His administration even lauded USAID as the best bilateral development agency in the world,[25] built private-sector engagement,[26] promoted women's role in global development,[27] and created the U.S. International Development Finance Corporation (DFC)[28] to inject investment to curb China's global influence in the developing world.[29] Trump 45 also launched the "Clear Choice" initiative to promote a private-sector-led approach to development, positioning U.S. companies and investment as superior alternatives to China's state-driven model.[30] The administration further created a new USAID office in Greenland and Mission to Central Asia to further counter Chinese expansionism into the arctic and throughout the Indo-Pacific region.[31]

Conversely, Trump 45 consistently pushed for lower foreign assistance funding levels (ranging from a 32% reduction for FY2018 to a 22% reduction for FY2021).[32] For FY2019, the administration requested US$39.3 billion be budgeted for foreign assistance through USAID and the State Department.[33] This was approximately one-third less than what Congress ultimately appropriated.[34] His proposed deep cuts would have affected global health programs, contributions to peace

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Rebuilding Ukraine – Current Political Posture, Opportunities for U.S. Businesses

By Lyubov Zeldis, Fort Lauderdale

photo: iStock/Tetiana Strilchuk

"The U.S. government has recently shifted its approach to Ukraine, engaging in direct negotiations with Russia regarding the conflict's resolution, pursuing a minerals agreement with Ukraine, and temporarily halting military aid and intelligence sharing," although the military aid may be reinstated.[1]

This article explores the scope of U.S. aid to Ukraine; the United States' current stance on Ukraine; Europe's current stance on Ukraine; and the opportunities Ukraine still presents for American investors despite the shift in U.S. policy.

Current United States Stance on Ukraine

"To date, [the United States has] provided US$66.5 billion in military assistance since Russia launched its full-scale invasion of Ukraine on 24 February 2022, and approximately US$69.2 billion in military assistance since Russia's initial invasion of Ukraine in 2014. [The United States has] used the emergency Presidential Drawdown Authority on fifty-five occasions since August 2021 to provide Ukraine military assistance totaling approximately US$31.7 billion from U.S. Department of Defense (DoD) stockpiles."[2]

"As President Trump and Secretary of State Marco Rubio have said, it is the policy of the United States that the conflict between Ukraine and Russia is unsustainable and must end. The United States will use our leverage, influence, and national power to advance peace and implement a sustainable solution to this conflict."[3]

Recent U.S. Policy Shifts

U.S.-Russia Peace Talks on Ukraine

As stated by the House of Lords Library article *Recent US and UK government policy on Ukraine*:

> On 12 February 2025, President Trump and Russian President Vladimir Putin had a phone call described by President Trump as "lengthy and highly productive." Following the call, President Trump announced on his Truth Social platform that both leaders had "agreed to have our respective teams start negotiations immediately" to end the conflict in Ukraine.
>
> In response to President Trump's announcement, the UK, France, Germany, Italy, Poland, Spain, and the European

Union issued a joint statement expressing their willingness to enhance support for Ukraine and engage in discussions with the United States on future negotiations. The statement highlighted that "Ukraine and Europe must be part of any negotiations" and affirmed that "the security of the European continent is our common responsibility," with the signatories "working together to strengthen our collective defen[s]e capabilities."

Following the call between Donald Trump and Vladimir Putin, Ukrainian President Volodymyr Zelensky also stated that he had spoken with President Trump about a "lasting, reliable peace" and that they had "agreed to maintain further contact and plan upcoming meetings."

On the same day, U.S. Defense Secretary Pete Hegseth spoke at a defense summit in Brussels. He called on European nations to take on the "overwhelming share" of aid to Ukraine, asserting that the United States would "no longer tolerate an imbalanced relationship." He also argued that a return to Ukraine's pre-2014 borders was "an unrealistic objective."

The following day, President Zelensky warned that Ukraine could not accept "any agreements [made] without us."

On 19 February 2025, U.S. Secretary of State Rubio and Russian Foreign Minister Sergei Lavrov held high-level talks in Saudi Arabia, with both parties agreeing to appoint teams to negotiate an end to the war.

[…]

On 20 February 2025, President Trump expressed optimism about a peace agreement, calling on President Zelensky and President Putin to "get together."[4]

Minerals Agreement and Disputes Between the United States and Ukraine

"On 20 February 2025, President Trump stated that the United States and Ukraine were 'pretty close' to finalizing a minerals agreement. The agreement was to establish an investment fund, jointly managed by both governments, to support Ukraine's reconstruction."[5]

On 25 February 2025, Ukrainian Prime Minister Denys Shmyhal announced that a preliminary minerals agreement with the U.S. government had been reached and was expected to be signed that week when President Zelensky was due to meet with President Trump at the White House; however, during the meeting on 28 February, the deal was not signed and the meeting ended abruptly.[6]

Finally, after a series of negotiations, on 30 April 2025, the United States and Ukraine signed an agreement to establish the United States-Ukraine Reconstruction Investment Fund.[7] The Ukrainian government released the text of the agreement, and it was published in *The Kyiv Independent*.[8]

President Zelenskyy describes the U.S.-Ukraine resources deal as a "truly equal" agreement.[9] He noted that the agreement has "changed significantly" over negotiations, adding that it will open the way for the modernization of industries in Ukraine.[10]

It is intended in the agreement that Ukraine will maintain complete ownership over its natural resources and infrastructure, including decisions on what to extract. "The U.S.-Ukraine Reconstruction Investment Fund will be jointly managed by both countries on an equal partnership basis."[11]

"The fund will be capitalized, in part, by revenues from future natural resource extraction."[12]

"Ukraine will contribute 50% of revenues from the exploitation of new minerals, oil, and gas projects. . . . This means the profitability of the fund is dependent on the success of new investments in Ukraine's resources. The investments from the fund are [intended to encourage] further private-sector interest in investing in Ukraine's resources and attract the necessary capital for Ukraine's reconstruction and development of resources."[13]

The deal counts the United States' prospective military spending as its contribution to the fund.[14]

"The agreement designates the U.S. International Development Finance Corporation (DFC) as the U.S. partner in the deal."[15]

While the agreement does not entitle the United States to Ukrainian minerals as repayment for military aid, the deal does include a provision for U.S. offtake for future mineral resources on competitive terms.[16]

While no security guarantee, "the agreement affirms a 'long-term strategic alignment' between Ukraine and the United States and U.S. 'support for Ukraine's security, prosperity, reconstruction, and integration into global economic frameworks.' . . . [Per the U.S. Treasury,] 'no state or person who financed or supplied the Russian war machine will be allowed to benefit from the reconstruction of Ukraine,'" thereby taking a harsher stance on Russia.[17]

It must be noted that for the deal to be effective and for investor confidence, the peace between Ukraine and Russia must be reached. Severe security risks can deter private investment.[18]

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Notable Shifts in Federal Funding Under the Trump Administration: Information for Internationally Based Subrecipients on Grant Awards

By Mindy B. Pava, Washington, D.C.

photo: iStock/Olivier Le Moal

The year is 2024. University X, based in Florida, receives a US$10 million, three-year research grant from the National Institutes of Health (NIH) to conduct high-level scientific research on the effects of MRI imaging on young children. The grant's project summary provides that the research will specifically focus on children from underrepresented minority communities, as there is a gap in research knowledge relating to these populations. To undertake the research aims outlined in the scope of project, University X needs to rely on the scientific knowledge of certain researchers from Company Y, based in Spain, who have developed specific testing protocols for young children to ensure statistical accuracy. The subaward agreement provides that Company Y shall offer its unique expertise in the performance of the work and contribute to the project through the use of statistical algorithm (and research analysis) for the results from young children.

In March 2025, two months after President Trump is inaugurated, the NIH sends University X a notice that the grant award has been terminated because it "no longer effectuates agency priorities."[1] Although the termination notice is vague, University X officials suspect the grant was terminated because of its focus on children from underrepresented minority communities—and that this research conflicts with the new administration's efforts to root out all Diversity, Equity, and Inclusion (DEI) initiatives.

Although this is a hypothetical fact pattern devised only for the purposes of this article, the world of federal funding has experienced many similar scenarios since 20 January 2025. While federal grant funding—and whether it is being curtailed in an effort to eliminate "fraud, waste and abuse"—seems like a concern that primarily implicates domestic organizations eligible to receive U.S. government funding, the impacts extend beyond U.S. domestic borders.

Because subrecipients on prime grant awards can be foreign-based, and because a grant termination affects the prime award recipient but also flows down to the subrecipient, this article suggests that it is vital for the international community, and for counsel to foreign-based businesses in the research

and technology sectors, to understand the current legal landscape relating to grant funding. For Company Y, the termination of University X's grant likely means it will only be paid for the research analysis work it did (if any) prior to the grant's termination (a small portion of what it expected at the time the subaward agreement was executed).

Background on the World of Federal Grants

Despite its name, a "grant" is not a gift. Instead, "grant" is a general term for funds that are awarded by the federal government, state or local agencies, private organizations such as foundations, or corporations—oftentimes through a competitive process requiring a detailed application. Specifically relating to financial assistance awards from the federal government, the Uniform Guidance,[2] also known as 2 C.F.R. Part 200 (and 45 C.F.R. Part 75 for U.S. Department of Health and Human Services (HHS) awards), establishes a detailed framework for managing federal grants, with the intent of streamlining regulations and reducing administrative burdens on recipients.

The government does not provide a blank slate of funding to grantees for any and all activities in which they may wish to engage. Instead, the government awards funds so that grantees can carry out activities within certain, generally prescribed parameters, described as the "scope of project." Even for costs incurred in furtherance of the grantee's approved scope of project, the government will only reimburse certain of those costs meeting certain specific standards. The limiting standards applied to the costs the federal government will reimburse are the "cost principles" applied to federal grants under Subpart E of the Uniform Guidance. Under these federal cost principles, costs must be "allocable" and "allowable" to be charged to a particular federal award.[3] In sum, the key takeaway when examining federal grants is to recognize that, by issuing a grant award, the government is funding only (i) certain costs, (ii) of certain activities, that are (iii) incurred during certain periods of time.

The Subaward Process

A federal grant recipient (the "prime" awardee) may make a "subaward" of federal funds to other entities—for essentially the same project purposes and subject to the same terms and conditions—with the approval of the federal agency awarding the funding. Generally, the prime recipient carries out a substantial portion of the project, but passes on some distinct facet to its subrecipient. In our example, while University X is responsible for conducting the research, Company Y (the subrecipient) is accountable for ensuring that the scientific testing protocols are accurately employed for the young children serving as the research subjects. Subawards are generally made pursuant to written agreements that constitute contracts enforceable under state law and serve as a special type of contract for grant management purposes. However, unlike other contractual relationships, for subawards, all terms and conditions inherent in the prime award are generally "flowed down" to the subrecipient.[4]

All subawards must be approved by the federal awarding agency.[5] Often, such approval is achieved when the prime awardee clearly includes the identity of the subrecipient in its grant application to the funding agency. When not approved by this process, separate prior written approval is mandatory.

In recent years, federal funding agencies have instituted heightened requirements and stricter reporting standards on foreign subrecipients. The NIH, for example, outlined new requirements in January 2024 that focused on enhancing monitoring, documentation, and reporting of foreign subrecipients.[6] Under these requirements—which Company Y (based in Spain) would need to follow under our scenario—foreign subrecipients must provide access to all lab notebooks, data, and documentation supporting research outcomes to the prime awardee, and such access must be provided at least once per year, in alignment with the timing requirements for Research Performance Progress Report submissions. These more rigorous requirements on foreign subrecipients may have several aims: (i) they may be viewed as part of the U.S. government's expanded effort to impose greater accountability on prime awardees' decisions to enter into subawards with foreign entities based outside of U.S. jurisdiction; and (ii) they also may be viewed as limiting the potential for foreign entities to misuse federal research funds. The requirements place the onus on prime awardees, such as University X, to take measures to ensure compliance with this enhanced responsibility—such measures may include a decision by prime awardees to modify their contracts with foreign subawardees to include additional monitoring and reporting.[7]

Within that framework of the heightened emphasis on the relationship between domestic prime awardees and foreign subrecipients, we turn our attention to the world of federal grants post 20 January 2025.

Changes to the Federal Grants Landscape Since President Trump's Second Inauguration

After President Trump's inauguration, the new administration immediately issued a substantial number of executive orders (EOs).[8] As the administration has clearly signaled its desire to make federal spending more efficient, the EOs[9] have led recipients of federal grants to ask whether the funding they

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Anti-Foreign Corruption Enforcement in the Second Trump Administration

By Robert J. Becerra, Coral Gables

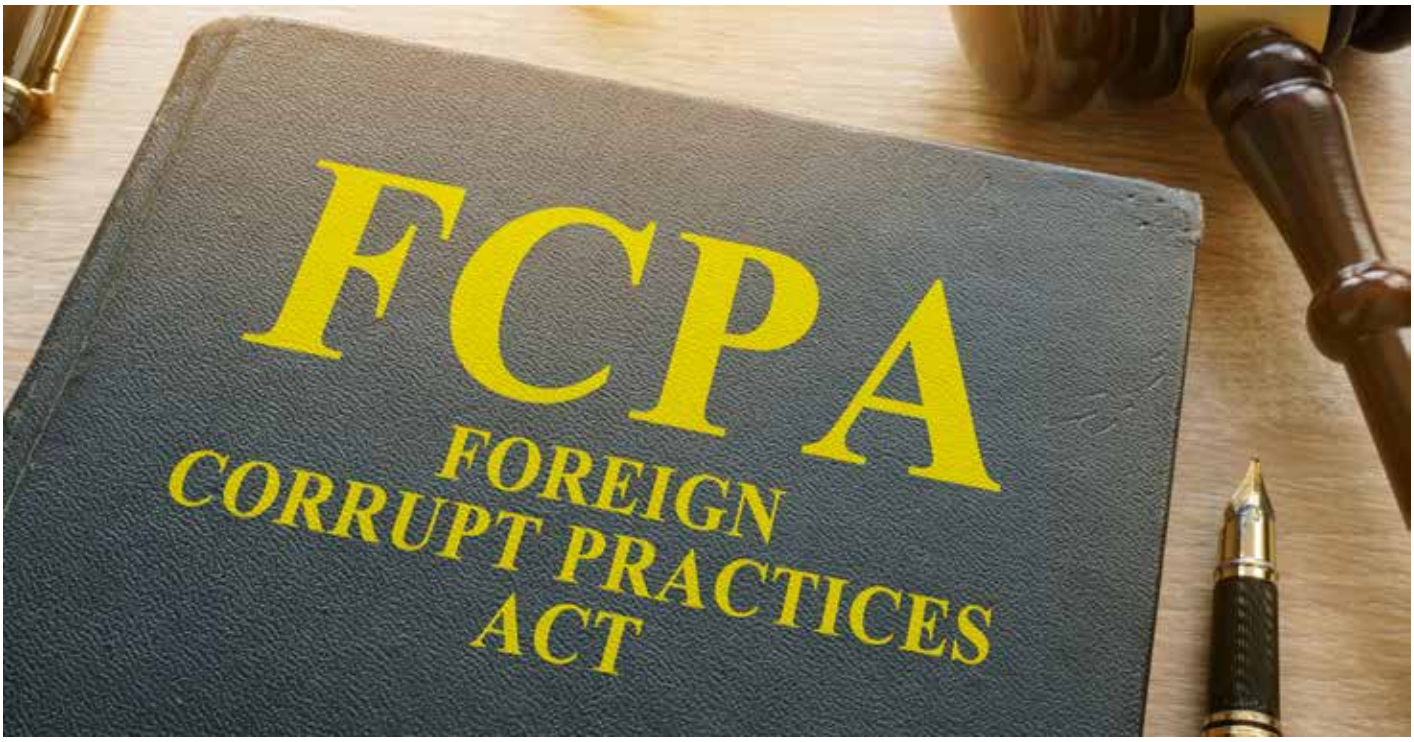

photo: iStock/designer491

The second Trump administration ushered in a whirlwind of executive orders that have disrupted the status quo in a variety of areas, whether it be international trade, immigration, the federal work force, education, diversity, equity and inclusion, or international economic or humanitarian assistance. President Trump has been called the "Disruptor in Chief."[1] One additional area where the administration is disrupting the status quo is anti-foreign corruption enforcement by the Department of Justice (DOJ). This article will discuss U.S. anti-corruption statutes such as the Foreign Corrupt Practices Act, the recently enacted Foreign Extortion Prevention Act, and the disruption in foreign corruption enforcement priorities by the second Trump Administration's DOJ.

The Foreign Corrupt Practices Act (FCPA)

Since 1977, the FCPA, codified at 15 U.S.C. § 78dd-1, et. seq., has prohibited U.S. persons, U.S. companies, their foreign affiliates, and persons and companies located in the United States from making corrupt payments to foreign government officials (or persons deemed to be so) to obtain or retain business. The scope of who qualifies as a foreign official under the FCPA is broad and includes not only those serving in public office, but also candidates, leaders of political parties, and officers of foreign government-owned companies or institutions.[2] Violation of the FCPA carries both civil and criminal penalties.[3] The FCPA is customarily enforced by both the DOJ and the Securities and Exchange Commission (SEC), as companies traded on U.S. exchanges have certain financial reporting and books and records requirements under the FCPA.[4] The FCPA has extraterritorial application for those employed by U.S. companies, subsidiaries, or foreign companies with a U.S. presence.[5] However, because of its broad application, U.S. business interests have often complained that the FCPA puts them in a competitive disadvantage as opposed to foreign competitors, in countries where bribes, either in the form of fees, commissions, or facilitation payments, are customary and necessary.

The Foreign Extortion Prevention Act (FEPA)

The United States broadened its efforts against foreign corruption by enacting in 2023 a new statute, the FEPA, codified at 18 U.S.C. § 1352, which addresses the "demand side" of foreign bribery and was not covered by the FCPA.

Specifically, the FEPA makes it unlawful for a foreign official to corruptly demand, seek, receive, accept, or agree to receive or accept, directly or indirectly, anything of value from (1) any person while in the territory of the United States; (2) an "issuer" as defined under U.S. securities laws; or (3) any "domestic concern," in return for being influenced in the performance of an official act, being induced to do or omit an act in violation of an official duty, or conferring any improper advantage in connection with obtaining or retaining business for or with—or directing business to—any person.[6]

The FEPA defines "foreign official" broadly to include (1) any official or employee of a foreign government or its departments, agencies, or instrumentalities; (2) senior foreign political figures; (3) officials or employees of public international organizations; (4) persons acting in an official capacity for or on behalf of such entities; and (5) persons acting in an unofficial capacity for or on behalf of such entities. This statute complements the FCPA by targeting the recipients of bribes, whereas the FCPA primarily focuses on the bribe payers.[7] Like the FCPA, the FEPA is subject to extraterritorial jurisdiction.[8]

Recent DOJ Enforcement of the FCPA Prior to Trump's Executive Order

During the first Trump administration, FCPA enforcement was muscle-bound, with fifty-two corporate cases and more than US$9 billion in penalties. 2020 was a record-breaking year in FCPA enforcement.[9] The DOJ had also ramped up enforcement of the FCPA during the Biden administration, as shown, by example, in the cases brought in 2023 and 2024. In 2023, there were fifteen corporate resolutions of FCPA violations, of which six involved the DOJ only; seven were SEC only, and two actions were brought by the agencies in parallel proceedings. The total sanctions imposed totaled US$777 million.[10] The 2023 cases involved underlying misconduct that occurred in at least fourteen jurisdictions. Of the six cases involving the DOJ only, one resulted in a guilty plea, four were resolved with deferred prosecution agreements, one with a non-prosecution agreement, and the balance resulted in declinations of prosecutions but with disgorgement of gains under the DOJ's voluntary self-disclosure policy.[11] At least thirteen individuals were charged by the DOJ or pleaded guilty in 2023.[12] Examples of enforcement in 2023 include cases against two oil and gas traders who violated the FCPA in connection with obtaining Petrobras contracts in Brazil: a Colombian investment house who faced FCPA charges for bribes to a Colombian vice-minister of transport to obtain a contract for a road project involving Odebrecht; and a former *Petróleos de Venezuela* official who pleaded guilty to participating in a scheme to launder proceeds from FCPA violations in connection with a currency exchange scheme.[13]

In 2024, an individual pleaded guilty to FCPA violations involving bribes paid to officials of Ecuador's state-owned oil company and to a subsidiary of Mexico's state-owned oil company in exchange for trades and lucrative oil contracts; and two individuals linked to an aviation service company pleaded guilty to FCPA violations involving bribes to South African and Nepalese officials to secure contracts from those nations' state-owned airlines. In August 2024, officials from a voting machine company were indicted for bribing Filipino officials in exchange for contracts with the government of the Philippines to use the company's voting machines. In addition, the former finance minister of Mozambique was convicted at trial for FCPA violations, and the former comptroller general of Ecuador was sentenced to a decade in prison for violating the FCPA and money laundering by taking bribes from Odebrecht. In late 2024, the DOJ announced a new FCPA investigation in Boston against a health care company involving a contract awarded by the Maltese government that was the result of alleged payments to Maltese government officials.[14]

DOJ enforcement activity in 2023 and 2024 evidenced rigorous enforcement of the FCPA against both corporate and individual defendants involved in obtaining business in foreign countries. This pace of enforcement activity appeared to be continuing until the events of February 2025.

The Second Trump Administration and Anti-Foreign Corruption Enforcement

On 10 February 2025, President Trump issued his executive order entitled "Pausing Foreign Corrupt Practices Act Enforcement to Further American Economic and National Security." The executive order directs the DOJ to issue a 180-day pause in all investigations and enforcement actions by the DOJ, and directs the attorney general to review and update the DOJ's enforcement guidelines. The executive order also instructs the DOJ not to initiate new enforcement actions and to review all existing investigations and enforcement actions. The attorney general is permitted, under the executive order, to extend the moratorium beyond the initial 180-day period.

In the executive order, President Trump stated the FCPA is "systematically, and to a steadily increasing degree, stretched beyond proper bounds and abused" and that FCPA enforcement is "overexpansive and unpredictable" and goes after U.S. companies for activities that are "routine business practices in other nations."[15] According to the "fact sheet" that accompanied the executive order, U.S. companies are

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Export Enforcement by the U.S. Government

By Peter A. Quinter, Boca Raton

photo: iStock/Darwel

The United States exports the second most cargo of any country in the world, second only to China.[1] There are numerous limitations under U.S. law on what may be exported, to whom it may be exported, what the exported item may be used for, and to where such exports may be shipped. The primary federal law enforcement agencies that regulate the export, reexport, and transfer of merchandise from the United States and abroad are (1) U.S. Customs and Border Protection (CBP), (2) the Directorate of Defense Trade Controls (DDTC) of the U.S. Department of State, (3) the Bureau of Industry and Security (BIS) of the U.S. Department of Commerce, (4) Immigration and Customs Enforcement (ICE), U.S. Department of Homeland Security, and (5) the Office of Assets Control (OFAC) of the U.S. Department of the Treasury. Numerous other agencies are involved, which include the intelligence and defense community, but those are more focused.

Perhaps the federal agency most people know about is U.S. Customs and Border Protection, better known by its acronym CBP. No matter what federal agency laws and regulations are being enforced, CBP is almost always involved because its personnel are located at every air, ocean, and land international border crossing in the United States, and it has the legitimate legal authority to stop and examine any cargo coming into or departing the United States.[2] Hence, any attempt to illegally export merchandise (e.g., narcotics or military items) can be intercepted by CBP.

Although a CBP officer may stop and examine an exporter's merchandise, if it determines there may be a violation of law, CBP will detain the cargo and refer the matter through CBP headquarters in Washington, D.C., to the respective federal agency with jurisdiction over the type of cargo. For example, if it is defense or military items, the referral will be made to the DDTC for a determination of whether there is a violation of the International Traffic in Arms Regulations (ITAR), and if so, what violation.[3] If there is a violation such as no DDTC license presented to CBP for the approved export or the shipment, or the terms of the license have been violated, the shipment will be seized by CBP. If the violation involves an item that is considered "dual use" with either military or civilian applications, such as global positioning satellites, it will be referred to the BIS for a license determination under the Export Administration Regulations (EAR).[4] As with the DDTC, if a license is required, but was not presented in advance to CBP, the shipment will be seized by CBP. If the CBP officer suspects the violation was intentional, CBP will contact a special agent from ICE who will be assigned to conduct an investigation to determine whether the matter should be referred to the

U.S. Department of Justice for civil proceedings or criminal prosecution.

OFAC is a lesser known, yet critical federal law enforcement agency responsible for export enforcement. OFAC administers and enforces economic sanctions programs primarily against countries and groups of individuals, such as terrorists, other malicious foreign actors, and narcotics traffickers.[5] The sanctions can be either comprehensive or selective, using the blocking of assets and trade restrictions to accomplish foreign policy and national security goals.[6] Since the invasion of Ukraine by Russia in February 2022, the United States has imposed broad sanctions against specific individuals and entities in Russia and Belarus including the List of Specially Designated Nationals and Blocked Persons (SDN list).[7] In what are called "blocking sanctions," unless otherwise authorized or exempt, transactions by U.S. persons are prohibited if they involve transferring, paying, exporting, withdrawing, or otherwise dealing in the property or interests in property of an entity or individual listed on OFAC's SDN list.[8] There are several "sectoral sanctions" against Russia such as sectoral sanctions on the Russian oil exploration and production sector.[9] There is an absolute prohibition on exports to the Crimea, except food and medicine, as well as to certain other occupied areas of Ukraine.[10]

Whether it be the DDTC, BIS, or OFAC, U.S. persons may submit license applications to the appropriate federal agency for authorization to export cargo. The license application must specifically name what will be shipped, how much will be shipped, how it will be transported, which companies will be involved, the method and route of the shipment, the value of the shipment, etc.[11] Once a license is issued to the applicant, the shipper must carefully follow the terms of the license. Even after a shipment is exported to the overseas customer, it is common for federal agency personnel located at U.S. embassies to perform a verification to confirm that the end-use and the end-user identified in the application are accurate. Too often, a license will be approved to export a high technology item to a specific company in a specific location, and when the special agent visits the location, the item is nowhere to be found. The concern is that the restricted item was transported illegally to an individual, entity, or country not friendly to the United States.

Be advised that attempts to provide training for the use of software or technology without a license may also be a violation of law.[12] This may even include a professor providing a lecture at a university in the United States to foreign nationals or transporting such information on a laptop to present at a conference overseas. I represented a prominent professor at a well-known university who had his laptop searched and seized by CBP because it contained information he was planning to present at a conference overseas. With the involvement of special agents from Homeland Security Investigations, a federal prosecutor from the U.S. Department of Justice, and officials from the Naval Criminal Investigative Service, the matter was resolved without criminal prosecution or monetary penalties.

For all exports, if an error or mistake was made by the shipper, with or without an export license, each federal agency has a procedure for the shipper to "come clean" by filing a voluntary disclosure.[13] The gravity of the nature of the violation being disclosed to the government will determine the response by the government agency. It could be a warning letter, it could be a cancellation of pending licenses, or it could be a monetary penalty. In the hundreds of disclosures I have filed over the last thirty years, I have never seen a disclosure result in a criminal prosecution, although that remains a possibility.

The big question now is what changes have occurred under the Trump administration since President Trump was inaugurated on 20 January 2025. The formal "America First Trade Policy" published by The White House on inauguration day certainly reveals the priority that President Trump places on international trade.[14] What has occurred in the four months since then is no surprise to those of us in in the international trade community. Some of the highlights include:

1. There has been a 252% increase (from the comparable period in the previous administration) in antidumping and countervailing duty investigations and orders to attempt to prohibit the "dumping" of foreign merchandise into the United States that would unfairly compete with domestically produced merchandise.[15] Although such additional dumping duties are paid for by the U.S. importer, the foreign country regularly then responds with an increase in the amount of customs duties on the same or other products being exported from the United States to the country upon which the dumping duties were focused.

2. The "America First" memorandum stated that ". . . the Secretary of State and the Secretary of Commerce shall assess and make recommendations regarding how to maintain, obtain, and enhance our Nation's technological edge and how to identify and eliminate loopholes in existing export controls—especially those that enable the transfer of strategic goods, software, services, and technology to countries to strategic rivals and their proxies."[16]

In the president's 2025 Trade Policy Agenda published on 3 March 2025, it stated: "By identifying, and acting against,

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Defining Economic Security in the Trump Administration

By Arthur Freyre, Alexandria

". . . Into this breach comes President Donald J. Trump with a new organizing principle for strategic policy: Economic security is national security."

Peter Navarro[1]

Introduction

Economic security has become a highly popular policy term in Washington, D.C., since 2016. For instance, the recent supply chain issues caused by the COVID-19 pandemic brought this issue to the forefront,[2] and the tariffs placed on China by both the Trump and Biden administrations have highlighted the concept of economic security. Despite its trendiness, economic security has consistently been a crucial factor in evaluating national security since the nation's founding. Since its founding, the United States has been a nation of commerce. As the country's economy has grown, so has the definition of economic security.

To effectively explore the concept of economic security, this article proposes a framework for defining economic security, establishing a clear foundation for analysis. The next step is to apply that framework to the Trump administration. This is followed by an assessment of how the administration defines economic security. Finally, we provide some concluding thoughts. The goal is to provide guidance in understanding what economic security is. This will enable practitioners to evaluate any argument that mentions economic security, should the government use economic security as a rationale for a specific policy.

Defining the Framework

Defining economic security is a complex concept, as there is no universally accepted definition of the term. Given the complexities, it is essential to outline a structured approach. Flexibility in defining a term has its advantages, but it also carries the potential for abuse in the form of demagoguery. In other words, using rhetoric that appeals to people's prejudices by looking for someone or something to blame. Because there is no set definition for the term "economic security," the next best step is to provide a framework that allows one to define it.

There are two benefits to developing this framework. The first is that it provides a standard for use when discussing economic security. The second is that it enables one to distinguish between legitimate security concerns and demagoguery. Given the definition of this concept and the evolution of economic security throughout U.S. history, I propose a framework to help define economic security as it is viewed within the Trump administration. This framework can serve any president's term or terms.

This framework has two steps. The first step in our framework is to understand the times in which we live. We need to be aware of the current trends that are impacting or have impacted U.S. foreign policy. The second step is to understand the president's goals and vision as they relate to economic security.

Defining the country's goals means addressing the issues that the president deems essential. In the past, statements regarding the president's vision and goals were found in political platforms, State of the Union speeches, or even executive orders. Then, Congress passed the Goldwater-Nichols Department of Defense Reorganization Act in 1986.[3] This law mandates the submission of the National Security Strategy (NSS) and requires the president to submit a report to Congress within 150 days of taking office. The report must include the following five points:

1. The worldwide interests, goals, and objectives of the United States that are vital to the United States' national security interests
2. The foreign policy, worldwide commitments, and national defense capabilities to deter aggression and to implement the U.S. national security strategies
3. Proposed short-term and long-term uses of the political, economic, military, and other elements of the U.S. national power to protect or promote the interests and achieve the goals and objectives . . .
4. The adequacy and capabilities of the United States to carry out the national security strategy . . . and
5. Such other information as may be necessary to inform Congress on matters relating to the national security strategy of the United States[4]

The significance of the National Security Strategy lies in the opportunity it provides to understand and assess the issues that define economic security.

Economic Security as Defined by President Trump

Now that we have a framework to define economic security, let's apply the framework to the current Trump administration. To comprehend President Trump's approach, we must first consider the broader context in which his policies were formulated. Again, the first step is to understand our current state of affairs. We can define our current state of affairs in the following manner:

- The days of the United States being the sole superpower in the world are numbered. Secretary of State Marco Rubio stated the following in an interview with Megan Kelly:

  > And I think that was lost at the end of the Cold War, because we were the only power in the world, and so we assumed this responsibility of sort of becoming the global government in many cases, trying to solve every problem. And there are terrible things happening in the world. There are. And then there are things that are terrible that impact our national interest directly, and we need to prioritize those again. So it's not normal for the world to simply have a unipolar power . . . It was a product of the end of the Cold War, but eventually, you were going to reach back to a point where you had a multipolar world, multiple great powers in different parts of the planet. We face that now with China and to some extent Russia, and then you have rogue states like Iran and North Korea, you have to deal with . . . And so we need to really work hard to avoid armed conflict as much as possible, but never at the expense of our national interest. So that's the tricky balance.[5]

  For those who are unfamiliar with international relations, the term "multipolar" refers to ". . . the idea that there are many important global powers, not just a few superpowers . . . ."[6]

- We are in the early stages of Cold War 2.0, characterized by a competition between Russia and China. China seeks to supplant us both economically and militarily. Russia seeks to supplant us militarily.[7] China is utilizing its economic influence to attempt to dismantle or bifurcate the existing international trade system.[8] For instance, both Russia and China are part of the BRICS, a trade group primarily comprising Brazil, Russia, India, and China. A few years ago, Brazil's President Lula sought to establish a BRICS currency, aiming to counter the dollar's strength as the primary currency in international trade. Lula argues, ". . . It's not about replacing our currencies, but we need to work so that the multipolar order we aim for is reflected in the international financial system . . ."[9] Lula's call for an alternative currency reinforces the idea "that China is accelerating efforts to construct an alternative

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Visa, Vision, Victory: How Smart Structuring Can Fuel Global Expansion Into the United States

By Nouvelle L. Gonzalo and Yunjuan (Sarah) Bai, Gainesville

photo: iStock/Ralf Liebhold

Every year, billions of dollars flow into the United States from foreign businesses. As such, how a company enters the United States matters as much as what it brings. In 2023, foreign direct investors committed a total of US$148.8 billion to acquire, establish, or expand their businesses into the United States, according to the U.S. Bureau of Economic Analysis (BEA).[1] The United States remains a prime destination for foreign businesses seeking global expansion due to its stable economy, advanced infrastructure, and access to capital markets. However, entering the United States requires navigating complex corporate law considerations, particularly when structuring a business to comply with both legal and immigration requirements. The L-1A visa is a crucial immigration pathway for multinational companies, allowing them to transfer executives and managers to their U.S. operations. However, securing an L-1A visa requires meticulous corporate structuring to meet the visa's qualifying criteria.

During the first Trump administration, heightened scrutiny of L-1A applications led to an increase in Requests for Evidence (RFEs) and a narrowing of the definitions of executive and managerial roles.[2] These changes made it even more important for businesses to structure their U.S. entities strategically to ensure visa approval.

This article examines the changes the current Trump administration has made as they concern structuring the expansion of a foreign company into the United States in a way that supports L-1A visa eligibility. It covers common legal challenges that businesses face, understanding the L-1A visa process, corporate structuring, Trump era changes, and a global case study that applies these considerations.

Common Legal Challenges

Expanding into the United States presents foreign businesses with a complex legal environment. The top five legal challenges they often encounter include:

1. Regulatory Compliance and Oversight
Foreign businesses must navigate a myriad of U.S. regulations, including industry-specific standards and federal guidelines. The Committee on Foreign Investment in the United States (CFIUS) plays a pivotal role in this landscape by reviewing foreign investments for potential national security risks. CFIUS has intensified its enforcement efforts, imposing over US$70 million in penalties during 2023-2024 for violations such as failing to file required notifications and breaching mitigation agreements. This underscores the necessity for foreign investors to thoroughly understand and comply with U.S. regulatory requirements to avoid severe penalties and reputational damage.

2. Anti-Bribery and Corruption Laws
The Foreign Corrupt Practices Act (FCPA) prohibits bribery of foreign officials and mandates accurate financial record-keeping. Notably, in 2025, despite a suspension of new investigations under the FCPA, the trial of two executives from a global company based out of India proceeded, highlighting the Act's stringent enforcement. Foreign businesses must implement robust compliance programs to adhere to the FCPA and avoid significant legal repercussions.

3. Trade Policies and Tariffs
The U.S. trade environment is continually evolving, with recent administrations adopting protectionist measures. For instance, the Trump administration imposed 10% and 25% tariffs on goods from countries like China, Canada, Mexico, and Colombia, leading to increased production costs and supply chain disruptions. Businesses must stay informed about such policies and develop strategies to mitigate associated risks.

4. Intellectual Property Protection
Safeguarding intellectual property (IP) is crucial for businesses entering the U.S. market. Foreign companies must ensure their IP is adequately protected under U.S. law to prevent infringement and unauthorized use. This involves registering trademarks, patents, and copyrights, and being vigilant against potential IP violations.

5. Employment and Labor Laws
Understanding and complying with U.S. employment and labor laws is essential. This includes adhering to regulations on wages, workplace safety, antidiscrimination policies, and employee benefits. Noncompliance can lead to legal disputes, financial penalties, and damage to a company's reputation.

Navigating these legal challenges requires diligent preparation and consultation with legal counsel familiar with U.S. laws and regulations. By proactively addressing these issues, foreign businesses can establish a successful and compliant presence in the U.S. market.

Understanding the L-1A Visa in a Corporate Expansion Context

L-1A is a nonimmigrant visa that allows U.S. employers to bring key executives or managers from related foreign companies to the United States. It also enables a foreign company to send its executive or manager to open a new office in the United States. For new offices, the initial L-1A will be given a one-year validity period; for established businesses, the initial period will be three years. All L-1A visas can be renewed in increments of up to two years, and the maximum valid period is seven years in aggregate.

When a foreign company buys an existing business in the United States that has been operating for over a year, the following criteria must be met to be eligible for an L-1A visa. First, there must be a qualifying relationship between the U.S. company and the foreign company. Qualifying relationships include parent-subsidiary, branches, and affiliates. Second, both the U.S. and foreign companies must be doing business and engaged in regular and systematic business activities. A mere presence of an agent or office of the foreign company doesn't meet the "doing business" requirement. Third, the named employee must have been working with the qualifying foreign company for a continuous period of one year, at an executive or manager position for the past three years, and will continue to work in an executive or manager position after being transferred to the United States.

A foreign company may also come to the United States to open a new office by themselves. In this case, the requirements for an L-1A visa are slightly different. Instead of requiring the employee transferee to assume an executive or managerial position immediately upon being transferred to the United States, the transferee is given one year to develop a team to support their proposed executive or managerial role. In other words, the new U.S. office, as the petitioner, has to prove that the office will have enough of a team to support a managerial or executive position for the employee transferee. This can be done through submitting a comprehensive business plan outlining the office's strategy, marketing, financial, and staffing plan. In addition, the new office must first be incorporated in the United States and secure a sufficient physical office to house its planned staff and daily business activities.

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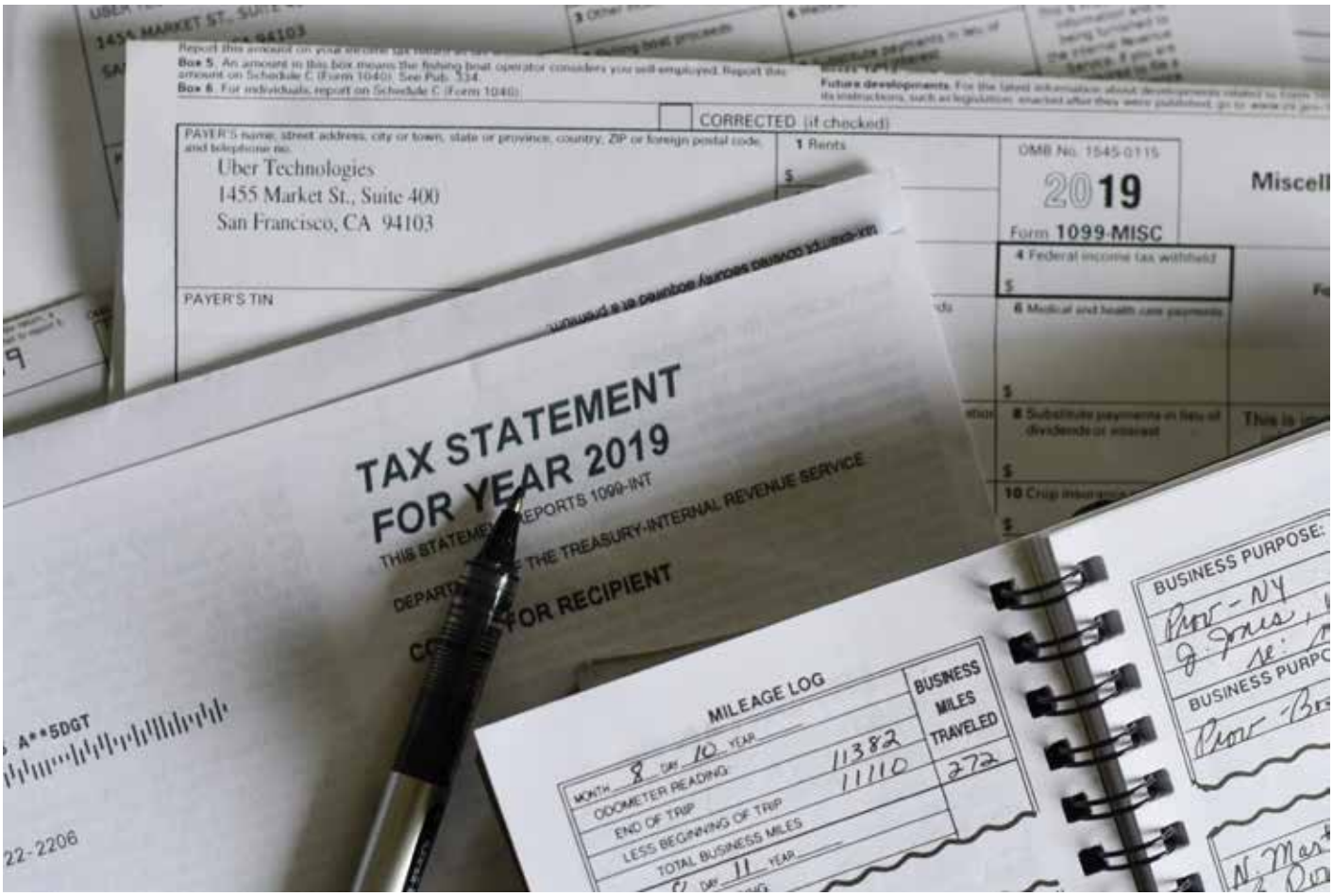
NGOs, Organized Crime, and Tax Evasion

By Carolina Obarrio Langdon,[1] North Miami Beach, and Gerardo E. Vega,[2] Buenos Aires
Translated by TransPerfect



The State is an organized body created by man to protect themselves from circumstances from which they cannot protect themselves. The responsibility is as much of the organization as it is of the inhabitants, because, above all else, "the State belongs to each and everyone of us"; this premise is about taking care of and worrying about management efficiency, which allows the full exercise of rights and freedoms, which is why it self-imposes on each of the inhabitants the obligation to contribute ideas, management and taxes, because societies, State organization and legal order are built on the basis of ideas (the pen), power (the sword) and resources (the money) of the tripartite principles that are reflected in the division of powers. The legislative branch gives origin to the ideas; the judicial branch holds the power of control and, the executive branch manages the resources.

This organization mandates a cost that is borne with taxes, a concept that allows it to provide sufficient services to meet the needs of the inhabitants.

This rule is stated in Article XXXVI of the American Declaration on Human Rights (ADHR) when it says *"Every person has a duty to pay the taxes established by law for the maintenance of public services"*; and it is supplemented with a duty of obedience to the law: *"Every person has a duty to obey the law and other legitimate orders of the authorities of his country and of the one in which he is located"* (Article XXXIII ADHR).

These simple international orders, beyond the fact of whether or not the countries have ratified the treaties, are the essence of legal order of any society; [otherwise,] it is impossible to have a State, and these will only guarantee rights and freedoms if they have sufficient public income; however, it

should be noted that the resources are limited, while human needs are unlimited and increasing.

These assessments indicate the obligation of every inhabitant to contribute. However, with the various tax modalities in society, all human beings are taxed. The design of the current tax structure makes it possible for no one to be exempt from paying taxes; only those who the legislator expresses in a law will be exempted for justified reasons. It is said to be the price of living in society, and it is accepted.

1. Today's Reality and NGOs

The performance of the world's countries often does not permit providing services adequately, and numerous are the causes of these deficiencies, which, in recent decades, have enabled the emergence of so-called NGOs.

The reality of these entrepreneurships, originally civil, is a sum of wills that, today, acquired a predominant role in society. However, not all tend to adequately meet statutory purposes. This particularity becomes serious when NGOs achieve State funding.

The other risk that is often seen is when these figures are used as a "screen" for morally questionable activities, or even for covering up illicit activity.

The "screen" usually counts on contributions from prominent people who, due to their lack of knowledge of the real activity of the NGO, but seduced by its purposes, are part of it, improving the image with their prestige.

These particularities merit proper controls. These are generally not practiced by governments or offices with competencies in specific State controls.

This reality creates favorable conditions to abuse this figure while also covering up illegal activities.

2. Organized Crime

These organizations have become a great scourge for humanity, due to their predatory activity and to the degradation they cause in society.

The concept of organized crime arises in the United States, which CRESSEY referred to as follows *". . . any crime committed by a person who occupies, in an established division of labor, a position designed for the commission of crimes, provided that such division of work includes at least one position for a corruptor, one position for a corruptee and one position for an enforcer."*[3]

These long-standing organizations in human history present different modalities, the simplest being the idea of a "gang,"[4] a more complex step, illicit association, consisting of an entity formed by "multiple people"[5] which will combine an agreement of wills addressed to a common purpose. The purpose of that agreement is based on an organized and permanent cooperation, at least until the achievement of the intended purpose. [Permanence and/or reiteration of an entourage], consensus building, stable organization and planning are the essential characters to make up this figure; that is, the union of participants over time is the consequence of a group vocation that inter-subjectively relates its members and the latter to the organization; social risk originates because permanence is a threat to society and public peace of mind. The reference to risk motivated policymakers to set up, in the case of Argentina, an autonomous and independent figure, because it poses a greater threat to the legal good. The Illicit Association is such that the object is unlawful, that is, the committing of the crime is its essential object.

The characteristics of these organizations are: (a) Complexity; (b) Permanence over time, that is, they are stable, although indeterminate in duration; (c) The aim pursued is to commit crimes; (d) Members are assigned roles or functions; (e) The structure responds to a hierarchical order; (f) The management tasks are carried out by a person seconded by a nearby group, or it is a group, similar to a directorate, that runs the organization; (g) The duration depends on the importance of its work; generally, it is indefinite; (h) The objectives are specific to each organization, the main thing is to achieve exorbitant income, not responding to a particular activity of each of its members, even the boss or "capo"; (i) Some organizations achieve a legal appearance, generally, using legal figures, which are veritable fictions and/or simulations.

The most serious problem is the economic expansion acquired in the 21st century. Technological advances favored this development. The international legal framework, as a location, while advancing, is overcome by the speed of the propagation of organized crime.

Informational benchmarks point to more than 10% of global GDP; however, there is a tendency to exceed that percentage.

The United Nations Office on Drugs and Crime estimated 3.6% of global GDP, or $2.1 trillion, by 2009. Among the data that have been possible to count is the 2015 World Economic Forum (WEF) report on the state of the global illegal economy which yielded some more conclusive data on the real importance of these activities, and their influence on the development of countries' wealth. Thus, according to this report, the main illegal activities accounted for between 8% and 15% of global GDP.

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Las ONG, el crimen organizado y la evasion tributaria

Por Carolina Obarrio Langdon[1] **y Gerardo E. Vega**[2]

El Estado es un ente organizado creado por el hombre para protegerse de circunstancias que por sí mismo no puede hacerlo. La responsabilidad, tanto es de la organización, como de cada uno de los habitantes, porque, ante todo, "el Estado es de todo y de cada uno", esta premisa, fundamenta ocuparse y preocuparse por la eficiencia de gestión, la cual permite el ejercicio pleno de los derechos y libertades, motivo por el cual, se auto impone a cada uno de los habitantes la obligación de aportar ideas, gestión y tributos, porque las sociedades, la organización estatal y el orden jurídico se construye sobre la base de las ideas (la pluma) el poder (la espada) y los recursos (el dinero) ideario tripartito que se refleja en la división de poderes. El legislativo origina las ideas; el judicial ostenta el poder de control y, el ejecutivo administra los recursos.

Esta organización demanda costo que se sufragan con los tributos, concepto que permite prestar los servicios suficientes para satisfacer las necesidades de los pobladores.

Esta regla está enunciada en el artículo XXXVI de la Declaración Americana sobre los Derechos Humanos (DADDH) cuando dice *"Toda persona tiene el deber de pagar los impuestos establecidos por la ley para el sostenimiento de los servicios públicos"*; y se complementa con deber de obediencia a la ley *"Toda persona tiene el deber de obedecer a la ley y demás mandamientos legítimos de las autoridades de su país y de aquel en que se encuentre"* (artículo XXXIII DADDH).

Estas sencillas mandas internacionales, más allá, que los países hayan ratificados, o no, los tratados, son la esencia del orden jurídico de toda sociedad; es imposible contar con un Estado y, estos solo garantizarán derechos y libertades si cuenta con ingresos públicos suficientes; sin embargo, debe señalarse, los recursos son limitados, mientras las necesidades humanas son ilimitadas y crecientes.

Estas apreciaciones indican la obligación de todo habitante a contribuir. Las modalidades tributarias variadas, pero, en una sociedad todo ser humano tributa. El diseño de la estructura

tributaria actual propicia que nadie está exento de abonar impuesto; solo se eximirá a quien el legislador por razones fundadas lo manifieste en una ley. Se dice que es el precio de vivir en sociedad, y se acepta.

1. La realidad actual y las ONG

El obrar de los países del orbe no suelen prestar servicios adecuadamente, numerosas son las causas de estas deficiencias, y estas, en las últimas décadas, han posibilitado el surgimiento de las llamadas ONG.

La realidad de estos emprendimientos, originariamente civiles, es una suma de voluntades que, hoy adquirieron un rol preponderante en la sociedad. Sin embargo, no todas suelen cumplir adecuadamente con las finalidades estatutarias. Esta particularidad adquiere gravedad cuando las ONG logran financiamiento estatal.

El otro riesgo que suele apreciarse es cuando se utilizan estas figuras como "pantalla" de actividades dudosas moralmente, o, incluso, encubriendo actividad ilícita.

La "pantalla" suele contar con aportes de personas destacadas que por desconocimiento de la real actividad de la ONG, pero seducido por sus fines, forman parte de la misma, mejorándole con su prestigio la imagen.

Estas particularidades ameritan adecuados controles. Estos, generalmente, no se practican, ni por los gobiernos, ni por las oficinas con competencias en controles estatales específicos.

Esta realidad propicia condiciones favorables para abusar de esta figura y, a la vez, incurrir en encubrimiento de las actividades ilegales.

2. El crimen organizado

Estas organizaciones se han convertido en un gran flagelo para la humanidad, por su actividad depredadora y de degradación que provoca en la sociedad.

El concepto crimen organizado surge en Estados Unidos, CRESSEY se refirió de la siguiente manera *"…cualquier delito cometido por una persona que ocupa, en una división del trabajo establecida, una posición diseñada para la comisión de delitos, siempre que dicha división del trabajo incluya al menos una posición para un corruptor, una posición para un corrupto y una posición para un ejecutor"*.[3]

Estas organizaciones de larga data en la historia de la humanidad presentan distintas modalidades, la más simple la idea de "banda"[4], un escalón más complejo, la asociación ilícita, consistente en un ente formado por "varias personas"[5] la cuales conjugarán un acuerdo de voluntades enderezado a un fin común. El fin de ese acuerdo está fundado en una cooperación organizada y permanente, al menos hasta el logro de la finalidad prevista. La permanencia y/o reiteración comitiva, concertación, organización estable y planificación, son los caracteres esenciales para conformar esta figura; es decir la unión los partícipes en el tiempo es la consecuencia de una vocación grupal que relaciona intersubjetivamente a sus miembros y a estos con la organización; el riesgo social se origina porque la permanencia es amenaza para la sociedad y la tranquilidad pública. La referencia al riesgo motivó a los legisladores a configurar, en el caso de Argentina, una figura autónoma e independiente, porque representa una amenaza mayor al bien jurídico. La Asociación Ilícita es tal cuando el objeto es ilícito, es decir, el cometido de delito es su objeto esencial.

Las características de estas organizaciones son: a) La complejidad; b) La permanencia en el tiempo, es decir son estables, aunque indeterminada su duración; c) La finalidad perseguida es cometer delitos; d) Los integrantes tienen asignados funciones o roles; e) La estructura responde a un orden jerárquico; f) Las tareas directivas está a cargo de una persona secundada por un grupo cercano, o es un grupo, semejante a un directorio quien dirige la organización; g) El tiempo de duración depende de la trascendencia de su obrar, generalmente, es indefinido; h) Los objetivos son propios de cada organización, el primordial es lograr rentas exorbitantes, no responden a una actividad particular de cada uno de sus integrantes, incluso del jefe o "capo"; i) Algunas organizaciones logran apariencia legal, generalmente, utilizando figuras jurídicas, las cuales son verdaderas ficciones y/o simulaciones.

El problema más serio es la expansión económica adquirida en el siglo XXI. Los avances tecnológicos favorecieron este desarrollo. El orden jurídico internacional, como local, si bien avanza, es superado por la velocidad de propalación del crimen organizado.

Las referencias informativas señalan una participación superior al 10 % del PBI mundial; sin embargo, hay una tendencia a superar ese porcentaje.

La Oficina de las Naciones Unidas contra la Droga y el Delito estimaba para el año 2009 en el 3,6% del PIB mundial, o 2,1 billones de dólares. Entre los datos que se han tenido posibilidad de contar se menciona el informe del Foro Económico Mundial (FEM) del año 2015 sobre el estado de la economía ilegal a nivel global arrojaba algunos datos más concluyentes sobre la importancia real de estas actividades, y su influencia en el desarrollo de la riqueza de los países. Así pues, según este informe, las principales actividades ilícitas significaban entre el 8% y el 15% del PBI mundial.

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QUICK TAKE

A Fictional Space Station, a Real Astronaut, and the Legal Questions We Can't Ignore

By Neha S. Dagley, Miami

What happens when fiction dares to ask the legal questions that reality hasn't yet tested? The Korean television series *When the Stars Gossip*[1] unfolds aboard a multinational commercial space station and weaves together science, ethics, and drama. But beneath its narrative arcs lie provocative legal hypotheticals that challenge the adequacy of existing international space law. With plotlines involving orbital collisions, unauthorized biomedical experiments, and astronauts in life-threatening scenarios, the show surfaces treaty ambiguities that space lawyers and policymakers are likely to confront in a not-so-distant future.

Set aboard the International Institute of Space United (I.O.U.), a fictional multinational research station, *When the Stars Gossip* follows Commander Eve Kim—a seasoned Korean astronaut with years of experience navigating the complexities of multinational space missions—and Dr. Ryong Gong, a terrestrial obstetrician selected as a civilian space tourist. Dr. Ryong embarks on the mission under the guise of research participation, but he carries a hidden agenda linked to the corporate sponsor. Their evolving relationship unfolds amid orbital emergencies, secret medical experiments, and a pregnancy that raises moral and legal dilemmas. Behind the scenes is the MZ Group, a powerful corporate sponsor whose undisclosed agenda centers on human reproduction in space, a storyline that brings into focus issues of state oversight, ethical violations, and regulatory evasion. As mission control fragments and ethical boundaries blur, the series challenges audiences to consider what happens when space law lags behind human ambition. Though fictional, these scenarios foreshadow potential realities as more private spaceflight participants enter orbit—bringing with them new legal, ethical, and regulatory challenges that current treaty frameworks may not yet be equipped to handle.

I had the unique privilege of discussing these issues one-on-one with South Korea's first and only astronaut, Dr. Soyeon Yi.[2] Dr. Yi served as a space consultant for *When the Stars Gossip*. Her real-world space mission commenced on 8 April 2008, when she launched into space alongside Commander Sergey Volkov and Flight Engineer Oleg Kononenko aboard the Soyuz TMA-12 from the Baikonur Cosmodrome in Kazakhstan. During her time aboard the International Space Station (ISS), Dr. Yi conducted various multidisciplinary experiments managed by the Korea Aerospace Research Institute (KARI) and funded by Korea's Ministry of Education, Science and Technology (MEST). After spending eleven days in space, she returned to Earth on 19 April 2008. Her perspective as an astronaut, scientist, engineer, and space communicator lent the production its authenticity. In this article, we explore the real legal frameworks that intersect with the show's fiction and interweave reflections from Dr. Yi on spaceflight, storytelling, and law.

photo courtesy of Dr. Soyeon Yi

Legal Flashpoints in Fiction: What the Show Gets Right—and Where the Law Is Silent

Debris Liability and the Problem of Old Objects in Orbit

In the show's opening episode, the spacecraft's radiator and solar panels are struck by an unidentified object—later revealed to be a derelict "SuitSat"[3] from a prior mission. The debris is initially too small to track, eluding detection by Mission Control, and ultimately impacts the station's solar panels and radiator. Though fictional, the incident mirrors a real-world challenge: the growing threat posed by untracked space debris and the limitations of current orbital debris mitigation regulatory regimes.

Under Article IX of the Outer Space Treaty, States Parties must "conduct all their activities in outer space, including the Moon and other celestial bodies, with due regard to the corresponding interests of all other States Parties to the Treaty."[4] The provision further requires parties to avoid harmful contamination of outer space. These general duties can collectively be interpreted as an affirmative obligation to mitigate orbital debris. Also applicable is the Liability Convention providing for absolute liability for damage caused by its space objects on the surface of the Earth or to aircraft in flight, and fault-based liability caused elsewhere, including in space.[5]

However, the precise implementation of general treaty obligations is left to national legislation. The Federal Communications Commission (FCC), for example, has adopted a five-year post-mission disposal requirement for satellites authorized for launch after 29 September 2024. These rules apply to U.S.-licensed and non-U.S.-licensed satellites seeking U.S. market access alike, requiring them to deorbit no later than five years after the end of their mission. Satellites already in orbit as of 29 September 2024 are grandfathered in. Applications granted prior to that date for satellites exceeding the five-year limit are exempt so long as the launch occurred prior to 30 September 2024.[6] This regulation aims to mitigate long-term orbital debris accumulation and represents a significant shift toward enforceable national standards. Parties can seek a waiver of the five-year post-mission disposal requirement under the FCC's existing waiver rules.

The fictional debris incident also raises legal questions about attribution and detection. Space object tracking is managed through international collaboration, but not all small or fragmented debris can be tracked. The SuitSat's detached arm was too small to appear on the monitoring systems in time to avoid a collision, as depicted in the show. If it had caused loss of life or catastrophic system failure, identifying the responsible launching State—and proving fault under the Liability Convention—would be exceptionally difficult. The scene highlights the tension between increased space traffic, aging hardware, and inadequate international norms to manage cumulative debris risk. As more private and state actors populate low-Earth orbit, the need for binding, multilateral debris mitigation protocols become all the more urgent.

Rescue Obligations and Redefining Distress in Orbit

Episodes 3 and 4 of *When the Stars Gossip* portray a high-stakes spacewalk gone awry. Commander Eve Kim is flung around the station after losing her foot grip during a solar panel repair. Her tether swings her across open space until she grasps a damaged panel, tearing her glove and causing a dangerous pressure leak. Her oxygen levels drop, and a fatal outcome appears imminent. In a dramatic turn, the space tourist defies mission control orders to execute an unsanctioned rescue. The scene challenges viewers to consider one of the more unsettled corners of space law: What constitutes "distress" in orbit? Who holds the legal obligation to act? Can breaking protocol, such as Ryong's impulsive EVA,[7] be justified, particularly in the uniquely perilous space environment?

Article V of the Outer Space Treaty (OST) affirms that "[i]n carrying on activities in outer space and on celestial bodies, the astronauts of one State Party shall render all possible assistance to the astronauts of other States Parties" and further characterizes them as "envoys of mankind."[8] This humanitarian framing laid the foundation for the Rescue Agreement, which was drafted to operationalize these obligations. Article 1 of the Rescue Agreement requires any Contracting Party that discovers astronauts in distress, whether by accident or emergency landing on Earth or in any place not under national jurisdiction, to notify the launching authority and the secretary-general of the United Nations.[9] Article 3 goes further, directing States in a position to help to extend assistance in "search and rescue operations" to ensure the "speedy rescue" of such personnel when they have landed on the high seas or in any place not under the jurisdiction of any State.[10]

Yet this is where legal ambiguity takes hold. Neither the Outer Space Treaty nor the Rescue Agreement explicitly addresses situations where astronauts are imperiled while still in orbit. The show leverages this silence to dramatic effect. Dr. Ryong's unsanctioned EVA raises layered legal questions. If a contracted civilian spaceflight participant overrides mission protocol to rescue a fellow crewmember, and injury results to personnel or to the station itself, who is legally responsible? Would the act invoke the Liability Convention if the damaged spacesuit is considered a "space object"? Would the obligation

fall on South Korea, or might liability be distributed among parties to a consortium space station agreement if one were in place?

Further complicating matters is Article VIII of the OST, which grants a launching state jurisdiction and control over its personnel and space objects.[11] Yet aboard a fictional commercial station like the I.O.U.—multinational, with private funding, and hosting crew from various nations—these jurisdictional boundaries can blur. As private space operations grow, the prospect of emergency decision-making in legal gray zones becomes more likely. The fictional rescue arc is more than dramatic license as it exposes the gaps in existing treaty law and the urgent need for updated guidance. Space law must evolve to accommodate not just search and rescue missions but on-orbit interventions, internal crew disagreements, and actions taken in defiance of command.

Dr. Soyeon Yi's Real-World Lens

Dr. Soyeon Yi's real-life experience as South Korea's first and only astronaut brings unique credibility to the show's vision. Her 2008 spaceflight aboard the Soyuz marked a historic moment for her and her country. Dr. Yi's perspectives are deeply informed based on her spaceflight and ISS experience and her survival of a high-risk reentry in 2008 when her Soyuz capsule entered ballistic descent and landed nearly 300 miles off-target in Kazakhstan. A nomadic shepherd first assisted the crew until the search and rescue team arrived more than thirty to forty minutes after the ballistic reentry. Dr. Yi spoke about the intense physical toll, describing spinal compression and difficulty walking in the aftermath. Importantly, she noted that while astronaut training is comprehensively designed and continuously refined over time to address as many scenarios as possible, it still cannot prepare astronauts for every unexpected eventuality that might arise during missions.

As a consultant on *When the Stars Gossip*, Dr. Yi provided critical insights into astronaut routines, zero gravity functions, and crew dynamics. She shared that while technical precision matters, what often resonates most with viewers is the human reality of life in orbit, including friendships and relationships, a theme that is central to the show. In our interview, we specifically discussed a scene from Episode 4, where Commander Kim reads a letter from her adoptive father: "*My dear daughter, once you experience the vastness of space with no beginning or end, you'll understand. Out here, everything weighs zero. Zinnias, lettuce, mayflies, even humans. All living things are equal. So do not carelessly step on an earthworm in the backyard . . . or weed the lawn. They are miracles made by the spirits of the universe. Every being is a miracle on its own*." Dr. Yi remarked on the power of such moments to convey a sense of unity and fragility that often comes with space travel.[12]

Dr. Yi also spoke about the public response within the show's fictional world, encompassing press coverage, diplomatic tensions, and media fascination with the astronauts' personal stories as an important reflection of reality. In today's environment, astronauts serve as scientists and national figures. She emphasized that space-themed media can serve as a gateway for audiences to engage with real-world space issues, something particularly important in countries like South Korea, where space is an emerging field. Interestingly, the show's release timeline is close to the official launch of South Korea's new space agency (May 2024) known as the Korean Aerospace Administration (KASA). Dr. Yi observed that public awareness and interest often follow emotional engagement and shows like *When the Stars Gossip* can help spark broader discussions that eventually reach legal, scientific, and policy circles.

Conclusion

Fiction has long served as a mirror for society's unspoken questions. In *When the Stars Gossip*, that mirror is turned toward space law. The show reveals the limitations of existing legal frameworks by dramatizing ethical dilemmas, jurisdictional uncertainties, and emergency scenarios in orbit. Rather than focusing solely on their shortcomings, it offers something more powerful: a provocation. It invites legal scholars, policymakers, and industry leaders to think beyond compliance and consider law as a structure that can anticipate, not just respond to, the evolving realities of space exploration. Dr. Yi's dual perspective as South Korea's first astronaut and as a consultant to the series brings a rare authenticity to these discussions. Her reflections remind us that no treaty, protocol, or agreement can fully predict the human realities of spaceflight. The choices, relationships, and risks that define life in orbit should inform how the law continues to evolve. As space becomes more accessible to private actors and multinational partnerships, fiction provides a valuable testing ground. It allows us to test ideas, challenge assumptions, and build better legal tools. With new agencies emerging and public interest growing, this is the moment to take those lessons seriously. The future of space law depends not just on technical capability but on the willingness to prepare for legal uncertainty before it becomes a crisis.

With sincere thanks to Dr. Soyeon Yi, whose achievements as an astronaut and advocate for space exploration continue to inspire those working to shape the legal and policy frameworks for humanity's future in space.

Neha S. Dagley *is an attorney with nearly two decades of experience representing foreign and domestic clients in complex litigation and arbitration. She holds an advanced LL.M. in air and space law from Leiden University in the Netherlands and recently presented at the United Nations in Vienna on Advancing Private Human Spaceflight: International Law, Regulatory Frameworks, and Public-Private Collaboration. Ms. Dagley is a member of the Executive Council of The Florida Bar's International Law Section and serves as co-chair of its Asia Committee. In a full-circle moment of inspiration, she has been accepted to attend the International Space University's Space Studies Program this summer—the same program Dr. Yi joined after returning from her historic mission to the International Space Station.*

Endnotes

[1] *When the Stars Gossip* 별들에게 물어봐, directed by Park Shin-woo, written by Seo Sook-hyang (2025).

[2] Transcript of Interview with Dr. Soyeon Yi by Neha Dagley (11 Mar. 2025), on file with author.

[3] The SuitSat reference is based on a real event. SuitSat-1 was a retired Russian Orlan spacesuit equipped with a radio transmitter, deployed from the International Space Station on 3 Feb. 2006. It was "filled mostly with old clothes" and "fitted with a radio transmitter and released to orbit the Earth." NASA Image and Video Library, *SuitSat-1 Floats Free*, https://www.nasa.gov/image-article/suitsat-1-floats-free/ (last accessed 7 Apr. 2025).

[4] Outer Space Treaty, Treaty on Principles Governing the Activities of States in the Exploration and Use of Outer Space, including the Moon and Other Celestial Bodies, Oct. 10, 1967, 18 U.S.T. 2410, 610 U.N.T.S. 205 ["Outer Space Treaty"].

[5] Convention on International Liability for Damage Caused by Space Objects, Sep. 1, 1972, 24 U.S.T. 2389, 961 U.N.T.S. 187 ["Liability Convention"].

[6] *See* FCC, *Orbital Debris Mitigation Rules*, https://www.fcc.gov/space/faq-orbital-debris (last accessed 6 April 2025); *see also* 47 CFR § 5.64(b)(7)(iv)(A); 47 CFR § 25.114(d)(14)(vii)(D)(1); 47 CFR § 25.283(e); and 47 CFR § 97.207(g)(1)(vii)(D)(1).

[7] EVA refers to Extravehicular Activity.

[8] Outer Space Treaty, Art V.

[9] Agreement on the Rescue of Astronauts, the Return of Astronauts, and the Return of Objects Launched into Outer Space, Dec. 3, 1968, 19 U.S.T. 7570, 672 U.N.T.S. 119 ["Rescue and Return Agreement"].

[10] Rescue and Return Agreement, Art 3.

[11] Outer Space Treaty, Art VIII ("A State Party to the Treaty on whose registry an object launched into outer space is carried shall retain jurisdiction and control over such object, and over any personnel thereof, while in outer space or on a celestial body.")

[12] Dr. Yi is the author of the following quote coined by her over a decade ago: "I've experienced outer space as a place open to all humankind without any preconceptions." Parallel to the sentiment of the quote expressed in the show, hers appears on a site that sells SOYEON wine (https://www.winefornia.com/soyeon). A portion of the profits are donated to Amelia's Aero Club, an educational initiative by the Museum of Flight designed to inspire young girls in the exploration of STEM initiatives.

ILS Lunch & Learn With Melissa Ferrari
29 January 2025 • Coral Gables

Fiduciary Trust International hosted the ILS Lunch & Learn on 29 January 2025 in their offices overlooking beautiful Coral Gables, Florida. ILS Past Chair Jackie Villalba interviewed board-certified Melissa Ferrari who leads operations for the Miami office of international law firm Pogust Goodhead. Melissa represents international plaintiffs in cross-border mass and class action proceedings involving consumer claims, medical products, and environmental issues. She is one of fewer than 150 civil law notaries in Florida.

Initially a medical malpractice defense litigator with a background in nursing, Melissa Ferrari now focuses on representing the interests of international plaintiffs.

Participants listen intently as Melissa Ferrari responds to a question from moderator Jackie Villalba.

ILS Lunch & Learn participants gather for a rooftop photo overlooking the cityscape of Coral Gables on a beautiful South Florida winter day.

iLaw 2025 • 7 February 2025 • Miami

The iLaw conference is the International Law Section's annual flagship event. iLaw 2025 featured opening and closing plenary sessions; a luncheon keynote address by Emilio García Silvero, chief legal and compliance officer with FIFA (sponsored by Barakat + Bossa); and three parallel tracks on (1) international arbitration (sponsored by AAA-ICDR), (2) international litigation, and (3) international business transactions. The conference is the premiere international law conference in Florida and is attended by legal practitioners from the United States, Canada, Europe, and Latin America.

The day before iLaw, on 6 February, 2025, the International Law Section conducted its Mid-Year Meeting at the offices of Greenberg Traurig PA, which included a celebration of the winners of the ILS Fantasy Football League. Later that evening, iLaw attendees enjoyed an opening cocktail reception at Boulud Sud, a Mediterranean restaurant in Downtown Miami.

Opening plenary session: Despierta América: Key Cross-Border Developments in Latin America, with Richard Montes De Oca (moderator), Suzette Recinos, Yuri Moreno, and Mónica Villafaña

Emilio García Silvero delivers the keynote address.

iLaw Tracks

Hot Topics in International Litigation with Carlos F. Osorio, Clarissa A. Rodriguez, Frederico Singarajah, José E. Arvelo, and Ed Mullins (moderator)

iLaw Tracks

Foreign Counsel and In-House Perspectives on U.S. Anti-Corruption Efforts with Ilan Katz Mayo, Violeta Longino, Michael Fernandez (moderator), Frank LaFontaine, and Diego Sierra

Nearshoring and Friendshoring: What Florida Lawyers Need to Know From Corporate to Labor Issues in the Americas with Giuseppe de Palo (moderator), Delia Reyes, Alberto Reyes Báez, and Rogelio Vargas

Crypto and Financial Services Regulatory Panel with Justin Carlson, Fraser Hughes (moderator), Brittany Leonard, and Esteban Aguero Guier

Global Counsel: Mastering Foreign Firm Management and Cross-Border Litigation with Diogo Ciuffo, Gilbert Squires (moderator), María Verónica Arroyo, Warren Jay Stamm, Esther Silva, and Javier Fernández-Samaniego

Florida and the Future of U.S. Trade with Arthur Chiu, Olga Torres, Peter Quinter (moderator), Lena Halasa, and Luis Armendariz

iLaw Tracks

Litigating in Florida: Spotting International Issues From Beginning to End with Hon. Jose M. Rodriguez, Jocelyne A. Macelloni, Amy T. Geise, Don Hayden, and Joseph Rome (moderator)

Protecting Your Client's Image in the United States and Abroad with David O'Steen (moderator), Hans Hertell, Sira Veciana-Muino, and Esteban León Moreno

Thank you to these presenters who are not pictured:

Investment Arbitration Reports and Updates
James Hosking (moderator), Martina Polasek, John D. Daley, Carlos Ramos-Mrosovsky

International Energy Arbitration
Laura Zimmerman (moderator), Ulyana Bardyn, Annie Lespérance, Veronica Lavista, and Diana Paraguacuto-Mahéo

International Construction Arbitration: Infrastructure Projects With Sovereigns
Luis M. Martinez (moderator), Jerry P. Brodsky, Alvin Lindsay, Erica Franzetti, and David Attanasio

2025 General Counsels' Closing Plenary: Mapping Out the Next Quarter Century
Eve Perez-Torres (moderator), Fatima Wolff, Aline Drucker, Kristopher Zinchiak, Rafael Ribeiro, and Jaime Garcia-Nieto

ILS Executive Council Meeting

The International Law Section conducts its Mid-Year Meeting, led by ILS officers Jeff Hagen (vice treasurer), Cristina Vicens Beard (chair-elect), Ana Barton (chair), Laura Reich (secretary), and Davide Macelloni (treasurer).

iLaw Opening Reception

Congratulations to the 2025 ILS Fantasy Football winners. In first place is [Steelers Curtain] (Jorge De Hoyos), second is [Trippin'] (Omar Ibrahem), and third is [Tax Legends] (Jeff Hagen).

Fantasy Football Champion Jorge de Hoyos proudly displays his trophy and champion's ring.

Cristina Vicens Beard, Davide Macelloni, Jennifer Mosquera, and Joe Rome

Laura Reich, Susanne Leone, and Neha Dagley

Blake Bierman and Alain Acanda

iLaw Closing Reception

ILS officers say thank you to our sponsors!

Giovanni Angles and Adrian Nuñez

Michael Clauser, Jim Meyer, and Rafael Ribeiro

Sherman Humphrey, Esteban Guier, Michael Fernandez, Katie Gonzalez, and Adrian Sierra

Giovanna F. Del Nero, Mary Ann Shahid, Catalina Correa Párraga, Ana Barton, and Alvin Lindsay

iLaw Closing Reception

iLaw attendees close out iLaw 2025. Till next year!

Many thanks to our law student volunteers!

Santiago Cueto, Luke Becerra, and Bob Becerra

ILS-FIU Law Meet & Greet
19 March 2025 • Miami

On 12 March 2025, members of the International Law Students Association (ILSA) at the Florida International University College of Law invited members of the ILS to a meet and greet in the FIU law school atrium. ILS members welcome opportunities like these to meet with students as they prepare for careers in international law.

Cristina Vicens Beard, Prof. Manuel Gómez, and Laura Reich

From left, Jackie Freitas, ILSA president, along with Kelly Cuba, Catarina Alvarez, and Lauren Amos, joins Bob Becerra for a "round table" discussion during the ILS-FIU Law Meet & Greet.

Eddy Palmer shares his experiences with law students during the ILS-FIU Law Meet & Greet.

Giovanna Del Nero, Dinara Seidova, Cristina Vicens Beard, and Prof. Manuel Gómez

ILS Presentation @ Ava Maria School of Law 13 March 2025 • Naples

On 13 March 2025, Laura Reich and Ana Barton visited with students at Ave Maria School of Law in Naples, Florida, to provide information about the International Law Section and the practice of international law in Florida. The ILS is committed to guiding law students as they enter the legal profession and letting them know the professional and personal benefits they would enjoy as international law practitioners.

Ana Barton and Laura Reich

Ana Barton and Laura Reich with students at the Ave Maria School of Law

ILS Lunch & Learn With Robert J. Becerra
19 March 2025 • Coral Gables

Robert J. Becerra, the speaker at the 19 March 2025 Lunch & Learn is no stranger to the International Law Section. An active member of the ILS, Bob served as chair in 2020-21. He is board certified in international law and concentrates his practice in the areas of civil litigation, white collar criminal defense, grand jury investigations, cargo loss, federal agency investigations, disputes between exporters and importers, trade-based money laundering, export enforcement, FDA detentions and investigations, customs seizures and civil forfeitures, and other proceedings related to international trade. Thank you to Fiduciary Trust International for once again hosting the ILS Lunch & Learn and to ILS Past Chair Jackie Villalba for conducting the interview.

Bob Becerra and Jackie Villalba

Each ILS Lunch & Learn features a delicious lunch and an opportunity for ILS members to meet with colleagues and learn from each other.

No Lunch & Learn is complete without the rooftop photo overlooking sunny Coral Gables!

WORLD ROUNDUP

ITALY

Giovanna Vaglio Bianco, Milan
giovanna_vaglio@hotmail.com

Italian Supreme Court sets limits on employers' email-monitoring practices.

The Italian Supreme Court has set limits on employers' email-monitoring practices with judgment no. 807 of 13 January 2025.

In this case, a company received an alert (on 8 February 2017) from its internal control system that indicated possible misconduct by one of its employees. Following the alert, the company implemented controls on email log files of the employee. The monitoring was extensive and focused on data stored from one month before the February 2017 alert.

The controls led to the dismissal of the employee, who challenged the company's activities leading up to the termination. In particular, the dismissed employee, referring to Article 4, Law no. 300, 20 May 1970 (Workers' Statute), claimed that an employer may only carry out controls and gather data after a well-founded suspicion of illegal conduct. In this case, according to the employee, data could be gathered and used only after the alert (February) and not before, as happened (the review went back to January).

The company assumed and argued its conduct was fair, aimed to ascertain the unlawful behavior of its employee (the so-called "defensive controls").

The Supreme Court ruled that the dismissal was unfair and based on data that couldn't be used for disciplinary purposes since the information was collected before the suspicion arose. In other words, the Court stated that the employer controls must be conducted ex post, that is, only after a well-founded suspicion of unlawful conduct.

This judgment establishes firm principles regarding the limits of employer control, particularly in a technological context, as surveillance capability—thanks to technological means—has increased and can be pervasive.

It is crucial to set clear boundaries concerning monitoring activities and data collection to ensure they are lawful and compliant with current regulations in the jurisdiction. Moreover, any monitoring activity must be proportionate, transparent, and clearly justified, ensuring that employees are informed about the scope and purpose of such surveillance according to the Italian Data Protection Authority's guidelines and decisions.

Internal investigations will be more challenging for Italian employers, as practices such as reviewing employee emails are likely to receive strict scrutiny to ensure the proper balance between business interests (related to the freedom of employers' economic initiative, e.g., article 41 of the Italian Constitution) and employees' dignity and privacy rights.

Giovanna Vaglio Bianco *is an Italian attorney and member of the Milan Bar Association. She focuses her practice on employment and labor law, assisting national and international clients on labor law issues, including employment and self-employment contracts, employees' transfers, disciplinary proceedings, and dismissals.*

NORTH AMERICA

Laura M. Reich and Clarissa A. Rodriguez, Miami
lreich@harpermeyer.com;
crodriguez@harpermeyer.com

Trump administration imposes tariffs as part of its "America First" trade agenda.

The Trump administration's use of tariffs began immediately after President Donald Trump first took office in January 2017 and have been a hallmark of his "America First" trade policy. Since President Trump's second inauguration in January 2025, his administration has implemented a series of significant tariff measures, which the administration hopes will bolster domestic industries and reduce the U.S. trade deficit but which critics decry as a significant shift toward economic protectionism and the start of a new crisis in global trade.

The tariffs proposed since the start of President Trump's second term include:

- A 10% tariff on a broad range of Chinese goods, effective 4 February 2025
- A 25% tariff on all steel and aluminum imports, effective 12 March 2025
- A baseline 10% tariff on nearly all imported goods, with higher tariffs for certain specified countries

The Trump administration's stated goals with its tariff policies are to reduce trade deficits with countries including China, Mexico, and the European Union and to protect American industries from what the administration sees as unfair competition from foreign countries, particularly China. As part of its broader goals, the administration hopes to use tariffs as leverage to renegotiate existing trade agreements and to penalize countries for practices that it considers unfair, such as currency manipulation and government subsidies to undermine U.S. competitiveness. Critics warn that these tariffs

will fuel inflation, slow economic growth, and damage the U.S. global trade network.

Canadian prime minister announces that Canada will match U.S. auto tariffs.

Canadian Prime Minister Mark Carney has announced that Canada will match the United States' 25% auto tariffs with a similar tariff on vehicles imported from the United States. The Trump administration has previously enacted 25% tariffs on Canada's steel and aluminum imports. In response, Canada had put a 25% retaliatory tariff on US$21 billion worth of U.S. goods, such as wine and spirits and orange juice.

Prime Minister Carney stated on 27 March that "the old relationship we had with the United States, based on deepening integration of our economies and tight security and military cooperation, is over." He further stated that Canada would respond to U.S. tariffs "with purpose and with force."

Mexican president welcomes preferential U.S. tariff treatment, says Mexico will respond to future tariffs imposed by the United States.

Although President Trump previously announced a 25% tariff on all imports from Mexico, the administration later agreed to pause such tariffs on products covered by the United States-Mexico-Canada Agreement (USMCA). Mexican President Claudia Sheinbaum stated that this preferential treatment was due to the good relationship between the United States and Mexico: "There are no additional tariffs to Mexico and that is good for the country." President Sheinbaum has advocated for keeping a "cool head" when dealing with the United States and the Trump administration. She has won praise domestically for fending off a barrage of threats from President Trump and even turning those threats to praise as President Trump has called her "tough" and "a wonderful woman" with whom he has a "very good" relationship. Her approval ratings domestically have peaked above 75%.

Laura M. Reich *is a commercial litigator and an arbitrator practicing at Harper Meyer LLP. In addition to representing U.S. and foreign clients in U.S. courts and in arbitration, she is also an arbitrator with the American Arbitration Association and the Court of Arbitration for Art in The Hague. A frequent author and speaker on art, arbitration, and legal practice, Ms. Reich is an adjunct professor at Florida International University Law School and Florida Atlantic University and secretary of the International Law Section of The Florida Bar.*

Clarissa A. Rodriguez *is a board certified expert in international law. She is a member of the Harper Meyer LLP dispute resolution practice and specializes in art, fashion, and entertainment law, as well as international law. With nearly two decades of experience, Ms. Rodriguez leads and serves on cross-disciplinary teams concerning disputes resolution and the arts industry. She has found a way to dovetail her passion for the arts into her legal career by representing the players in the art, fashion, and entertainment industries in their commercial endeavors and disputes.*

WESTERN EUROPE

Susanne Leone, Miami
sleone@leonezhgun.com

EU – U.S. trade tensions escalate.

The trade relationship between the United States and Europe is experiencing significant tensions, primarily due to recent tariff implementations and disputes. In March 2025, the United States imposed a 25% tariff on all steel and aluminum imports, aiming to strengthen its domestic industries. In retaliation, the European Union announced plans to reintroduce tariffs initially imposed in 2018 and 2020. These measures, set to total €4.5 billion in 2025, target a range of U.S. products, including steel, aluminum, home appliances, and various food items. While the EU initially planned to implement these tariffs on 1 April 2025, the European Commission delayed their enforcement until mid-April to allow for further negotiations and reassessment of which U.S. goods should be affected. Among the targeted products is U.S. bourbon whiskey, raising concerns within the U.S. bourbon industry about potential price hikes and restricted market access. In addition to traditional goods, the EU is considering actions against major U.S. tech firms like Apple, Meta, and Google to determine if they are violating EU digital competition laws. If found guilty, these companies could face substantial fines based on their global revenues, potentially opening a new front in the trade dispute that could lead to additional tariffs and regulatory challenges.

These escalating tensions threaten the estimated US$9.5 trillion commercial relationship between the United States and Europe. Extended disputes and tariffs could disrupt supply chains, increase costs for consumers, and slow economic growth on both sides of the Atlantic. As negotiations continue, the situation remains fluid, with the possibility of further developments on the horizon.

France to distribute "survival manual" for citizens.

France is set to distribute a "survival manual" to every household, helping citizens to prepare for "imminent threats," including the possibility of armed conflict on French soil. The guide will cover a range of scenarios, from natural disasters and technological or cyber incidents to health emergencies like COVID-19 and security threats such as terrorism and armed conflict. If approved, the aim is to deliver the twenty-page booklet to French households before the summer.

Amazon fined €746 million for GDPR violation.

The Luxembourg Administrative Court upheld a record €746 million fine against Amazon for processing personal data in breach of the EU General Data Protection Regulation (GDPR). The court dismissed Amazon's appeal, leaving the fine and corrective measures imposed by Luxembourg's privacy watchdog, the Luxembourg National Commission for Data Protection (CNPD), in place, though they remain suspended

during the appeal period.

Susanne Leone *is one of the founders of Leone Zhgun, based in Miami, Florida. She concentrates her practice on national and international business start-ups, enterprises, and individuals engaged in cross-border international business transactions or investments in various sectors. Ms. Leone is licensed to practice law in Germany and in Florida.*

OFF WORLD

Neha S. Dagley, Miami
nehadagley@gmail.com

United States Space Force launches orbital watch to secure commercial operators.

The U.S. Space Force Space Systems Command has rolled out a new initiative to enhance commercial space infrastructure's resilience. Dubbed *Orbital Watch*, the program is designed to provide unclassified threat intelligence to U.S.-based space companies, many of which now form a vital part of national security architecture. With private-sector players increasingly exposed to risks such as signal interference, cyber intrusions, and potentially hostile on-orbit behavior, Orbital Watch offers a much-needed line of defense through timely curated threat insights. The first release of the unclassified threat fact sheet in March 2025 reached more than 900 commercial space providers.

In its current rollout, Orbital Watch functions as a one-way stream where the government shares relevant threat data quarterly. An added layer is in development, which will include a secure portal featuring a two-way exchange with trusted commercial partners. This initiative denotes a broader shift in advancing dynamic public-private information sharing. The U.S. Space Force sees this as essential in enabling rapid response and system hardening across the board, particularly for companies providing communications, Earth observation, launch services, and other critical infrastructure. By building a mechanism for direct, actionable communication, Space Force is underscoring a new reality where national security in orbit depends on industry as much as it does on government.

The Front Door website makes clear that the information shared falls within one of two categories: (a) fully unclassified and distributed under Distribution Statement A or (b) Distribution F. Per DoDI 5320.24, Distribution A materials can be publicly released, but Distribution F materials may be distributed only as directed by the controlling DoD Office.

Isaacman signals ambitious shift at NASA confirmation hearing.

At his Senate confirmation hearing on 9 April 2025, Jared Isaacman, nominee for NASA administrator, delivered testimony that was both personal and strategic. Isaacman framed his candidacy as a chance to reintroduce urgency and daring into NASA's long-term trajectory. He acknowledged without apologizing that he isn't a traditional pick: he's not a scientist, has never worked at NASA, and launched his first company from his parents' basement at age 16. But from that early leap came a series of ventures that spanned payment processing, defense aviation, and human spaceflight, culminating in his leadership of two privately funded missions beyond Earth's orbit.

Isaacman's statement to the committee related his experience operating the world's largest private fleet of adversary fighter jets, training U.S. military pilots in real-world threat scenarios. He also referred to his two record-setting space missions—*Inspiration4*, the first all-civilian mission to orbit that raised over US$240 million for St. Jude Children's Research Hospital, and *Polaris Dawn*, where the crew completed the first-ever commercial spacewalk.

Looking ahead, Isaacman laid out the following three-part objective for NASA: "(a) American astronauts will lead the way in the ultimate 'high ground' of space; (b) We will ignite a thriving space economy in low Earth orbit; (c) NASA will be a force multiplier for science." Importantly, he emphasized the priority of sending American astronauts to Mars but also highlighted that the United States "will inevitably have the capabilities to return to the Moon and determine the scientific, economic, and national security benefits of maintaining a presence on the lunar surface." He also advocated advancing nuclear propulsion technologies, enabling long-duration interplanetary travel.

If confirmed, Isaacman pledged to instill a mission-first ethos within NASA. "Some risks," he indicated to the committee, "like exploring the worlds beyond ours, are worth taking."

Neha S. Dagley *is an attorney with nearly two decades of experience representing foreign and domestic clients in complex litigation and arbitration. She holds an advanced LL.M. in air and space law from Leiden University in the Netherlands and recently presented at the United Nations in Vienna on Advancing Private Human Spaceflight: International Law, Regulatory Frameworks, and Public-Private Collaboration. Ms. Dagley is a member of the Executive Council of The Florida Bar's International Law Section and serves as co-chair of its Asia Committee.*

Best Practices: The New Legal Power Play: Why Mediation Is a Must in an Age of Economic Nationalism

By Giuseppe De Palo, New York City

Since early 2025, the economic landscape has only grown more turbulent. Under the Trump administration's renewed emphasis on economic nationalism, tariffs have once again become a favored policy tool—imposed one day, revoked the next, and often weaponized as geopolitical leverage. This volatility has placed enormous pressure on cross-border commercial agreements and long-standing business relationships, particularly in industries dependent on predictable trade flows and stable supply chains.

The global cost of this uncertainty is staggering. According to a March 2025 estimate by the Peterson Institute for International Economics, the revived U.S.-China trade conflict alone could reduce global GDP by as much as US$235 billion over the following twelve months if escalation continues. The World Trade Organization reported that trade tensions reduced global GDP growth by 0.3% last year, while the International Monetary Fund warns of further erosion of investment and job growth if tariff policies remain unpredictable. Meanwhile, global corporations lost an estimated US$1.6 trillion in 2024 due to supply chain disruptions—much of it driven by geopolitical tensions and abrupt trade restrictions.

Trade relationships themselves are shifting. The United States has reduced its reliance on Chinese imports, sourcing more goods through intermediaries such as Mexico and Vietnam. European economies have reoriented away from Russia, strengthening ties with the United States. These geopolitical realignments affect not only economic flows, but also the legal landscape in which contracts must be interpreted, renegotiated, and redrafted.

The Legal Stakes: Risk Management or Risk Creation?

The legal implications are profound. The number of trade-related disputes filed at the World Trade Organization rose by more than 30% between 2023 and 2024—the sharpest annual increase in over a decade. With more than 3,000 new global trade restrictions enacted in 2023 alone—up from about 650 in 2017—businesses and their counsel are navigating a world of rising protectionism and diminished predictability.

Faced with these challenges, many companies default to litigation or zero-sum renegotiations, often with lawyers reinforcing these adversarial instincts. Yet this reflex is

increasingly counterproductive. The traditional model, where one party's gain is the other's loss, frequently leads to mutual destruction. Instead, forward-thinking counsel are encouraging clients to rethink the deal itself through collaborative renegotiation strategies and early mediation—before value is destroyed.

Rethinking the Game: Pareto and the Promise of Mutual Value

Drawing on Vilfredo Pareto's principle of optimal resource allocation, companies—and their legal advisors—are discovering that many strained agreements, particularly those affected by tariffs, can be creatively restructured. This might involve modifying payment schedules, adjusting delivery timelines, diversifying sourcing, or expanding cooperation into other areas.

Such Pareto-optimal renegotiations align with integrative bargaining techniques, which prioritize joint value creation over distributive claims. These methods contrast with more traditional, transactional approaches to trade policy. For example, the application of tools such as Section 232 of the Trade Expansion Act (national security tariffs) and Section 301 of the Trade Act (addressing unfair practices) has, at times, introduced legal uncertainty and added complexity to commercial planning.

Rather than viewing international law and global contracts as battlegrounds, future-ready legal counsel see both negotiation and mediation as strategic tools for resilience and value preservation.

Real-World Case Studies: How Legal Counsel Can Empower Creative Compromise

This approach is not theoretical. It is already shaping outcomes where lawyers work in tandem with mediators and business counterparts:

1. **Supply Chain Resilience**
   A European electronics firm avoided collapse of a key supplier relationship after a tariff hike by renegotiating longer payment terms and helping the supplier diversify component sourcing. The company's general counsel led the early engagement of a mediator.

2. **Retail Partnership Expansion**
   A U.S. retailer and a South American coffee producer were locked into an increasingly unprofitable contract. Mediation—initiated by external counsel—led to a creative revision: The retailer added premium SKUs, and the supplier adjusted prices. The result was a stronger, more diversified alliance.

3. **Auto Industry Joint Venture Adjustment**
   A Japanese automaker and a North American partner faced steep component tariffs. Rather than ending the venture, their legal teams facilitated a renegotiated structure: retooling a plant in Mexico and sharing R&D on electric vehicles.

4. **Pharmaceutical Licensing Flexibility**
   A European pharmaceutical distributor lost access to U.S.-sourced APIs (active pharmaceutical ingredients) due to national security restrictions. A mediator—proposed by counsel—facilitated a temporary local production license and cost-sharing arrangement, preserving intellectual property integrity and market continuity.

These examples demonstrate how lawyers, when they broaden their role from litigator to value protector, can lead clients to more resilient outcomes.

Legal and Cultural Dimensions of Renegotiation

Not all attempts at creative renegotiation succeed. Power imbalances, entrenched distrust, and inflexible regulatory regimes can block progress. Moreover, sudden tariffs may activate complex legal clauses—such as force majeure or material adverse change—which, when mishandled, can escalate rather than resolve disputes.

Here, legal tools are necessary but not sufficient. Cultural fluency is just as important. In cases I have facilitated, cultural disconnects—over hierarchy, formality, or perceptions of fairness—were often the true source of impasse. Lawyers who understand how different business cultures define credibility and legitimacy are better positioned to prevent breakdowns.

With China's pivot to developing economies and growing investment flows into India and Africa, legal counsel must navigate not just legal differences, but cultural expectations in contract design and dispute prevention.

Mediation as a Legal Strategy—and Ethical Imperative

Experienced mediators bring neutrality, structure, and perspective to conversations that have become adversarial. In today's volatile climate, mediation is no longer an alternative dispute resolution tool—it is a frontline legal strategy.

Mediators help parties overcome psychological biases, reframe issues, surface shared interests, and build durable solutions. When engaged early—ideally before positions harden—mediation can rescue agreements and avoid litigation traps.

The business case is clear: A 2023 CEDR study found that 75% of international mediations settle on the day and an additional

11% settle shortly thereafter. JAMS reported a 7% increase in global filings in 2023, with more than 19,000 disputes handled. Arbitration of cross-border disputes can cost each party US$200,000 to US$500,000 and last up to three years.

But the ethical case is equally urgent. As noted in *Raising the Bar's Bar: A New Ethical Imperative for Lawyers in Complex Global Negotiations*, lawyers who fail to advise on mediation may soon face scrutiny under evolving standards of competence and care. The risks of omission are rising, and so are expectations.

Implications for Legal Counsel

For in-house and transactional lawyers, renegotiation isn't just a business option—it's a legal responsibility. Counsel advising clients with global interests must:

- Anticipate regulatory and political disruptions
- Include flexible performance clauses in contracts
- Recommend pre-dispute mediation before breakdowns occur
- Understand cross-cultural negotiation norms
- Document and advocate value-preserving alternatives to litigation

Legal education and continuing professional development programs must treat negotiation and mediation as core competencies—not electives. This is no longer soft law; it's sound lawyering.

Personal Reflections: Universality in Mediation

This belief in the power of dialogue is not academic for me. I have successfully facilitated the resolution of disputes involving parties from more than 100 countries, fostering constructive outcomes across diverse cultural and legal contexts—from fragile post-conflict regions to high-stakes corporate negotiations. Whether in Nigeria or New York, I have seen a common thread: the human drive to preserve dignity, restore trust, and find shared purpose. When dialogue fails or never begins, the costs are stark: lost deals, displaced communities, shattered relationships. But when it succeeds, the results are transformative.

Conclusion: Future-Proofing Law Practice in a Fragmented Legal Order

The Trump administration's trade policies have reminded the world of a harsh truth: The legal and commercial frameworks underpinning globalization can shift overnight. For law firms, corporate counsel, and arbitrators, this volatility demands more than technical expertise—it requires a strategic mindset.

As global supply chains contract and investment flows shift, the lawyers who thrive will be those who embrace structured negotiation, advocate early mediation, and protect their clients not just in courtrooms—but at the negotiating table.

In an era of uncertainty, dialogue remains the most reliable infrastructure we have.

Giuseppe De Palo *is a mediator at JAMS in New York City with vast international experience. He advises institutions and companies on cross-border negotiation strategies.*

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New Tariff Tools Under Trump 2.0, continued from page 9

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components into downstream products, the production of silicon carbide substrates (or other wafers used as inputs into semiconductor fabrication), and any resulting dependencies and vulnerabilities that create risk for downstream industries and harm U.S. semiconductor producers and foundries.[25]

If the USTR makes affirmative determinations in the semiconductor and labor and human rights investigations, additional Section 301 tariffs on China and Nicaragua are likely, and the tariffs may encompass more than just the products subject to the Section 301 investigation. While Section 301 remains a significant tool for imposing country-specific tariffs, which can withstand multiple administrations, its process is more time-consuming than the imposition of tariffs under IEEPA, discussed later in this article.

Section 232 Tariffs

President Trump also imposed tariffs under Section 232 in his first term and has continued to use Section 232 in his second term to impose additional tariffs on U.S. imports. Section 232 of the Trade Expansion Act of 1962 (19 U.S.C. § 1862) provides a mechanism for interested parties or the U.S. Department of Commerce to initiate investigations into the effect of specific imports on U.S. national security.[26] Regarding national security, the Department of Commerce considers the following factors: (1) existing domestic production of the product; (2) future capacity needs; (3) manpower, raw materials, production equipment, facilities, and other supplies needed to meet projected national defense requirements; (4) growth requirements, including the investment, exploration, and development to meet them; and (5) any other relevant factors.[27]

If the Department of Commerce determines that the targeted product is imported in certain quantities or under such circumstances to impair U.S. national security, then the president may take action, including imposing tariffs or quotas, to offset the adverse effect.

Before President Trump's administration, tariffs were last imposed under Section 232 in 1986.[28] President Trump's first term saw eight Section 232 investigations initiated, resulting in additional tariffs on imported steel (25%) and aluminum (10%).[29] In 2020, President Trump expanded the scope of these tariffs to include certain steel and aluminum derivative goods. Country-specific exemptions and importer-specific exclusions were granted under the Section 232 exclusion process.

The second Trump administration has indicated a continued reliance on Section 232. On 10 February 2025, President Trump signed proclamations imposing a 25% tariff on steel and increasing the tariff on aluminum from 10% to 25%.[30] These proclamations also broadened the list of steel and aluminum derivative articles subject to the 25% tariffs and immediately terminated the Section 232 exclusion process, with existing exclusions remaining valid until their expiration or volume limit is reached, without the possibility of renewal.

In addition to these ongoing measures, new Section 232 investigations were announced on copper (25 February 2025), wood products (1 March 2025), semiconductors (14 April 2025), pharmaceuticals (14 April 2025), critical mineral and rare earth imports (15 April 2025), and medium- and heavy-duty trucks and parts (23 April 2025). The investigation on wood products will assess the national security implications of imported timber, lumber, and derivative products (such as paper products, plywood, flooring, furniture, cabinets, and wood moldings) with a report due to the president by 26 November 2025, potentially recommending mitigating actions and policies to strengthen the domestic supply chain.[31] The copper investigation will evaluate the national security risks associated with all forms of imported copper and copper derivative products.[32]

Most recently, on 26 March 2025, President Trump invoked Section 232 to impose a 25% tariff on imports of automobiles and certain automobile parts.[33] This action renewed a 2019 investigation that had previously led to negotiations with the EU, Japan, and other countries, which ultimately did not result in agreements. President Trump stated that the national security concerns identified in 2019 persist and have escalated.[34] The 25% tariff on automobiles took effect on 3 April 2025 while tariffs on automobile parts were delayed until 3 May 2025.[35]

International Emergency Economic Powers Act

IEEPA is the newest tariff tool that President Trump has

implemented in his second term. IEEPA, enacted in 1977, provides the president with broad authority to impose economic sanctions following a declaration of a national emergency.[36] Section 1701 of IEEPA stipulates that this authority can be used to address any unusual and extraordinary threat originating in whole or substantially outside the United States to the national security, foreign policy, or economy of the United States, provided the president declares a national emergency regarding such threat.

Under IEEPA, the president has significant discretion in defining what constitutes a "national emergency" and an "unusual and extraordinary threat." This allows for a potentially quicker and more unilateral imposition of tariffs compared to the investigation processes and administrative coordination required under Section 301 and Section 232.[37]

On 1 February 2025, President Trump declared that the threat posed by illegal aliens and drugs, including fentanyl, constitutes a national emergency under IEEPA. As a result, the Trump administration announced that until the crisis is alleviated, it would impose a 25% additional tariff on imports from Canada and Mexico, and a 10% additional tariff on imports from China.[38] Later, on 3 March 2025, the Trump administration further amended the IEEPA tariff on China from 10% to 20%, stating that China had failed to take "adequate steps to alleviate the illicit drug crisis through cooperative enforcement actions."[39]

On 24 March 2025, President Trump issued an executive order imposing tariffs on countries importing Venezuelan oil.[40] Referencing the ongoing national emergency related to Venezuela declared in Executive Order 13692 of 8 March 2015, (Blocking Property and Suspending Entry of Certain Persons Contributing to the Situation in Venezuela), the president found that the actions and policies of the Nicolás Maduro regime continue to pose an unusual and extraordinary threat to U.S. national security and foreign policy.[41] As a result, the Trump administration imposed a 25% tariff on all goods imported into the United States from any country that imports Venezuelan oil, whether directly or indirectly. This tariff is supplemental to any existing duties imposed under IEEPA, Section 232, Section 301, or other authorities.[42] The tariff will expire one year after a country's last importation of Venezuelan oil, unless terminated earlier by the U.S. secretary of commerce.[43]

On 2 April 2025, the Trump administration invoked its authority under IEEPA to address the declared national emergency posed by the persistent trade deficit, citing a lack of reciprocity in trade relationships and harmful policies such as currency manipulation and exorbitant value-added taxes (VAT) by other countries.[44] As a result, President Trump imposed a 10% "reciprocal tariff" on all imports into the United States, beginning 5 April 2025, with country-specific modifications that were scheduled to begin on 9 April 2025, which would have increased the additional tariff to 20% for the European Union, 34% for China, 24% for Japan, 46% for Vietnam, and 26% for India, while several countries, including Brazil, Singapore, and Colombia, will remain at 10%. The country-specific increases were then delayed after President Trump announced on 9 April 2025 that the country-specific modifications would be paused for all countries except China for ninety days. Because China retaliated, the country-specific rate for China increased to 125%.

Responsive Strategies to Tariff Threats and the Imposition of Tariffs

The shifting landscape of global tariffs under the Trump administration has prompted diverse responses from affected nations to protect their economic interests. This section delves into the specific responses of the United States' top three trading partners: Canada, Mexico, and China.[45] These nations have employed contrasting methods, including countermeasures, negotiation, and legal challenges.

Mexico's Approach

In contrast to immediate retaliation, Mexico has primarily pursued a strategy of negotiation to reduce or delay the implementation of U.S. tariffs.[46] On 6 March 2025, Mexico reached an agreement with the United States under the Fair and Reciprocal Plan on Trade Executive Order, which suspended all tariffs on Mexican goods covered by the United States-Mexico-Canada Agreement (USMCA) until 2 April 2025, otherwise deemed "Liberation Day."[47] The agreement included commitments from Mexico regarding measurable progress in reducing fentanyl smuggling to the United States, U.S. cooperation to curb illegal weapon flows to Mexico, and enhanced cooperation on illegal immigration, including increased border security on the Mexican side.[48]

However, despite this agreement, on 2 April 2025, the United States continued to enforce a 25% tariff on non-USMCA cars, steel, and aluminum exports from Mexico. Mexican President Claudia Sheinbaum has stated that Mexico continues to engage in negotiations to seek reductions in tariffs on these impacted sectors.[49]

Canada's and China's Approach

By contrast, Canada and China have adopted more assertive approaches, responding to U.S. tariffs and threats with their own tariffs, legal challenges, and other measures.

For example, in response to the "retaliatory tariffs" announced by the United States on 2 April 2025, Canada announced the imposition of 25% tariffs on non-USMCA-compliant vehicles imported from the United States, and a 25% tariff on non-Canadian and non-Mexican content of USMCA-compliant vehicles imported from the United States. Earlier, in March 2025, Canada had also implemented 25% tariffs on steel products and aluminum products, as well as on a range of other imported U.S. goods including tools, computers and servers, display monitors, sport equipment, cast-iron products, orange juice, peanut butter, wine, spirits, beer, coffee, appliances, apparel, footwear, motorcycles, cosmetics, and certain paper products.[50]

Retaliatory measures were also considered at the provincial level in Canada. On 10 March 2025, Ontario, the most populous province in Canada, joined in retaliating against the Trump administration's tariffs by threatening to impose a 25% surcharge on electricity that it exports to Michigan, Minnesota, and New York.[51] However, following negotiations, Ontario withdrew its threat, and the United States, in turn, pulled back on a threat to double its steel and aluminum tariffs to 50%.

In addition to these countermeasures, Canada has pursued dispute settlement at the World Trade Organization to challenge President Trump's new tariffs on steel and aluminum, additional import duties on goods from Canada, and the additional duties on imports of automobiles and automobile parts from Canada.[52]

Similarly, China has employed a multifaceted approach involving reciprocal tariffs and legal challenges in the WTO. Following the imposition of the 20% IEEPA tariff and the 34% reciprocal tariff, China vowed to enact tariffs on U.S. goods exported to China, which were valued at approximately US$143.5 billion in 2024.[53] On 4 April 2025, the Chinese Ministry of Finance announced it would impose equivalent tariffs on imported goods from the United States.[54] Effective 10 April 2025, China similarly imposed a 34% tariff on all imported goods from the United States.[55] These tariffs by China are in addition to the 10% to 15% tariffs added on select products on 10 March 2025, which included wheat and soybeans, with U.S. soybean exports subject to a combined rate of 44% beginning 10 April 2025.[56] When the United States increased the reciprocal tariff rate for goods from China, China responded by similarly imposing additional tariffs to match the United States' 125% tariff rate.

China has also been swift to submit disputes before the WTO, including one concerning the 10% IEEPA tariff on all imports from China.[57] China alleges the U.S. tariff measures violate WTO rules, are discriminatory and protectionist, and are inconsistent with the United States' obligations under the General Agreement on Tariffs and Trade (GATT).[58] These claims are similar to those filed by Canada.[59]

Furthermore, China's approach goes even further to include sanctions and export controls. China's Ministry of Commerce reactivated the "Unreliable Entity List" to impose sanctions on eleven U.S. companies allegedly involved in "arms sales to Taiwan" and military-technological cooperation with Taiwan.[60] This action effectively bars these companies from conducting business in China or with Chinese companies, akin to the U.S. Specially Designated Nationals (SDN) List published by the U.S. Department of the Treasury's Office of Foreign Assets Control (OFAC).[61]

In a separate measure, the Chinese Ministry of Commerce enacted export controls on sixteen American companies, prohibiting the export of Chinese dual-use items.[62] Export controls also included the implementation of export restrictions on medium and heavy rare earth elements (HREEs) and related items (including samarium, gadolinium, terbium, dysprosium, lutetium, scandium, and yttrium) that are mined and processed almost exclusively in China and which are used in various advanced technologies ranging from electric cars to smart bombs.[63] U.S. companies that use China-sourced HREEs in their supply chain include Lockheed Martin, Tesla, and Apple, among others.[64]

Presently, the United States has only one rare earth mine, and industry professionals have noted that it will take time (a matter of years) to develop alternative supply chains.[65] This struggle to forge independence from China's 90% control over HREEs global supply lines is not unique to this administration and has been an important (although unsuccessful) goal for many global companies that have suffered under prior impositions of export restrictions by China.[66] However, the most recent line of counter tariffs by China will certainly impact the efforts by many companies around the world to transition to green energy, as these tariffs may impact supply chains for a variety of industries that benefit from modern technological advancements such as energy, electronics, defense, and health care.[67]

In what may be another retaliatory effort, China's General Administration of Customs suspended import qualifications for six U.S. enterprises engaged in exporting sorghum, poultry meat, and bone meal, citing detections of harmful substances.[68]

Conclusion

President Trump's second administration has signaled a continued and potentially intensified use of tariffs as a policy tool, employing not only traditional mechanisms but also leveraging the expansive authority of IEEPA.

The rapid implementation of IEEPA tariffs, based on presidential declarations of national emergency, represents a notable shift from the more deliberative processes associated with Section 301 and Section 232. These actions have significant economic implications for other nations, eliciting diverse responsive strategies, ranging from Mexico's focus on negotiation to the more assertive countermeasures and legal challenges pursued by Canada and China. Ultimately, the continuing evolving landscape of tariffs and countermeasures under President Trump's administration requires a close examination of these tools and their far-reaching implications for global trade relations.

Li Massie *is an associate at Akerman LLP with a practice focused on import regulations and other federal regulatory compliance. She advises clients on matters before U.S. Customs and Border Protection, the U.S. Department of Commerce, and the U.S. Court of International Trade. She also advises producers of consumer products on compliance with FDA, FTC, CPSC, and other federal regulatory requirements. Ms. Massie obtained her J.D. from Florida State University College of Law, her M.A. from the University of Nottingham, and her B.A. from the University of Florida.*

Odette Ponce *is an associate at Akerman LLP with a practice focused on export controls, economic sanctions, foreign investment, and international trade compliance. She advises clients on regulations administered by BIS, OFAC, and DDTC, and counsels on enforcement risks, compliance strategies, and national security reviews before CFIUS. She also advises clients on doing business with Cuba's emerging private sector. Ms. Ponce obtained her J.D. from the University of Miami School of Law, her M.P.H. from Boston University, and her B.A. from Florida International University.*

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the EO calls on agencies to enhance screening and vetting "to the maximum degree possible" and return standards and procedures to those effective during the prior Trump administration.[23] Some of the key aspects of the executive order include:

1. Stricter vetting for visa applicants and those already in the country, with a focus on identifying potential security threats.[24]
2. Evaluation of all visa programs to ensure they are not used by foreign nation-states or other hostile actors to harm the security, economic, political, cultural, or other national interests of the United States.[25]
3. Identification of countries throughout the world for which vetting and screening information is so deficient as to warrant a partial or full suspension on the admission of nationals from those countries pursuant to section 212(f) of the INA (8 U.S.C. 1182(f)).[26]
4. Evaluation of the adequacy of programs designed to ensure the proper assimilation of lawful immigrants into the United States.[27]
5. Evaluation and adjustment of all existing regulations, policies, procedures, and provisions of the Foreign Service Manual . . . to ensure the continued safety and security of the American people.[28]
6. Increased scrutiny for individuals from "high-risk" countries, regardless of their current nationality or citizenship.[29]

Impact of Executive Order 14161

With increased screening, individuals applying for lawful immigration benefits domestically can expect to undergo longer processing times. Practitioners can expect U.S. Citizenship and Immigration Services (USCIS) to issue a higher number of Requests for Evidence (RFEs) and denials for benefits requests, as occurred during President Trump's first administration.[30] Practitioners can also expect potential delays in visa issuance and appointment scheduling at U.S. Consulates and Embassies abroad, as well as more visa applicants undergoing administrative clearances and security checks.[31]

In accordance with EO 14161, it has been reported that President Trump's administration "is considering implementing travel restrictions for the citizens of as many as 43 countries."[32] This "travel ban" would apply to citizens of the designated countries. The countries would be placed into three categories: red (eleven countries), orange (ten countries), and yellow (twenty-two countries), with the red countries facing a complete ban with their citizens barred from entering the United States, the orange countries facing a partial ban, and the yellow countries having sixty days to address deficiency concerns.[33] Though legal challenges may be filed in response to this travel ban when it is formally issued, it is important to note that the U.S. Supreme Court previously upheld the legality of President Trump's travel ban imposed during his first administration.[34]

Practice Tips for Immigration Practitioners

EO 14161 has introduced rigorous vetting requirements, creating significant challenges for practitioners preparing applications. The following are some informed practice tips for immigration practitioners:

1. Anticipate enhanced scrutiny and assume all applications will face heightened review, especially for applicants from countries flagged as "high-risk."
2. Include exhaustive documentation proving ties to home countries, such as property deeds, employment contracts, or family obligations, to counter potential "immigrant intent" denials.
3. Proactively address gaps in evidence with regard to key statutory elements in applications for nonimmigrant and immigrant visas (e.g., disclose full employment history, define managerial and executive capacity in L-1A context, qualify the proffered job as an specialty occupation in H-1B context, demonstrate the investor's control over and source of the funds and marginality of the investment in E-2 context, qualify the petitioner under the affidavit of support, and argue the favorable discretion that should be exercised on your client's behalf in adjustment of status

applications, etc.) to reduce the likelihood of RFEs and/or denials.

4. Advise clients about extended processing times due to security checks, particularly for H-1B, L-1, and family-based petitions.
5. Monitor the administration's list of countries subject to partial/full travel bans.
6. Advise clients from anticipated "red" or "orange" tier countries to avoid nonessential travel and to renew visas/extensions early.
7. Schedule visa interviews at U.S. Consulates and Embassies promptly to avoid delays.
8. Prepare clients for consular questions about ties to "high-risk" countries, including dual nationality or family connections.
9. Track agency guidance, as the Department of Homeland Security (DHS) and the Department of State (DOS) were required to revise vetting regulations by April 2025, including adjustments to grounds of inadmissibility and assimilation metrics.[35]
10. Monitor litigation: Legal challenges to the travel bans are expected when they are announced, which could pause or modify policies.

Termination of Parole Programs and Temporary Protected Status

EO 14165 also terminated "all categorical parole programs that are contrary to the policies of the United States established in my Executive Orders, including the program known as the 'Processes for Cubans, Haitians, Nicaraguans, and Venezuelans' (CHNV)."[36] On 14 February 2025, Acting Deputy Director of USCIS Andrew Davidson suspended the adjudication of all requests for immigration benefits (including applications for asylum, Temporary Protected Status (TPS), or other status adjustments) for individuals paroled to the United States through the Uniting for Ukraine (U4U) parole program, CHNV, and Family Reunification Parole Programs for nationals of Colombia, Ecuador, Central America, Haiti, and Cuba.[37] On 28 February 2025, a class action complaint was filed in the U.S. District Court for the District of Massachusetts, challenging the legality of the administration's suspension of all parole programs.[38] This lawsuit remains pending as of this writing.

President Trump's administration has also moved to terminate TPS for Venezuela and Haiti, reversing extensions granted under the Biden administration. TPS for Venezuelans under the 2023 designation ended on 7 April 2025, affecting up to 348,000 individuals.[39] DHS Secretary Kristi Noem argued that the TPS system had been "abused" and that extensions were inconsistent with the program's temporary nature.[40] The termination of TPS will result in the affected Venezuelan nationals losing the right to lawfully work in the country as well as the protections that prevented them from being removed from the United States.[41] TPS under the 2021 designation for Venezuelans will expire on 10 September 2025, unless extended.[42]

TPS granted to Haitians by the federal government will end on 3 August 2025, cutting short an extension granted until February 2026 by the Biden administration.[43] DHS Secretary Noem's rationale for terminating TPS early was that Haiti's designation has been prolonged beyond necessity and that country conditions in Haiti no longer justify TPS.[44] More than 300,000 Haitians with TPS in the United States could lose their legal status and employment authorization.[45]

Advocacy groups and individuals have filed federal lawsuits in Massachusetts, California, and Maryland, arguing that DHS Secretary Noem lacked legal authority to revoke extensions already granted by former DHS Secretary Alejandro Mayorkas.[46] Plaintiffs claim the terminations of TPS violate the Administrative Procedure Act (APA) and the Fifth Amendment's Equal Protection Clause due to alleged discrimination based on race or national origin.[47] All three of these lawsuits remain pending as of this writing.

Mass Deportations

President Trump also revoked all Biden-era enforcement priorities, allowing Immigration and Customs Enforcement (ICE) agents to target any undocumented immigrant for deportation. The Trump administration has significantly expanded the use of expedited removal, allowing for rapid deportation of undocumented immigrants without a court hearing. Individuals who are not in lawful immigration status who cannot prove continuous presence in the United States for at least two years prior to their encounter with immigration authorities are now subject to expedited removal.[48] This expansion of expedited removal now applies anywhere in the United States, removing previous limitations that restricted its use to within 100 miles of the border and within 14 days of the individual's entry to the United States.[49] The legality of this policy is being challenged in the District Court in Washington, D.C., with advocates arguing that the policy violates due process rights.[50] This lawsuit remains pending as of this writing.

In its plan to deport 12 million people by the 2026 midterms, the Trump administration is considering several options, including a proposal to carry out mass deportations through a "network of processing camps on military bases, a private fleet

of 100 planes, and a small army of private citizens empowered to make arrests."[51] The administration has also enlisted federal agencies such as the Internal Revenue Service (IRS), the Drug Enforcement Administration (DEA), and the Bureau of Alcohol, Tobacco, Firearms, and Explosives (ATF), agencies that previously have not played significant roles to assist in immigration enforcement.[52]

On 20 January 2025, President Trump issued Executive Order 14159, "Protecting the American People Against Invasion," which directed DHS to ensure that all previously unregistered aliens in the United States comply with the requirements to register with the government under section 262 of the Immigration and Nationality Act (INA) (8 U.S.C. 1302) and to ensure that failure to comply with the registration requirement is treated as a civil and criminal enforcement priority.[53] The following classes of persons are required to register online by submitting Form G-325R:

- Persons present in the United States without inspection and admission or inspection and parole (that is, aliens who crossed the border illegally);
- Canadian visitors who entered the United States at land ports of entry and were not issued evidence of registration (Form I-94); and
- Aliens who submitted one or more benefit requests to USCIS, including applications for deferred actions or TPS, who were not issued evidence of registration (Employment Authorization Document, e.g.).[54]

Individuals subject to the registration requirement who fail to register will be guilty of a misdemeanor and will, upon conviction, be fined not to exceed US$5,000 or be imprisoned for not more than six months, or both.[55]

Conclusion

President Trump's policies on immigration and enforcement, delivered through executive orders and policy memoranda, have sparked widespread concern among immigrant communities and civil rights organizations, with legal battles expected to continue as the administration pushes forward with its mass deportation plans. Practitioners should be aware of the administration's policies as well as the outcomes of the pending legal challenges in order to properly counsel their clients. Practitioners should prepare all visa applications and benefits requests thoroughly to ensure that they comply with the increased vetting requirements.

Larry S. Rifkin *is the managing partner of Rifkin & Fox-Isicoff PA. The firm's specialty is immigration law with its principal office in Miami, Florida. Mr. Rifkin is also chair of the USCIS, ICE, CBP, Labor, and State Department Liaison Committee for the International Law Section of The Florida Bar and former chair of the International Law Section.*

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operations, multilateral aid, and humanitarian aid.[35] He also tried to withdraw the United States from the WHO.[36]

Similarly, with less than 1% of foreign assistance distributed through loans, Trump 45 also attempted to shift that ratio to favor aid through loans, but Congress rejected those efforts.[37]

A comprehensive breakdown by agency, sector, and activity can be found through a search at ForeignAssistance.gov.[38]

Beyond sharp budget cuts, the administration telegraphed some of its other current foreign assistance policy through selective aid—prioritizing countries aligned with U.S. interests.[39] As Trump 45 creeped away from a globalization model based on international development cooperation toward a more strategically conditional approach,[40] foreign aid became a bargaining tool frequently accompanied by punitive measures.[41] For example, Trump 45 reallocated funds from Central American countries for failing to slow migration.[42] Finally, there was a shift in strategic focus away from President Obama's broader values-model of promoting democracy, stability, and global development, to a paradigm emphasizing temporary assistance to help countries achieve self-reliance.[43] The stated goal of *Project 2025* in this regard was to end the need for foreign assistance.[44]

Trump 47—Condemning USAID as Run by "Radical Lunatics"[45]

Trump 47 went from creeping toward strategically conditional aid to a sprint. Perhaps frustrated by previous unsuccessful attempts to persuade Congress to slash the foreign assistance budget, primarily expended through USAID, the independent agency became among the first targeted by DOGE. Elon Musk, the apparent leader of DOGE,[46] referred to USAID as a "criminal organization"[47] of "radical leftists, grifters, and lunatics"[48] and that it was the agency's "time to die."[49]

The elimination of USAID, however, is an anomaly from the roadmaps provided by *Project 2025* and the USAID memo.

Project 2025. Although *Project 2025* was developed by the conservative Heritage Foundation, many believe it may serve as a partial blueprint for Trump 47—despite President Trump's denials—because many of its authors have close ties to both Trump 45 and 47.[50] For example, Max Primorac, a senior research fellow at the Heritage Foundation who authored the chapter on USAID, formally served as its acting chief operating officer.[51]

Musk may have been parroting *Project 2025*, which called USAID "an institution marred by bureaucratic inertia: programmatic incoherence; wasteful spending; and dependence on huge awards to a self-serving and politicized aid industrial complex of United Nations agencies, international nongovernmental organizations (NGOs), and for-profit contractors."[52]

To "fix" this, *Project 2025* offered at least thirty-seven recommendations for the future of USAID, many of which overlap with policies under Trump 45 and actions under Trump 47. This includes the overarching themes of aligning foreign assistance to U.S. foreign policy[53] and utilization of the private sector to invest in emerging markets to work toward eliminating the need for foreign assistance altogether.[54] Notably, it also calls for a freeze on all major policies and directives (though not actual project funds) while facilitating alignment to the administration's priorities.[55]

It reinforces Trump 45's policies on: (1) countering China's influence throughout the developing world;[56] (2) ending long-term aid programs by designing exit strategies and implementing transition funding from crisis to development projects and limiting the duration of humanitarian assistance;[57] (3) promoting private-sector solutions and encouraging trade and investment over aid;[58] (4) empowering women and families;[59] (5) increasing awards to local organizations, including those that are faith-based;[60] (6) and reinstating an expanded Mexico City Policy, which would block funding for foreign NGOs that promote or facilitate abortion.[61]

Thematic of President Trump's 2024 campaign, *Project 2025* adds the suggestion of dismantling what it perceives as DEI (diversity, equity, inclusion) initiatives and structures.[62]

Meanwhile, the USAID memo focuses on empirical metrics to determine whether a project makes the United States safer, stronger, and more prosperous.

USAID memo. Secretary of State Rubio admonished that U.S. foreign assistance must account for "[e]very dollar we spend, every program we fund, and every policy we pursue [which] must be justified with the answer to three simple questions:" (1) "Does it make America safer;" (2) "Does it make America stronger;" and (3) "Does it make America more prosperous?"[63]

The overarching theme, optimizing the value of foreign assistance to the American taxpayer,[64] is consistent with the actions of both Trump administrations and *Project 2025*.

The USAID memo, first reported by *Politico*,[65] asserts that the system of foreign assistance is so wasteful and broken that it "needed to be dismantled to fix it properly."[66] It continues that the gutting of USAID has created an "unprecedented opportunity to restructure the system and establish an international cooperation architecture that respects the taxpayer; is laser-focused on delivering measurable results, especially through the private sector; and aligns with America's strategic interests."[67]

To do this, the memo offers a myriad of structural reforms. These include eliminating certain functions or redistributing responsibilities and funding among a rebranded, leaner USAID—renamed the U.S. Agency for International Humanitarian Assistance—the State Department, and the DFC.[68]

Loyal to Rubio's directive to make the United States safer, stronger, and more prosperous, the memo correlates the goals to tasks and metrics used to determine whether specific programs are a successful return on investment.

- Safer—Trump 47 has already disregarded the suggested rebranding of USAID and its newly limited purpose of providing humanitarian assistance, disaster response, global health, and food security.[69] Instead, the president expanded the scope of the Department of State's responsibilities to administer any few remaining humanitarian programs.[70] The success of the agency would have used metrics such as saved lives, outbreaks contained, and famines averted.[71]
- Stronger—The State Department would be charged with aid considered political in nature under the management of political appointees, such as democracy promotion, religious freedom, conflict prevention/stabilization, women's empowerment, and civil society.[72] Suggested metrics include improvement in democracy-based indices, reductions in illegal migration, decreased illicit drug trade, and lower corruption levels.[73]
- More prosperous—The DFC should use foreign assistance to promote trade investment in energy, infrastructure, technology, and innovation.[74] Metrics of success would include capital mobilized, financial returns generated, jobs created, expansion of markets for U.S. firms,[75] countering China's influence, and securing critical minerals.[76] It offers technical suggestions on how to measure these reliably.[77] Trump 47, however, is considering repurposing the DFC as a sovereign wealth fund (SWF).[78]

Trump 47's similar and diverging policies. The second administration's foreign aid policy partially aligns and diverges from his first term, *Project 2025* advice, and the recommendations of the USAID memo.

Trump 47's foreign aid policy aligns with several key positions outlined during his first term, as well as elements of *Project 2025* and the USAID memo. These include aligning foreign assistance with administration priorities to advance the "America First" agenda, significantly reducing overall foreign aid funding, eliminating DEI programs while penalizing contractors who engage in DEI-friendly policies, and prohibiting aid to entities that promote abortion.[79] Additionally, some USAID functions have been transferred to the State Department to increase political oversight, and the administration has reinstated pro-family, anti-abortion policies from Trump 45. Withdrawing from the WHO was telegraphed by his first-term attempt.[80]

However, Trump 47 has also departed from several of the recommendations. Instead of rebranding and restructuring USAID to continue delivering humanitarian assistance, global health, and food security aid, the administration has ordered it shuttered. The sliver of humanitarian aid that remains has been rerouted to the State Department, which has continued to defund programs. Trump 47 also rejected a return to 2019 aid levels,[81] opting instead to close USAID and reduce funding for the U.S. Institute for Peace[82] and the U.S. African Development Foundation to their statutory minimums.[83] Finally, given the extent of program cuts, proposals to shift procurement to local NGOs (non-governmental organizations) in recipient countries now appear moot.

It is too early to determine if Trump 47 will refocus the DFC to promote investment in trade, energy, infrastructure, technology, and innovation in hopes of gaining a return on investment. However, the president has ordered the creation of an SWF[84] partially to "promote United States economic and strategic leadership internationally."[85] Unless the president creates a new agency, it is speculated that the administration may partially repurpose DFC as the agency to oversee the SWF.[86]

Similarly, it is unclear whether a second Trump administration will continue Trump 45's focus on promoting women in emerging economies or instead eliminate such initiatives by framing them as DEI programs—rather than recognizing them as essential to expanding the labor force in those markets.[87]

In dismantling USAID, Trump 47 has necessarily ended all the agency's reforms effectuated under Trump 45, including USAID-run "Clear Choice," intended to contain Chinese soft power and influence.[88] However, the potential repurposing of the DFC may include such policies, as curbing China's influence was a top concern of Trump 45, was prioritized by both *Project 2025* and the USAID memo, and clearly remains a paramount priority of Trump 47.

In sum, there has been a dramatic shift in foreign aid policy between Trump 45 and Trump 47. The first administration promoted initiatives like women's empowerment, private-sector engagement, and countering China through the DFC and Clear Choice, but it also attempted to reduce foreign aid budgets, withdraw from international bodies, and deliver assistance through a more transactional, interest-driven lens. *Project 2025*, written by those proximate to the president, proposed sweeping reforms and a pause on USAID policy implementation until agency priorities could be aligned with the administration's agenda—but it did not suggest freezing project funding. The USAID memo, similarly, sought to quantify Rubio's mandate that every program must make the United States safer, stronger, and more prosperous, and advised structural changes including narrowing USAID's mission to humanitarian assistance. Both documents shared two core goals beyond efficiency: aligning aid with U.S. strategic interests and leveraging economic development to ultimately eliminate the need for foreign assistance. Notably, however, neither called for USAID's dissolution. Trump 47's decision to pause all assistance, order the agency dissolved, and reassign the very limited remaining set of programs to the State Department marks a more radical restructuring from even the most ambitious prior reform proposals. Whether the DFC will be used to advance development, compete with China, or promote global economic stability remains to be seen, though curbing Chinese influence has been an important theme through both administrations.

A Decline in U.S. Soft Power Helps China

U.S. Soft Power Decline

The United States exercises soft power by shaping global perceptions through non-coercive means—such as cultural exports and expressions of goodwill. One key aspect of this soft power is a country's tradition of providing humanitarian aid and development assistance abroad, which fosters a reputation for compassion and global leadership. This reputation not only strengthens diplomatic relationships but can also advance U.S. strategic interests by building alliances, opening markets, and promoting stability in key regions. Since the Marshall Plan,[89] U.S. foreign assistance has played a central role in reinforcing this image by supporting both humanitarian relief efforts and long-term economic development in emerging economies.[90]

Bags of food distributed by USAID have proudly read "from the American People."[91] According to Beatrice M. Spadacini, a senior communications advisor in the Bureau for Global Health under Obama and Trump 45, "American generosity has brought us goodwill on the ground despite our sometimes-harmful foreign policy."[92]

Conversely, Mandeep Tiwana, interim co-secretary general at CIVICUS: World Alliance for Citizen Participation, explains the causative shift of soft power:

> The abrupt halt to funding has led to the collapse of vital healthcare programs, the closure of democracy initiatives, and the abandonment of vulnerable communities that relied on U.S. support. This move reflects a broader trend of closing civic space and helps authoritarian regimes and populist political parties to tighten their grip on governance worldwide.[93]

Center for Sustainable Development Senior Fellow George Ingram is more dire in his assessment of the decline of U.S. soft power and explains that: "Trust in the United States has been destroyed. Trust is not something that is built up quickly—it can be lost overnight, but it takes generations to rebuild. Right now, the U.S. is no longer trusted as a reliable ally in many parts of the world."[94]

A decline in soft power may also mean a decline in national security. The elimination of foreign aid undermines years of strategic assistance as illustrated by several key examples: (1) support for counter-ISIS programs in Syria; (2) efforts in Lebanon aimed at promoting a government independent of Hezbollah; (3) law enforcement and economic aid to Central America to curb gang influence and reduce migration incentives; and (4) funding for initiatives that counter Chinese influence in Africa by strengthening U.S.-Africa relations and securing access to critical minerals essential to the U.S. digital economy.[95] As far as humanitarian aid, it is also important to note that radicalization is driven by poverty and despair, and its alleviation contributes to making the United States safer from terrorism fueled by extremist views.[96]

In a world where trust equals influence, the elimination of the United States' portfolio of foreign aid has led to a precipitous decline in its soft power.

China Will Likely Fill the Gap

The abrupt absence of U.S. foreign assistance creates a vacuum that will likely be filled by China's Belt and Road Initiative (BRI). In short, BRI projects use loans and investments to expand China's global influence and supply chains while advancing domestic goals like employment and industrial capacity.[97] These loans and investments tend to be offered on very unfavorable terms to the receiving country and are often collateralized by mineral rights.[98]

One example is China's increased strategic presence in Africa, intended to harvest new export markets, agricultural land, and most importantly, access to a spectrum of raw materials.[99] China has also taken this opportunity to provide aid and assistance with development initiatives strengthening its soft power throughout Southeast Asia.[100] Not limited to Africa and Asia, China is filling the void created by declining U.S. influence by assisting with overseas infrastructure development, education, and humanitarian aid spanning the globe.[101]

This proactive engagement could lead to a realignment of regional alliances and a decline in U.S. influence.[102]

In the absence of U.S. aid, which traditionally comes in the form of grants requiring that U.S. firms and goods are used for funded projects,[103] China and its harsher terms may be one of the only viable alternatives to desperate countries. Moreover, Ravi Madasamy, LGBTQI+ liaison officer on the IBA Human Rights Law Committee, is concerned that "China may be among the donors filling the place of the US—and it won't necessarily do so with the same requirement for aid recipients to adhere to human rights."[104] This may lead to enhanced vulnerability among marginalized communities who may become more susceptible to discrimination and violence.[105]

There is a need for foreign assistance throughout the developing world. If the United States does not offer that aid—even if through loans and private-sector investment—it would be in China's strategic interests to do so.

Conclusion

President Trump has implemented an "America First" protectionist policy and ordered that foreign aid align narrowly with U.S. interests. Rubio clarified that taxpayer-funded foreign assistance is to be limited to activities that make the United States safer, stronger, and more prosperous. Trump 47 USAID officials proposed metrics to measure the success of those projects in meeting those objectives—generally this means a quantifiable return on investment.

Contravening advice from *Project 2025* and the USAID memo, Trump 47 has announced shuttering USAID, the biggest provider of foreign assistance in the world. He has further restricted or eliminated aid to other agencies and international organizations in an abrogation of soft power, potentially ceding some of that global influence to China. It has also caused the needless creation of a humanitarian calamity—which can hurt national security by creating the desperation that fuels radicalization throughout much of the developing world.

In the aggregate, President Trump's "America First" approach to foreign aid, despite its stated goals, may ultimately diminish U.S. influence, weaken longstanding alliances, and create conditions less conducive to long-term global stability and national security. Ironically, America First, aid second, may have left the United States less safe, less strong, and less prosperous.

Richard Junnier *practices Florida and international estate planning, family law, and criminal justice at Junnier Law & Research PA. Earning an LL.M. in global economy and human rights from NYU and an LL.M. in international law from the National University of Singapore, he dedicates a significant amount of his time to researching international human rights issues. He has lived on three continents and has traveled to more than forty countries including several conflict zones.*

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Rebuilding Ukraine – Current Political Posture, Opportunities for U.S. Businesses, continued from page 15

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"A substantial reconstruction of energy infrastructure will be essential before mineral exploration or production can begin," which in the author's view could be an opportunity for U.S. companies in the relevant sectors to participate in such reconstruction.[19]

In general, "the newly signed agreement is a positive step in U.S.-Ukraine relations."[20]

United Nations Resolutions

On 24 and 25 February 2025, which marked the third anniversary of Russia's invasion of Ukraine, the United States voted in the UN general assembly against a European-drafted resolution "that both criticized Russia's actions and supported Ukraine's territorial integrity."[21]

This was a shift in our country's stance toward Ukraine at the United Nations.[22]

"Russia, and countries including North Korea and Belarus, also voted against the resolution. . . The United States also proposed its own motion at the general assembly. . . [T]he general assembly adopted the resolution 'only after it was amended to include language supporting Ukraine, which led to the U.S. abstaining.' . . . Additionally, the United States proposed a resolution in the UN security council calling for a 'swift end' to the conflict and for a 'lasting peace' between Russia and Ukraine," focused on one simple idea: ending the war.[23]

Pause in U.S. Military Aid and Intelligence Sharing With Ukraine

As stated by the House of Lords Library article *Recent US and UK government policy on Ukraine*:

> The U.S. government paused shipments of military equipment to Ukraine on 3 March 2025. This decision was critici[z]ed by the Democrat party, including Senate Minority Leader Chuck Schumer, who called the move a "critical strategic mistake," and Senator Elizabeth Warren, who accused President Trump of "siding with Putin over U.S. allies in Europe." Some Republicans, such as Senator Susan Collins, also criticized the decision. She stated that she "[did] not think we should be pausing our efforts [. . .] It's the Ukrainians who are shedding blood."
>
> [. . .]
>
> On 4 March 2025, President Zelensky described the 28 February 2025 Oval Office meeting as "regrettable" and said that it was "time to make things right." He stated that Ukraine was "ready to work fast to end the war, and the first stages could be the release of prisoners and truce in the sky—ban on missiles, long-ranged drones, bombs on energy and other civilian infrastructure—and truce in the sea immediately, if Russia will do the same."
>
> [O]n 4 March 2025, in an address to Congress, President Trump stated that he had received a letter from the Ukrainian President agreeing to "come to the negotiating table." He also mentioned that there had been "serious discussions" with Russia and noted that he had "received strong signals that they are ready for peace."
>
> The following day, U.S. National Security Advisor Mike Waltz confirmed a pause in intelligence sharing with Ukraine. He suggested that intelligence sharing could resume in the future, should negotiations progress, stating:
>
> "On the military front and the intelligence front, the pause that allowed that to happen, will go away and we'll work shoulder to shoulder with Ukraine [. . .] I think if we can nail down these negotiations and move towards these negotiations, and in fact, put some confidence-building

measures on the table, then the president will take a hard look at lifting this pause."

[. . .]

Between 7 and 9 March 2025, Russia launched an aerial operation on several regions in Ukraine [. . .].

Following the attacks, President Trump said he was considering large-scale sanctions and tariffs against Russia. In a post on Truth Social, he stated:

"I am strongly considering large scale banking sanctions, sanctions, and tariffs on Russia until a ceasefire and final settlement agreement on peace is reached. To Russia and Ukraine, get to the table right now, before it is too late."[24]

U.S.-Ukrainian Talks on a Potential Ceasefire

As further stated by the House of Lords Library article *Recent US and UK government policy on Ukraine*:

On 11 March 2025, representatives from the U.S. and Ukrainian governments met in Saudi Arabia to discuss a framework for ending the war. Additionally, the two sides discussed the minerals agreement.

Following the talks, the U.S. and Ukrainian governments published a joint statement. The joint statement outlined that Ukraine was ready to accept an immediate thirty-day ceasefire subject to Russian agreement and, following Ukraine's agreement to a ceasefire, the United States had resumed intelligence sharing with and the delivery of military aid to Ukraine. The statement noted:

"Ukraine expressed readiness to accept the U.S. proposal to enact an immediate, interim 30-day ceasefire, which can be extended by mutual agreement of the parties, and which is subject to acceptance and concurrent implementation by the Russian Federation.

The United States will communicate to Russia that Russian reciprocity is the key to achieving peace. The United States will immediately lift the pause on intelligence sharing and resumed security assistance to Ukraine."

The joint statement also detailed that both President Trump and President Zelensky had agreed to conclude "as soon as possible" an agreement for "developing Ukraine's critical mineral resources to expand Ukraine's economy and guarantee Ukraine's long-term prosperity and security."[25]

Europe's Stance on Ukraine

As stated by the United Nations in its article *Post-war reconstruction of Ukraine is set to cost US$524 billion:*

The updated joint Rapid Damage and Needs Assessment (RDNA4) commissioned by the Ukrainian government, the World Bank Group, the European Commission, and the UN comes as Russia's full-scale invasion enters its fourth year. It covers damage incurred since intensified conflict erupted on 24 February 2022 through 31 December 2024.

[In 2025,] the government of Ukraine, with support from donors, has allocated US$7.37 billion (€7.12 billion) to address priority areas such as housing, education, health, social protection, energy, transport, water supply, demining, and civil protection.

As a total financing gap of US$9.96 billion (€9.62 billion) for recovery and reconstruction remains, mobilizing the private sector is critical. . . [M]any firms have started to invest in repairs. Estimates indicate that the private sector could potentially cover a third of total needs.[26]

"A major global financial effort will be required to rebuild Ukraine once the war is over. The EU has contributed substantial financial support to boost the country's resilience and recovery, but more support will be needed in the medium to long-term to reestablish the foundations of a free and prosperous country, anchored in European values and well-integrated into the European and global economy and to support it on its European path."[27]

Ukraine Facility

"To help Ukraine in its recovery, reconstruction, and modernization efforts, the EU has launched a new support mechanism for the years 2024 to 2027. The Ukraine Facility is a dedicated instrument that will allow the EU to provide Ukraine with up to €50 billion in stable and predictable financial support during this period.

The Facility underlines the EU's commitment to supporting Ukraine in the face of Russia's ongoing war of aggression and on its path toward EU membership."[28]

The Facility is organized around three pillars: (1) direct financial support to Ukraine; (2) a specific investment framework for Ukraine; (3) accession assistance.[29]

The pillars are explained in the European Commission's article *The Ukraine Facility Supporting Ukraine's recovery, reconstruction, and path towards EU accession*:

Pillar 1: Direct financial support to Ukraine
The government of Ukraine prepared a plan that sets out its vision for the recovery, reconstruction, and modernization of the country, as well as the reforms it intends to undertake as part of the EU accession process.

If the conditions set out in this plan are deemed to be fulfilled, the EU will provide financial support of over €38 billion to Ukraine during the period 2024 to 2027 through a combination of loans (up to €33 billion) and grants.

Pillar 2: A specific investment framework for Ukraine
The Facility establishes a specific framework to scale up investment for Ukraine's recovery and reconstruction.

To achieve this, the framework will enable investors to take advantage of EU budget guarantees and a blend of grants and loans from public and private institutions, which will make investing in Ukraine more attractive.

The Ukraine Investment Framework is equipped with €9.3 billion in guarantees and grants. It is expected to mobilize up to €40 billion in public and private investments in Ukraine over the coming years.

Pillar 3: Accession assistance
The Facility introduces new assistance measures to help Ukraine align with EU laws and to carry out the reforms necessary on its EU accession path. Technical assistance will be provided to authorities at national, regional, and local levels, as well as to civil society organizations.

How support will be financed: To finance the loans to Ukraine, the European Union will raise up to €33 billion on the financial market until the end of 2027 by issuing EU bonds under the unified funding strategy.

Grants will be financed through the EU annual budget under a new special instrument called the Ukraine Reserve. This instrument will be mobilized every year as part of the annual budget procedure to take into account the progress Ukraine makes in implementing reforms and using investments.

Conditions of the support: To obtain the support, Ukraine must implement its recovery and reform plan and also uphold democratic mechanisms, including a multiparty parliamentary system, the rule of law, and human rights including the rights of persons belonging to minorities.

Once the Commission can verify that the conditions have been fulfilled, payments to Ukraine will occur every quarter.

The European Commission and Ukraine will need to protect the EU's financial interests by countering fraud, corruption, and conflicts of interest. A dedicated Audit Board will support the Commission by assessing the effectiveness of Ukraine's management and control systems while conducting regular audit checks on the ground and liaising with Ukrainian authorities.

In addition, the European Council may hold a debate every year on the implementation of the Facility, based on a Commission report. If necessary, the European Council will invite the Commission to make a proposal for a review of the Facility in 2026, in the context of the next long-term EU budget. A regular Ukraine Facility Dialogue with the European Parliament will also take place at least every four months.[30]

Holding Russia Accountable

As stated by the European Commission factsheet titled *EU Solidarity with Ukraine*:

> Russia must pay for its actions in Ukraine. That is why the EU has stepped up its support investigations and the collection of evidence.
>
> The EU is supporting the International Criminal Court's capacities with €7.25 million. Moreover, Eurojust supports a Joint Investigation Team into international crimes committed in Ukraine, set up by Poland, Latvia, Estonia, Slovakia, Romania, Lithuania, and Ukraine, with the International Criminal Court and Europol as participants.
>
> To help coordinate the collection of evidence, the International Centre for the Prosecution of the Crime of Aggression against Ukraine has been established and is also based at Eurojust. The Centre supports the coordination of investigations and the collection of evidence of war crimes committed against Ukraine.
>
> Furthermore, about €210 billion in assets of the Russian Central Bank are immobilized in the EU.
>
> The EU [made a] decision to use proceeds from immobili[z]ed Russian assets for Ukraine. Depending on interest rates, revenues generated from these immobili[z]ed assets are likely to yield around €2.5-3 billion a year for the benefit of Ukraine. On 26 July 2024, the EU made available to Ukraine the first payment of €1.5 billion generated from immobili[z]ed Russian assets, channeled through the European Peace Facility and to the Ukraine Facility, respectively, to support Ukraine's military capabilities and reconstruction. More than €28 billion of private assets of listed persons and entities have been frozen so far.
>
> In February 2025, the Commission, the EEAS, the Council of Europe, Ukraine, and thirty-seven nation states laid down the legal foundations for the establishment of a Special Tribunal for the Crime of Aggression against Ukraine. Once formed, the Tribunal will hold Russian political and military leaders accountable for the crime of aggression.

> [T]he European Commission also adopted a Recommendation to the Council to participate in the formal negotiations to set up an International Claims Commission for Ukraine. The Claims Commission will be the body responsible to review, assess, and decide eligible claims recorded in the Register of Damage and determine the amount of compensation due in each case. The establishment of the Claims Commission will be a crucial step toward the compensation of victims of the war.[31]

This compensation model is not without precedent.

In June 1947, U.S. Secretary of State George Marshall outlined his plan, which is now referred to as the Marshall Plan, at a commencement address at Harvard University.[32] "American action to restore global economic health, he said, would provide the foundation for political stability and peace in Europe. 'Our policy is not directed against any country,' Marshall said, 'but against hunger, poverty, desperation and chaos.'"[33] "The Marshall Plan used US$13.3 billion—roughly US$171 billion in today's dollars—to rebuild war-torn Western Europe from 1948 to late 1951."[34]

"Modern-day Ukraine mirrors the Western European countries of the Marshall Plan era. It suffers from the physical devastation of war with its major cities heavily damaged," the threat of military attack from hostile neighbors remains, and it has a democratic government.[35]

Given the change in U.S. global leadership and the current status of U.S.-Ukrainian relations, any plan to reconstruct the country after war will mostly come from Europe.[36]

Ukraine "will require public funding from multiple nations as well as substantial private investment. That private investment could well include mineral extraction and refinement ventures."[37]

U.S. Businesses – Opportunities

Opportunities exist for U.S. businesses to participate in rebuilding Ukraine, utilizing U.S. and European resources and benefiting from these efforts.

Despite the continuing war, foreign investment increased in 2024. "There were ten inbound deals worth an estimated US$473 million in the first nine months of 2024, compared to thirteen deals in 2023 bringing in US$278 million."[38] "In the first nine months of 2024, there were thirty-six Ukrainian mergers and acquisitions (M&As) with a total estimated value of US$643 million, according to a new report from KPMG Ukraine."[39]

As reported by Ukrainka Pravda 25:

> President Zelenskyy noted that the United States has the right to earn money from Ukraine's rebuilding, as it has helped most in repelling Russian aggression[:]
>
> "The proportion of our defense is the same as the proportion of businesses that have the right to rebuild Ukraine and make money on it.
>
> The Americans helped the most, and therefore the Americans should earn the most. And they should have this priority, and they will. I would also like to talk about this with President Trump."
>
> President Zelenskyy added that Ukraine needs to restore energy infrastructure, develop natural resources, and has obtained technological experience in the war, which it is ready to share with its allies.[40]

The business section of the U.S. Embassy in Ukraine has always been a great resource for law practitioners and their clients when conducting business in Ukraine.[41]

The Export-Import Bank of the United States (EXIM), the nation's official export credit agency with the mission of supporting American jobs by facilitating U.S. exports, deserves special mention.[42] To advance American competitiveness and to assist U.S. businesses as they compete for global sales, EXIM offers financing including export credit insurance, working capital guarantees, loan guarantees, and direct loans.[43] As an independent federal agency, EXIM contributes to the United States' economic growth by supporting tens of thousands of jobs in exporting businesses and their supply chains across the United States.[44]

An example of EXIM benefiting U.S. businesses and creating jobs in the United States is Wabtec, which in 2019 merged with General Electric.[45]

Wabtec will deliver its U.S.-built locomotives to the Ukrainian Railways. In 2024, the EXIM Board of Directors "approved a historic US$156.6 million loan to Ukrainian Railways to support the potential acquisition of forty Wabtec diesel locomotives."[46] The transaction was approved on 4 April 2024 "and is estimated to support 800 jobs at Wabtec in the Western Pennsylvania region, and indirectly supports the rail-related supply chain."[47]

An article by the U.S. Chamber of Commerce titled *How the U.S. Can Help Ukraine Rebuild and Grow Its Economy* described a discussion between the CEO of the U.S. International Development Financial Corporation (DFC) and a senior partner of Horizon Capital where they "addressed the complex partnership between Ukraine and the United States":

> Amid the uncertainty of war, the companies noted the importance of financial development and investment in Ukraine.
>
> The DFC has invested approximately US$1.25 billion into agribusiness, small businesses, and energy in Ukraine. With investment efforts, the country's economy can stabilize and improve, leading to direct lending, loan guarantees, and political risk insurance—especially valuable in high-risk zones.
>
> "We need . . . the innovation of American business. The energy and spirit of American business and capital," said Scott Nathan, then CEO of the DFC. "We need them to make investments and do business to support Ukraine."[48]

The European Bank for Reconstruction and Development (EBRD), which was originally established to help build a new post-Cold War era in central and eastern Europe and has now expanded operations into three continents, has played a historic role and gained unique expertise in developing the private sector.[49] "The EBRD has invested over €210 billion in more than 7,400 projects."[50]

"With over thirty years of engagement in Ukraine, the EBRD is the country's largest institutional investor. In 2023, [EBRD's] governors approved a resolution to increase paid-in capital by €4 billion to help [to] sustain high levels of investments both during wartime and once reconstruction [of Ukraine] begins."[51]

In conclusion, notwithstanding the shift in the United States' stance toward Ukraine, there are tremendous opportunities for U.S. businesses in the market and for rebuilding the country using both U.S. and European resources, thereby contributing to the creation of a democratic nation and strengthening Ukraine's Western and European values.

Lyubov Zeldis *is the founder and principal of the law firm Lyubov Zeldis PA in Fort Lauderdale. She practices primarily in the area of international law. For over twenty years, she has represented international and domestic clients in commercial matters, disputes, and arbitrations (both international and domestic), corporate and merger and acquisition transactions, and has served as an in-house general counsel for a major franchisor. Ms. Zeldis has native proficiency in Russian and has working proficiency in Ukrainian and Romanian.*

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[46] EXIM, News, Export-Import Bank of the U.S. Chair Lewis Announces Historic Financing for Ukrainian Railways During Visit to Ukraine, 10 Apr. 2024, https://www.exim.gov/news/export-import-bank-chair-lewis-announces-historic-financing-for-ukrainian-railways-during.

[47] *Id.*

[48] US Chamber of Commerce, How the U.S. Can Help Ukraine Rebuild and Grow Its Economy, https://www.uschamber.com/international/how-the-u-s-can-help-ukraine-rebuild-and-grow-its-economy.

[49] European Bank for Reconstruction and Development, https://www.ebrd.com/home/who-we-are/ebrd-history.html.

[50] *Id.*

[51] European Bank for Reconstruction and Development, https://www.ebrd.com/home/what-we-do/focus-areas/war-on-Ukraine.html.

Notable Shifts in Federal Funding , continued from page 17

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receive is at risk and, if the funding continues, whether changes in federal program policy goals may materially alter requirements attached to that funding.[10]

An EO issued on 26 February 2025, "Implementing the President's 'Department of Government Efficiency' Cost Efficiency Initiative," focused on transforming the federal government's grant and contract spending. The EO required a detailed review of "all existing covered contracts and grants"[11] as well as a larger-scale review of policies, procedures, and personnel within a thirty-day period that concluded on 28 March 2025.

As part of this review, federal agencies have been given broader latitude to terminate federal grants under the rationale that the projects "no longer effectuate[s] agency priorities."[12] In March 2025, numerous grants were cancelled on the grounds that they no longer aligned with the new administration's priorities, particularly when grant funding related to gender identity, issues of diversity and equity, COVID-19 research and studies on vaccines, climate science, and teacher-training grants.[13] The situation is ever-evolving, but legal arguments against the terminations have ranged from asserting that the government's grant terminations violate the Administrative Procedure Act—including the APA's provision prohibiting any actions by agencies considered to be "arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law"[14]—to contending that the terminations violate the Fifth Amendment by only offering vague rationales for cancelling the grants.[15] When a grant is terminated in the middle of its performance period, the prime awardee receives notice that it can appeal the termination through the funding agency's dispute resolution process; however, such appeals may take months and no grant funding will flow during the appeal period.

Anticipated Next Steps for Foreign Subrecipients Similarly Situated to Company Y

Because grant funding flows down from the funding agency to the prime awardee and then to the subrecipient, any grant termination implicating the prime awardee will also cease funding to the subrecipient. As stated above, in this instance, Company Y must submit all invoices for its statistical analysis research work prior to the date of the grant's termination. These incurred costs likely will be paid, but the remainder of the subaward agreement is null and void unless the prime awardee prevails on appeal or in federal court litigation.

For international businesses accustomed to partnering with U.S. domestic research institutions in a prime awardee-subaward relationship, the Trump administration's focus on grant funding should raise cautionary flags. Before entering into any subaward agreements, the subrecipient should ensure it understands the scope of the research proposed. If the research project includes terminology relating to DEI initiatives, gender identity, climate change, or other areas identified by the Trump administration as inconsistent with the administration's priorities, potential subrecipients should closely analyze whether signing on to such an agreement is a prudent move. This careful approach is especially pragmatic for international business subrecipients, who are already grappling with additional monitoring and reporting requirements and now face these considerable new concerns.

Mindy B. Pava *is a partner at Feldesman Leifer in Washington, D.C., and a member of the firm's Litigation & Government Investigations, Federal Grants, Health Care, and Education practice groups. She focuses her practice on advising federal grantees, such as health centers and research institutions, as they navigate all facets of administrative and judicial review.*

Endnotes

[1] Although it is beyond the scope of this article, the author wishes to emphasize that it is unclear whether applicable regulations and policy provide NIH (or any other federal agency) with authority to terminate a grant award based merely upon changed agency policy priorities. Multiple courts have held that, absent a specific provision in the grant agreement or applicable grant management regulations so providing, a federal funding agency cannot terminate an award merely for the reason that its policy priorities have changed. *See, e.g.*, *King County v. Azar*, 320 F.Supp.3d 1167, 1170–71 (W.D.

Wa. 2018). Effective August 2020, 2 C.F.R. § 200.340 was modified to insert a new termination basis at § 200.340(a)(2), which stated that a financial assistance agreement could be terminated "[b]y the Federal awarding agency . . . to the greatest extent authorized by law, if an award no longer effectuates the program goals or agency priorities." By law, however, as a component of the U.S. Department of Health and Human Services, NIH must administer its awards in accordance with the provisions of 45 C.F.R. Part 75. HHS never adopted the 2 C.F.R. § 200.340 "no longer effectuates the program goals or agency priorities change" language within 45 C.F.R. Part 75, meaning that NIH (and other HHS) grant awards arguably are excluded from this termination basis.

[2] The Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards ("Uniform Guidance") underwent a considerable review and revision in 2024, culminating in revisions to 2 C.F.R. Part 200 published by the Office of Management and Budget (OMB) on 22 Apr. 2024 (89 Fed. Reg. 30046).

[3] For the NIH grant awards at issue in this article's hypothetical example, *see* 5 C.F.R. §§ 75.403 (Allowable costs) and 75.405 (Allocable costs).

[4] *Id.* § 75.101(b).

[5] *Id.* § 75.308(c)(1)(vi).

[6] *See* NIH Final Updated Policy Guidance for Subaward/Consortium Written Agreements, Notice NOT-OD-23-182 (Sept. 2023); available at https://grants.nih.gov/grants/guide/notice-files/NOT-OD-23-182.html.

[7] Following the date of submission of this article, on 1 May 2025, the NIH issued Notice NOT-OD-25-104 titled "Updated NIH Policy on Foreign Subawards." The Notice states that the NIH will implement a new award structure prior to Fiscal Year 2026, which will apply prospectively to all NIH grants and cooperative agreements. The new award structure "will prohibit foreign subawards from being nested under the parent grant." Until further details are released, NIH will not issue new awards to domestic or foreign entities that include a subaward to a foreign entity. It remains to be seen whether this policy change will be challenged in federal court.

[8] From 20 January 2025 through 15 April 2025 (the date of submission of this article), President Trump had signed 129 Executive Orders (EO 14147 through EO 14275).

[9] An executive order functions as a written directive, executed by the president, that instructs government agencies to take specific actions to comply with Article II of the Constitution—which vests the president with power over the government, including the ability to "take care that the laws be faithfully executed." EOs cannot override federal laws and statutory authority. Statutes must be passed by Congress and then signed by the president, and executive orders cannot impede this process. While EOs do not make law, they carry the force of federal law. EOs are sequentially numbered and then published in the Federal Register (a published daily journal pertaining to federal regulations and actions) and codified in Title 3 of the U.S. Code of Federal Regulations.

[10] Although EOs may receive significant press attention when they are signed by the president, EOs are not effective as law until they are implemented by federal agencies. If an EO instructs an agency to write a report or issue some sort of guidance, those measures can often take several months. Other EOs, however, specifically inform an agency that it has 30 days, or 60 days, to reach a consensus and announce a certain recommendation for action.

[11] *See* EO 14222, Section 3(b), available at https://www.whitehouse.gov/presidential-actions/2025/02/implementing-the-presidents-department-of-government-efficiency-cost-efficiency-initiative/. The EO defines "covered contracts and grants" broadly as any contract or grant subject to discretionary spending, but excludes expenditures pertaining to law enforcement, the military, intelligence community, public safety, and emergency spending. *See also* 90 FR 11095 (3 Mar. 2025).

[12] *See* detailed discussion in endnote 1, *supra*.

[13] According to a lawsuit filed in April 2025, the NIH, alone, has terminated more than US$2.4 billion in grants that it claims support nonscientific projects that "no longer effectuate agency priorities." The lawsuit, filed on behalf of individual university researchers and a union representing more than 120,000 higher education workers, was brought against the National Institutes of Health and challenges the mass termination of NIH grants, including through Executive Orders 14151, 14173, and 14168, and actions taken by the NIH to implement these executive orders. *See American Public Health Association v. National Institutes of Health*, Case No. 1:25-cv-10787 (U.S. District Court for the District of Massachusetts).

[14] *See* 5 U.S.C. § 706.

[15] Grant terminations are only one of the mechanisms by which the Trump administration has sought to place stark limitations on federal funding. The administration attempted to significantly reduce the "facilities and administrative" costs that NIH provides to research institutions to support the overhead cost of engaging in scientific research, but that attempted cut was halted by a federal district court preliminary injunction. A handful of universities including Columbia University, Cornell University, and others have been put on notice that they are being investigated for antisemitic discrimination under Title VI of the Civil Rights Act—these institutions are being threatened with considerable grant cancellations unless they demonstrate changed policies.

Anti-Foreign Corruption Enforcement in the Second Trump Administration, continued from page 19

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harmed by FCPA through "overenforcement because they are prohibited from engaging in practices common among international competitors, creating an uneven playing field," and infringing upon the president's "authority to conduct foreign affairs."[16] In addition, the fact sheet states that FCPA's "interpretation and enforcement by U.S. prosecutors has broadened, imposing a growing cost on our Nation's economy."[17] According to the president, "[w]e have to save our country. Every policy must be geared toward that which supports the American worker, the American family, and businesses both large and small and allows our country to compete with other nations on a very level playing field . . . ."[18] The president links these issues to national security, stating in the fact sheet that "critical minerals, deep-water ports and other key infrastructure are critical" to such security, which he believes is interfered with by excessive FCPA enforcement.[19]

Interestingly, an anticorruption enforcement directive that prioritizes U.S. interests over enforcement would most likely violate Article 5 of the Organisation for Economic Co-operation and Development (OECD) Convention on Combating Bribery of Foreign Officials, which states that "investigation and prosecution of the bribery of a foreign public official shall. . . not be influenced by considerations of national economic interest."[20] The results or consequences of such a violation of Article 5 of the OECD Convention remain to be seen.

This view toward restricting future FCPA enforcement by the DOJ is in conformity with the attorney general's 5 February 2025 memorandum on "Total Elimination of Cartels and Transnational Criminal Organizations" (TCOs). This memorandum directs the FCPA unit within the Fraud Section of the DOJ's criminal division to "prioritize FCPA investigations related to foreign bribery that facilitates the criminal operations of Cartels and TCOs and shift focus away from investigations and cases that do not involve such a connection" for a ninety-day period, subject to renewal by the attorney general.[21]

This directive indicates a shift of enforcement efforts from corporations to criminal organizations and cartels. Examples expressly given are cases involving bribery of foreign officials to facilitate human smuggling and the trafficking of narcotics and firearms.[22] The directive demonstrates support for prosecuting FCPA and FEPA cases linked to criminal organizations, rather than solely on foreign public corruption involving other businesses or industries. The directive allows local U.S. Attorney's Offices to initiate such investigations and prosecutions without prior authorization from the DOJ's Fraud Section in Washington, which was required before the 5 February 2025 memorandum, provided they give twenty-four hours advance notice.[23] These changes remain in effect for ninety days and will be renewed, or made permanent, as deemed appropriate by the attorney general or her designate.

Guidance and Takeaways Given the Executive Order and Attorney General's Memorandum

Although the FCPA remains good law and has not been in any way repealed or amended by the U.S. Congress, the executive order indicates that U.S. companies who pay bribes to obtain natural resources and access to deep-water ports and other infrastructure deemed to be of a national security interest to the United States are less likely to be investigated or prosecuted for violating the FCPA. Conversely, the executive order indicates FCPA enforcement may be increased against international competitors with a U.S. nexus to the extent they are trying to obtain the same resources as U.S. companies.

It is important to note that the president's executive order and the attorney general's memorandum do not expressly address the SEC's ability to investigate and bring cases against U.S. issuers of securities for FCPA violations for civil penalties or disgorgement. The SEC is not part of the DOJ; however, the president's directives may be implemented. Since the acting chairman of the SEC was appointed by President Trump, it would be surprising to see the SEC act in a manner in opposition to or inconsistent with the president's executive order to the DOJ. Nevertheless, only time will tell how the SEC, as an independent agency, will handle FCPA violations. In the

meantime, continued compliance with the FCPA, given the current uncertainties, remains prudent.

Importantly, given that today, as opposed to 1977 when the FCPA was passed by Congress, anti-foreign bribery laws exist in non-United States jurisdictions, foreign corruption investigations and cases will not end entirely. The OECD has a bribery convention, and the United Nations has a Convention Against Corruption.[24] In addition, if a foreign bribery case has a nexus to transnational criminal organizations (TCOs) or cartels, the attorney general's memorandum that permits U.S. Attorney's Offices to instigate investigations and prosecutions upon notice to, but not prior approval of, the attorney general may result in greater FCPA investigations involving such putative defendants.

Overall, a prudent executive or company should continue to monitor compliance with anti-foreign bribery laws as enforcement is always at the whim of the executive branch and there is no way to know whether the administration that takes over the United States on 20 January 2029 will have the same view regarding FCPA enforcement as the current administration. Since the statute of limitations for FCPA and FEPA violations is five years,[25] enforcement scrutiny could survive the current administration to be taken up by a new one in the future. In the meantime, the attorney general will be issuing new FCPA enforcement guidelines that will provide lawyers with more data to better advise clients regarding compliance with anti-bribery laws.

Will these new guidelines echo the president's executive order? Will they apply only to FCPA or FEPA investigations involving, directly or indirectly, TCOs and cartels? Will FCPA or FEPA investigations unrelated to TCOs and cartels disappear altogether? Or will investigative efforts concentrate on non-U.S. companies involved in strategic industries involving national security issues? All of these questions remain unresolved by the executive order and the attorney general's memorandum, and foment uncertainty for U.S. companies or foreign corporations on U.S. soil when conducting business in foreign nations.

In the near term, assessing FCPA enforcement risk with the DOJ should involve determining what exposure a person or company has with TCOs or cartels that may be involved in different industries.[26] This will involve a review of payment systems, sanctions monitoring, employee training, know your customer (KYC) training, and transactional due diligence. Beyond that, it is recommended that compliance with foreign anticorruption laws and appropriate due diligence continue unabated as the uncertainty of enforcement may ebb and flow based on which administration is in power and its views on international trade and business.

***Robert J. Becerra** is a board-certified expert in international law. He concentrates his practice in the areas of civil litigation, white collar criminal defense, grand jury investigations, cargo loss, federal agency investigations, disputes between exporters and importers, trade-based money laundering, export enforcement, FDA detentions and investigations, customs seizures and civil forfeitures, and other proceedings related to international trade.*

Endnotes

[1] *See* "Disruptor in Chief," CBC News, https://youtu.be/yf5tuad2vKchttphttps://youtu.be/yf5tuad2vKcs://youtu.be/yf5tuad2vKc.

[2] Criminal Division of the U.S. Department of Justice & the Enforcement Division of the U.S. Securities and Exchange Commission, *A Resource Guide to the U.S. Foreign Corrupt Practice Act,* (2d ed.), page 19 (July 2020), https://www.justice.gov/criminal/criminal-fraud/file/1292051/dl.

[3] *Id*. at page 69; 15 U.S.C. §§ 78dd-2(g)(1)(A), 78dd-3(e)(1)(A), 78ff(c)(1)(A).

[4] *See A Resource Guide to the U.S. Foreign Corrupt Practice Act, supra* note 2, at pages 3–4.

[5] *Id.* at pages 10–11.

[6] 18 U.S.C. § 3152 (b)(1)(A) and (B).

[7] 18 U.S.C. § 3152(a)(1)(A).

[8] 18 U.S.C. § 3152(b)(3).

[9] Paul Westcott, *A Record Year for FCPA Fines*, Dun & Bradstreet, (4 Jan. 2021), https://www.dnb.com/perspectives/corporate-compliance/2020-record-year-fcpa-settlement-amounts.html#:~:text=Another%20factor%20is%20regulatory.

[10] Debevoise & Plimpton, *FCPA Update*, 15 FCPA Update 6, (Jan. 2024), https://www.debevoise.com/-/media/files/insights/publications/2024/02/fcpa-update-january-2024.f?rev=9fd044dbc24a4b2e97de2812c4c227a7&hash=FA643A1534D9D8031CA0859BBA3F403F.

[11] *Id*.

[12] *Id.*

[13] *Id*.

[14] Miller & Chevalier, *FCPA Autumn Review 2024*, (29 Oct. 2024), https://www.millerchevalier.com/publication/fcpa-autumn-review-2024.

[15] Exec. Order No. 14209, 90 Fed. Reg. 9587 (10 Feb. 2025).

[16] The White House, *Fact Sheet: President Donald J. Trump Restores American Competitiveness and Security in FCPA Enforcement*, (10 Feb. 2025), https://www.whitehouse.gov/fact-sheets/2025/02/fact-sheet-president-donald-j-trump-restores-american-competitiveness-and-security-in-fcpa-enforcement/.

[17] *Id.*

[18] *Id.*

[19] *Id.*

[20] Organization for Economic Cooperation and Development, *Convention on Combating Bribery of Foreign Public Officials in International Business Transactions*, (17 Dec. 1997), https://legalinstruments.oecd.org/public/doc/205/205.en.pdf.

[21] Office of the Attorney General, *Memorandum For All Department Employees, Subject: Total Elimination of Cartels and Transnational Criminal Organizations*, (5 Feb. 2025), https://www.justice.gov/ag/media/1388546/dl?inline.

[22] *Id.*

[23] *Id.*

[24] *Convention on Combating Bribery of Foreign Public Officials in International Business Transactions*, *supra* note 21; U.N. Convention Against Corruption, 31 Oct. 2003, 2349 U.N.T.S. 41.

[25] The statute of limitations for anti-bribery violations may be extended an additional three years where the DOJ seeks evidence from foreign governments through Mutual Legal Assistance Treaties (MLATs). *A Resource Guide to the U.S. Foreign Corrupt Practice Act*, *supra* note 2, at pages 36–37.

[26] *See* Scott Simon, *Mexican Drug Cartels Are Getting Into the Avocado and Lime Business*, (19 Feb. 2022), www.npr.org/2022/02/19/1081948884/mexican-drug-cartels-are-getting-into-the-avocado-and-lime-business.

Export Enforcement by the U.S. Government, continued from page 21

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such unfair and non-reciprocal practices, the United States can use its leverage to open new markets for U.S. exports and re-shore the production that has been lost."[17] That was after President Trump imposed an additional 20% duty rate on all products from China being imported into the United States.[18] Despite such grandstanding, effective 12 April 2025, China imposed retaliatory tariffs of 15% on American chicken, pork, soybeans, and beef.[19] China continues to add names of U.S. companies that it formally sanctions or upon which it places restrictions, meaning that such U.S. companies are prohibited from exporting its merchandise into China.[20] The most prominent name is Boeing. Effective 15 April 2025, no Chinese airline may take further deliveries of Boeing jets or even parts.[21] China is the world's second largest aviation market, and therefore the recent restrictions are a big hit to Boeing and the inroads it had made in the Chinese aviation market.[22] This action by the Chinese government was in response to the extraordinary 145% duty rate placed upon Chinese products destined for the United States.[23]

Let us now focus upon the recent actions by the OFAC in export enforcement. Numerous organizations have been sanctioned by OFAC related to Yemen, Iran, Mexico, and China.[24] It should come as no surprise that sanctioned organizations include service providers that facilitate Iran's crude oil trade, the Iranian oil minister, the supposed leader of the Mexico-based transnational criminal organization responsible for smuggling migrants from Mexico into the United States, Mexican drug cartels, and the International Bank of Yemen.[25]

What is most interesting is the implementation of "secondary sanctions" by the Trump administration. Secondary sanctions are used to maintain or put additional pressure on the sanctions target by penalizing third-party non-U.S. persons that engage with the primary sanctions target in activities that could undermine or evade the purpose of the primary sanctions.[26] As an example, when the United States reinstated their sanctions against Iran, it reinstated secondary sanctions for non-U.S. persons engaging in transactions in several sectors of the Iranian economy, including the energy, financial services, and shipping and maritime sectors.[27] In other words, it coerces non-U.S. persons and companies to stop doing business with a foreign national or foreign entity that has been sanctioned. So, if the International Bank of Yemen is sanctioned by OFAC, that means any person, organization, or company, *anywhere in the world*, without any connection to the United States, that does business with that bank may be targeted by OFAC. Moreover, the Financial Crimes Enforcement Network (FinCEN), part of the U.S. Department of the Treasury, may prohibit all U.S. financial institutions from opening or maintaining any correspondent accounts for or on behalf of not only the International Bank of Yemen, but any bank that does business with the International Bank of Yemen. No bank in the world wants to be shut off from the U.S. international banking system, including the SWIFT code required for all international money transfers to or from a U.S. bank.

Unlike primary sanctions that are enforced against U.S. persons and businesses, secondary sanctions rely heavily on the importance of the U.S. financial system to non-U.S. persons and the use of the U.S. dollar as a favored global reserve currency. Non-U.S. entities with business relationships in the United States must comply with secondary sanctions. If they are in violation, they may be restricted partially or totally from participating in the U.S. financial system, including import or export restrictions. U.S. persons who are found in violation of sanctions may find themselves on the SDN list.

The efforts of ICE have shifted significantly since 20 January 2025. Under the new Trump administration, the focus is to locate and deport convicted felons and other undocumented persons (some people use the word "illegal aliens") and U.S. citizens who may have become citizens through alleged false statements on their naturalization applications.[28] Instead of focusing on cultural property, art, and antiques smuggling, or

intellectual property theft and commercial fraud, or preventing the illicit procurement and export of sensitive U.S. technology and weapons, sanctions violations, and wildlife trafficking, the focus is now on securing the border. The most recent press releases on the agency's website demonstrate its new mission, including "ICE removes twice deported criminal alien wanted for human trafficking in El Salvador," "ICE arrests Honduran alien convicted of sex offense," and "ICE arrests 44 criminal aliens during week-long multi-agency operation."[29]

The BIS has changed its priorities as well. Separate from the SDN list maintained by OFAC, the BIS has its own "Entity List," among other restricted party lists. The Entity List is found in Supplement No. 4 to Part 744 of the EAR (Supplement No. 4 to 15 CFR Part 744). The Entity List includes businesspersons, governments, private organizations, and institutions for which a specific license must be issued by the BIS in order for these individuals or entities to receive an export, reexport, or transfer of items that are "subject to the EAR" pursuant to Section 734.3 of the EAR. In reality, it means license applications to the U.S. government including entities or individuals on the Entity List (as ultimate consignees or intermediate consignees) are likely to be denied. Hundreds of companies, mostly in China, have been added since 20 January 2025.[30] As stated by Under Secretary of Commerce for Industry and Security Jeffrey I. Kessler,

> BIS is sending a clear, resounding message that the Trump administration will work tirelessly to safeguard our national security by preventing U.S. technologies and goods from being misused for high performance computing, hypersonic missiles, military aircraft training, and UAVs that threaten our national security.[31]

The Entity List is not limited to China. Obviously, U.S. government policy is to prohibit U.S. technology such as high-tech surveillance applications from falling into the wrong hands in any country. Think about such technology or weapons in the hands of the Russians against Ukraine, the Houthis in Yemen against marine vessels in the Persian Gulf, and Hezbollah in Lebanon against Israel. Foreign persons or companies that assist or facilitate such illegal exports or transshipments similarly run the risk of being added to the Entity List and/or the OFAC sanctions list.

To summarize, in my thirty-five years of practice as a U.S. customs and international trade attorney, both for the U.S. government and in private practice with "Big Law" representing private clients in the import/export business, the past few months have had the most dynamic changes in international trade policies and procedures. In my opinion, the radical changes that have recently occurred, and continue to occur, in export enforcement are far greater than the laws and regulations that went into effect after the tragedy of 11 September 2001. No longer limited to such obvious things as "weapons of mass destruction" or grenades and dynamite, today's export restrictions are expanded to commercial aircraft parts, semiconductors, drones, and many other types of dual-use products, software, and technology. Exports are now scrutinized much more carefully so that the U.S. government can establish that the end-use and the end-user (among other things) are legitimate and in the interests of the United States. The documentation and information that must be submitted in the application for export licenses to the various federal agencies has similarly expanded, and the approval process usually takes longer.

There is a valid concern that the United States will export less cargo to the rest of the world as international trade barriers are erected by the United States, and in retaliation against the United States by its current trading partners. The word *globalization*, meaning the growing interdependence of the world's economies, cultures, populations, brought about by cross border trade in goods and services, does not seem to have the popularity that it has enjoyed since WWII. It is ironic that the "America Trade First Policy" may actually have the opposite effect in reducing the exports of American products to the rest of the world.

Peter Quinter *is chair of the U.S. Customs and International Trade Law Group at the Gunster, Yoakley & Stewart PA. Mr. Quinter was a senior attorney with U.S. Customs before he went into "Big Law." He was chair of the International Law Section in 2015-2016 when he led a delegation of Florida lawyers to Havana, Cuba, and honored an undocumented "dreamer" who prevailed in litigation against The Florida Bar to become a licensed Florida lawyer, and honored a famous Cuban dissident at the annual conference in Boca Raton. Mr. Quinter resolves import and export cargo matters all over the United States principally involving U.S. Customs and Border Protection (CBP) and other federal law enforcement agencies.*

Endnotes

[1] *See* https://ustr.gov/countries-regions.

[2] *See* https://www.cbp.gov/travel/cbp-search-authority.

[3] *See* https://www.pmddtc.state.gov/ddtc_public/ddtc_public?id=ddtc_public_portal_itar_landing.

[4] *See* https://www.bis.doc.gov/index.php/all-articles/2-uncategorized/91-dual-use-export-licenses.

[5] *See* https://ofac.treasury.gov/.

[6] *See* https://ofac.treasury.gov/faqs/topic/1501.

[7] *See* https://ofac.treasury.gov/sanctions-programs-and-country-information/ukraine-russia-related-sanctions.

[8] *See* https://ofac.treasury.gov/faqs/topic/1501.

[9] *See* https://ofac.treasury.gov/sanctions-programs-and-country-information/ukraine-russia-related-sanctions

[10] *Id*.

[11] *See*, *e.g.*, https://www.bis.doc.gov/index.php/all-articles/16-policy-guidance/product-guidance/267-guidelines-for-preparing-export-license.

[12] *See* https://www.bis.doc.gov/index.php/all-articles/2-uncategorized/91-dual-use-export-licenses.

[13] *See*, *e.g.*, https://www.bis.doc.gov/index.php/enforcement/oee/voluntary-self-disclosure.

[14] https://www.whitehouse.gov/presidential-actions/2025/01/america-first-trade-policy/.

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[18] *See* https://www.whitehouse.gov/presidential-actions/2025/03/further-amendment-to-duties-addressing-the-synthetic-opioid-supply-chain-in-the-peoples-republic-of-china/.

[19] https://www.cbsnews.com/news/china-tariffs-us-farmers/.

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[23] *Id*.

[24] https://ofac.treasury.gov/recent-actions.

[25] *Id*.

[26] *See* Countering America's Adversaries Through Sanctions Act (P.L. 115-44) (CAATSA), in particular Section 228 of CAATSA.

[27] https://ofac.treasury.gov/sanctions-programs-and-country-information/iran-sanctions.

[28] *See*, *e.g.*, https://www.usatoday.com/story/news/politics/2025/04/25/trump-contractors-ice-detentions-deportations/83250623007/.

[29] https://www.ice.gov/newsroom.

[30] *See*, *e.g.*, https://www.bis.gov/press-release/commerce-further-restricts-chinas-artificial-intelligence-advanced-computing-capabilities.

[31] *See* https://www.msn.com/en-us/technology/tech-companies/us-imposes-export-restrictions-on-50-chinese-tech-companies/ar-AA1BNz2I?ocid=socialshare.

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trade architecture that is insulated from the U.S. influence and centered upon the developing world."[10]

- Our free trade agreements have not guaranteed that our trading partners will be democratic. For example, Nicaragua is ruled autocratically. Its policies are anti-American, yet it benefits from our trade agreement.[11]
- "In a globalized economy, foreign commerce and domestic commerce are difficult to disentangle."[12] In other words, commerce is becoming both international and domestic. We will discuss this in the next section.

Considering the current state of the world, we must next assess the president's vision and goals for the economy. Recently, the president, at the time of this writing, announced that he was imposing tariffs through the IEEPA (International Emergency Economic Powers Act).[13] The president's announcement allowed us to understand how the administration defines economic security. His statement is a restatement of his views on international trade that were made during his first administration. In announcing the tariffs, the president stated the following:

- Large and persistent annual U.S. goods trade deficits have led to the hollowing out of our manufacturing base; resulted in a lack of incentive to increase advanced domestic manufacturing capacity; undermined critical supply chains; and rendered our defense-industrial base dependent on foreign adversaries.
- Pernicious economic policies and practices of our trading partners undermine our ability to produce essential goods for the public and the military, threatening national security.
- These tariffs seek to address the injustices of global trade, re-shore manufacturing, and drive economic growth for the American people.
- Reciprocal trade is America First trade because it increases our competitive edge, protects our sovereignty, and strengthens our national and economic security.
- These tariffs adjust for the unfairness of ongoing international trade practices, balance our chronic goods trade deficit, provide an incentive for re-shoring production to the United States, and provide our foreign trading partners with an opportunity to rebalance their trade relationships with the United States.
- Access to the American market is a privilege, not a right.
- The United States will no longer put itself last on matters of international trade in exchange for empty promises.[14]

Regarding China, the White House's statement had the following:

> China's non-market policies and practices have given China global dominance in key manufacturing industries, decimating U.S. industry. Between 2001 and 2018, these practices contributed to the loss of 3.7 million U.S. jobs due to the growth of the U.S.-China trade deficit, displacing workers and undermining American competitiveness while threatening U.S. economic and national security by increasing our reliance on foreign-controlled supply chains for critical industries as well as everyday goods.[15]

Based on these statements, the Trump administration defines economic security as the revitalization of the American manufacturing sector to achieve national self-sufficiency. Phrases such as "undermin[ing] our ability to produce essential goods, reshoring ('The process of bringing back manufacturing or production operations to their country of origin or a nearby region')[16] production to the United States," and "China decimating U.S. industry . . ." reinforce the importance of self-sufficiency. These statements, along with those made during his first term, provide insight into how the administration will define and approach economic security.[17]

Assessing President Trump's Vision of Economic Security

Now that we have defined economic security under President Trump, we can analyze the president's definition of economic security. Four things stand out. The first is that his concept of

economic security is similar to the idea of a "Fortress America." Historically, this term was associated with the isolationism of the 1930's. However, when critics say that the president is an isolationist, they are using the wrong term. Trump's NSS under his first administration calls for a renegotiated free trade agreement, as seen when the United States, Canada, and Mexico renegotiated NAFTA during his first administration. The concept of "Fortress America" is based on the idea that U.S. companies will bring their factories back to the United States and that foreign companies, to avoid tariffs, will establish factories and hire U.S. workers. The recent decision by Hyundai Steel to build a factory in Louisiana is an example of Trump's vision.[18] At the core of this vision is self-sufficiency. Foreign trade will be at a minimum, as U.S. consumers will no longer need to purchase foreign goods.

The second point is that, in the short term, President Trump's definition of economic security represents a repudiation of the previous Republican president, George W. Bush. Here is the Bush administration's NSS as it relates to free trade:

> A strong world economy enhances our national security by advancing prosperity and freedom in the rest of the world. Economic growth, supported by free trade and free markets, creates new jobs and higher incomes. It allows people to lift their lives out of poverty, spurs economic and legal reform, and the fight against corruption, and it reinforces the habits of liberty. . .[19]

In contrast, President Trump's First NSS argued:

> The United States helped expand the liberal economic trading system to countries that did not share our values, in the hopes that these states would liberalize their economic and political practices and provide commensurate benefits to the United States . . . . For decades, the United States has allowed unfair trading practices to grow. Other countries have used dumping, discriminatory non-tariff barriers, forced technology transfers, non-economic capacity, industrial subsidies, and other support from governments and state-owned enterprises to gain economic advantages.[20]

Note the differences between the two NSS. President Bush's NSS adopts the view that international trade is a vital component of national security strategy. International trade enables people, including those in the United States, to escape poverty, fosters greater democracy, and promotes the fight against corruption through the rule of law. Ultimately, this leads to global peace.

In contrast, President Trump's NSS defines international trade as an element of domestic politics. The NSS focuses on the losses, not the gains of international trade. It highlights how the United States has been the victim of unfair trading practices and how U.S. leadership, specifically the Bush administration, failed to defend U.S. workers.

The third item is that President Trump's vision of economic security follows a pattern set by Presidents Obama and Biden. President Trump's vision of economic security continues to move international trade from a foreign policy matter to a domestic matter. As previously noted, foreign commerce and domestic commerce are increasingly interwoven. To explain this, excerpts of comments made by previous U.S. presidents are needed.

As previously stated, the United States was a nation of commerce. President Washington's farewell speech captures this idea well when he says, "The great rule of conduct for us in regards to foreign nations is in extending commercial relations, to have with them as little political connections as possible . . . ."[21] In other words, international trade, not building alliances, was the core mission of U.S. foreign policy.[22] Another example of how international trade influenced U.S. foreign policy is this statement from President Martin Van Buren: ". . . We sedulously cultivate the friendship of all nations as conditions most compatible with our welfare and the principles of our Government. We decline alliances . . . We desire commercial relations on equal terms, being ever willing to give a fair equivalent for advantages received . . . ."[23]

As the United States grew in economic and military power, a shift in Washington, D.C.'s stance on alliances occurred under President Warren Harding. President Harding said, "America was 'ready to encourage, eager to initiate, [and] anxious to participate' in any program 'likely to lessen the possibility of war.' The goal was nothing short of 'a high place in the moral leadership of civilization'. . . ." Engaging in trade for the benefit of the United States would, therefore, no longer be sufficient.[24]

During the Cold War, President Truman continued the point made by President Harding. For President Truman, international trade was crucial in countering the spread of communism. Specifically, he said, "The seeds of totalitarian regimes are nurtured by misery and want. They spread and grown the evil in the soil of poverty and want. They reach their full growth when the hope of a people for a better life has died . . . ." In other words, communism thrives in poverty.[25]

When President George W. Bush was in office, international trade was entirely part of the foreign policy toolkit. U.S. Trade Representative Robert Zoellick, during the early stages of the Global War on Terror in 2003, said:

> The primary reason for the proliferation of free trade agreements was the idea that trade promotes freedom by supporting the development of the

> private sector, encouraging the rule of law, spurring economic liberty, and increasing freedom of choice. Trade also [serves] our security interests in the campaign against terrorism by helping tackle the global challenges of poverty and privation. Poverty does not cause terrorism, but there is little doubt that poor, fragmented societies can become havens in which terrorist thrives.[26]

Secretary of State Rice echoed these comments in a 2008 essay, explaining that "A rising middle class also creates new centers of social power for political movements and parties. Trade is a divisive issue in our country right now, but we must not forget that it is essential not only for our health of our domestic economy but also for the success of our foreign policy."[27] Note the last clause of that statement, "it is essential not only for our health of our domestic economy, but also for the success of our foreign policy." We observe that international trade has both domestic and international aspects.

By the time President Obama was elected in 2008, a shift in how international trade was viewed in U.S. policy began to emerge. President Obama's NSS states the following: "We have responsibilities at home to continue improving our banking practices and forging ahead with regulatory reform, even as we press others to align with our robust standards.[28] In addition to securing our immediate economic interests, we must drive the inclusive economic growth that creates demand for American exports."[29] The phrase "even as we press others (i.e., trading partners) to align with our robust standards . . ." stands in contrast with the Bush administration's NSS, which states that it will allow the country to develop its economic policies and laws on its own. Under the Bush administration, the potential trading partner was allowed to develop its laws. Under the Obama administration, applying U.S. standards, whether they fit or not, is the price of admission to the U.S. market. Since we discussed President Trump in the previous section, we will now focus on President Biden.

When President Biden succeeded President Trump, President Biden continued to view international trade as a domestic policy issue. For instance, President Biden's NSS states:

> We have an affirmative agenda for the global economy to seize the full range of economic benefits of the 21st century while advancing the interests of American workers.

Later on, the Biden NSS states:

> Since 1945, the United States has led the creation of institutions, norms, and standards to govern international trade and investment, economic policy, and technology. These mechanisms advanced America's economic and geopolitical aims and benefited people around the world by shaping how governments and economies interacted—and did so in ways that aligned with U.S interests and values. These mechanisms have not kept pace with economic or technological changes, and today risk being irrelevant, or in certain cases, actively harmful to solving the challenges we now face—from insecure supply chains to widening inequality to the abuses of the PRC's nonmarket economic actions.[30]

As you can see, the views of Presidents Obama, Trump, and Biden on international trade are essentially the same. In their opinion, the United States has been taken advantage of by our friends and allies; those actions are responsible for the loss of U.S. jobs and factories. As a result, we need to protect the U.S. economy by forcing our trading partners to adapt to our policies, or we will place tariffs on them. The difference between these three presidents is the extent to which they are willing to impose tariffs.

The fourth and final item is the need for Congress to intervene. The Constitution granted Congress the power to raise tariffs, as tariffs are a form of taxation. The challenge lies in the ever-expanding definition of security that needs to be addressed, specifically in the context of international trade. Because defining economic security is based on assessment, there is always the fear that anything goes. For example, when issues are framed in terms of national security, the intent to carefully assess is replaced by crisis management thinking. Act now and question later seems to be the way Washington, D.C., operates. What makes it more challenging is that national security is one area that courts are reluctant to review. Courts traditionally give deference to both Congress and the president in matters of foreign affairs, but what happens when the executive chooses to take advantage of that deference as a way to bypass the Constitution?[31]

Congress is partially to blame for deferring to the president without assessing the president's decision. However, Congress, during the drafting of this article, has responded by introducing legislation that calls for accountability when the president decides to raise tariffs under the International Emergency Economic Powers Act (IEEPA). The sponsors of this legislation are Sen. Charles Grassley (R-IA) and Sen. Maria Cantwell (D-WA). The legislation requires congressional review of the president's designation and a vote on the tariffs.[32] It is a privilege for products to enter the American market. Still, it is also a privilege for the president and members of Congress to serve their constituents when the economy is in good shape.

Conclusion

I hope that the International Law Section will initiate a debate on economic security. International trade is a vital pillar of Florida's economy. My concern is that our current class of elected leaders, both Republicans and Democrats, either lacks an appreciation for international trade or chooses to ignore it, deferring instead to their political consultants or to think tanks for advice.

As lawyers, we have a different perspective. We are on the proverbial front lines in how the laws are implemented. The impacts and consequences of any statutes or tariffs are real and not imagined or hypothetical. Since we are most familiar with the effects of bad laws, the International Law Section should initiate this debate on economic security. We can't rely on Washington, D.C., to begin this conversation. We need to have this honest debate, where diverse viewpoints are heard, ranging from the "globalist" to the "America First" and all those in between. The discussion could focus on alternative definitions of economic security and what new legislation would be required to prevent abuse of the security process. Lawyers play a role in developing policy. As such, we must take the initiative to educate.

***Arthur Freyre** is an attorney at Poblete Tamargo, currently residing in Alexandria, Virginia, after practicing law in Miami, Florida. He graduated from St. Thomas University School of Law and shares his insights through a LinkedIn newsletter titled "Desde Washington." Passionate about his work, Arthur combines his legal expertise with valuable commentary on current events.*

Author's note: The views and opinions expressed in this article are my own and do not necessarily reflect the views or positions of the Law Offices of Poblete Tamargo or our clients.

Endnotes

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[13] https://www.whitehouse.gov/fact-sheets/2025/04/fact-sheet-president-donald-j-trump-declares-national-emergency-to-increase-our-competitive-edge-protect-our-sovereignty-and-strengthen-our-national-and-economic-security/. *See also*, Jennifer K. Elsea, *Enforcement of Economic Sanctions: An Overview*, https://www.congress.gov/h%22%3A%22%5C%22International+Emergency+Economic+Powers+Act%5C%22%22%7D&s=8&r=12 (Elsea explains the International Emergency Economic Powers Act: The International Emergency Economic Powers Act was passed by Congress in 1977. "The President may, upon declaring a national emergency involving any 'unusual and extraordinary threat, which has its source in whole or substantial part outside the United States,' restrict or prohibit a wide range of transactions involving 'property in which any foreign country or a national thereof has any interest by any person, or with respect to any property, subject to the jurisdiction of the United States'").

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[28] *Id*. at p. 17.

[29] https://bidenwhitehouse.archives.gov/wp-content/uploads/2022/11/8-November-Combined-PDF-for-Upload.pdf, pp. 34–5. (last visited 5 Apr. 2025).

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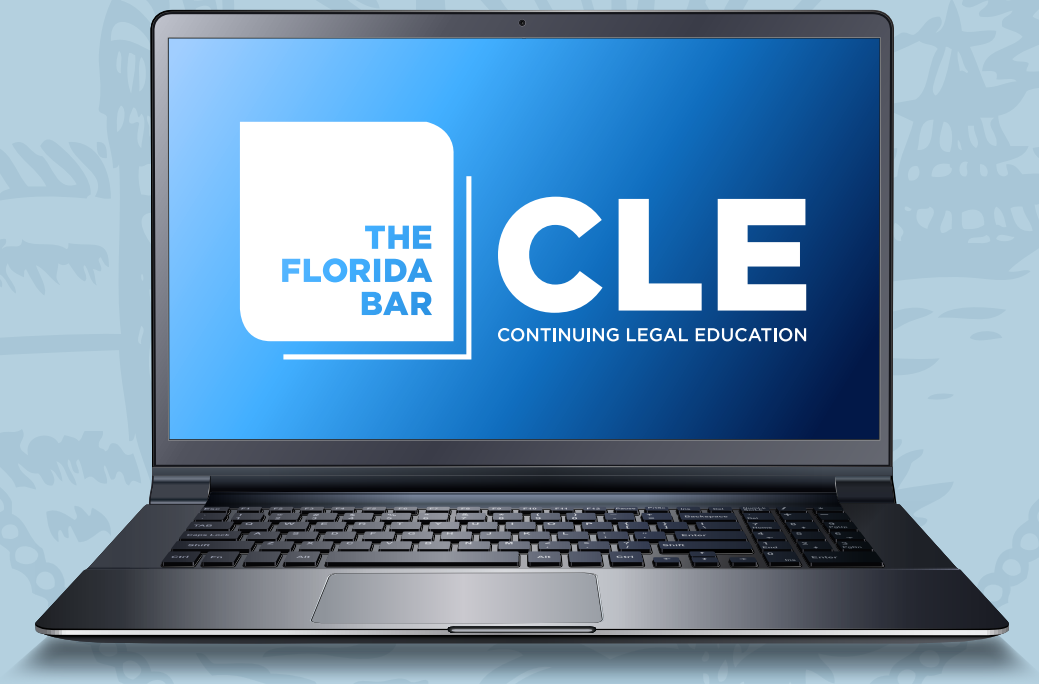

Visa, Vision, Victory, continued from page 25

photo: iStock/Ralf Liebhold

Corporate Structuring for L-1A Visa Qualification

Selecting the Right Business Entity for U.S. Operations

When expanding into the United States, foreign companies must choose a business entity that aligns with corporate governance needs. Although there are more than fourteen entity options, depending on the state of incorporation, the two most common choices are corporations (C-Corps) and limited liability companies (LLCs).

A C-Corp is a separate legal entity that allows for unlimited foreign ownership and provides limited liability to shareholders. However, it is subject to double taxation, as corporate profits are taxed at both the corporate and shareholder levels.[3] Despite this, it is often preferred for businesses that plan to raise capital through U.S. investors or enter public markets. Alternatively, an LLC offers pass-through taxation, meaning that profits are only taxed at the individual owner level, avoiding double taxation.[4] LLCs also provide flexibility in management and ownership structure, making them an attractive option for many foreign businesses.

The choice between a C-Corp or an LLC depends on the company's long-term growth plans and tax considerations. These long-term plans should be discussed with corporate legal counsel and the company's CPA to identify the key priorities of the company.

Ownership and Control Considerations

A critical requirement for L-1A visa approval is the establishment of a qualifying relationship between the foreign and U.S. entities. A qualifying relationship exists when the U.S. company is a parent or subsidiary, an affiliate, or a branch of the foreign company. The U.S. company, as the petitioner, must submit substantial documentation to evidence this relationship, such as, in the case of a corporation, the stock certificate, corporate bylaws, relevant shareholder meeting minutes, capital investment, wire transfers, stock purchase agreements, etc. It is important to remember that the qualifying relationship needs to continue to exist during the employee transferee's entire L-1A stay in the United States. If there is a material change in the ownership and control, an amended L-1A petition needs to be filed.

One of the common structures is a parent-subsidiary or subsidiary-parent relationship between the foreign company and the U.S. company. A parent company owns a subsidiary when it holds more than 50% of the entity and maintains control of the entity, holds 50% of the entity that is a 50-50 joint venture and has equal control and veto power over the entity, or holds less than 50% of the entity but in fact controls the entity.[5] U.S. Citizen and Immigration Services (USCIS) defines de facto control as the authority to direct management and operations. For example, although Company A owns only 40% of Company B, it controls Company B because it holds the majority of seats in the latter company's board or has veto power in the board's decisions. Such qualifying ownership should be reflected in corporate formation documents, bylaws, shareholder agreements, and board resolutions to demonstrate the parent company's clear control over the subsidiary.[6]

Alternatively, an affiliate relationship may be established if both the U.S. and foreign entities are owned by the same parent company, the same majority shareholder, or the same group of shareholders who own a controlling interest in both the foreign and U.S. companies. In the case of the sample group of shareholders, each shareholder in that group must hold approximately the same proportion within the group. However, the shareholders of each business do not have to be identical. While this complex shareholder structure is permissible for L-1A purposes, it requires detailed documentation to prove common ownership.[7]

The U.S. company can also be a branch office of the foreign company, which means it is an operating division or office of the foreign company in the United States. The qualifying branch relationship can be demonstrated by documents such as the state business license showing that the foreign corporation is authorized to engage in business activities in the United States, relevant U.S. tax returns listing the branch office as the employer, etc.[8]

Operational Considerations

Beyond selecting the right entity and ownership structure, foreign businesses must establish a U.S. operation that is doing business, which means the regular, systematic, and continuous provision of goods or services. Therefore, the mere presence of the foreign company's office or agent in the United States does not constitute doing business and is not eligible to support an L-1A petition. However, there is an exception for a new office L-1A visa petition, where the L-1A beneficiary is coming to the United States to be employed by the U.S. qualifying company that has been doing business for less than one year. In this case, the U.S. petitioning company does not need to be actively doing business at the time of filing the L-1A petition, but needs to provide evidence that it has secured sufficient physical premises to house the planned staff and business activities within one year of an L-1A new office petition approval.

USCIS requires the U.S. business to operate in a physical office space, which can be demonstrated through lease agreements, utility bills, and office setup documentation.[9] Virtual offices are not acceptable for L-1A application purposes. Financial viability is another key consideration. The U.S. entity must demonstrate sufficient capital investment to sustain operations, which includes bank statements, financial projections, and contracts with clients or suppliers. USCIS often requires evidence that the business is financially capable of supporting employee salaries, rent, and business operations.[10] For a new office L-1A petition, it is, therefore, significant to have a comprehensive business plan showing the U.S. entity's business vision and strategy, business and operational setup, market analysis, operational timetable, financial projections, hiring plan, and organizational chart to include the leadership and management teams.

In addition, the U.S. immigration law requires that an L-1A beneficiary must be coming to the United States to work in an executive or managerial role, meaning they should be managing, directing, or supervising a team rather than handling day-to-day operational tasks. Specifically, a managerial role means that the L-1A beneficiary will be primarily engaged in managing the U.S. company or a department; supervising and controlling the work of other supervisory, professional, or managerial employees, or managing an essential function; possessing the authority to hire and fire or recommend such and/or other personnel actions; and exercising discretion over the day-to-day business operations. An executive role entails that the proposed job duties in the U.S. company must be primarily directing the company's management, establishing the company's goals and policies, exercising wide latitude in discretionary decision-making, and receiving only general supervision or direction from the higher company authority.[11] In this regard, a well-documented organizational chart and job descriptions of the L-1A beneficiary and their direct subordinate employees will help establish that the executive or manager will oversee subordinate managers or professionals and not perform routine functions.[12]

Trump-Era Policy Changes Affecting L-1A Visa Adjudications

As in the first Trump administration, USCIS began introducing policies that make it more difficult to secure L-1A approvals. The most significant change is an increase in RFEs. USCIS began requiring more detailed documentation proving the legitimacy of business operations, the executive or managerial role, and the financial sustainability of the U.S. entity.[13] We can expect a continuation or even intensification of these trends. Companies need to hire an experienced immigration attorney to help prepare more robust evidence of a qualifying relationship, job duties, and business viability.

Another major change is the narrowing of executive and managerial definitions. Many petitions will be denied if the executive or manager is perceived to be involved in daily operations rather than high-level strategy and oversight. To counteract this, companies must submit extensive evidence of the executive's or manager's senior position and discretionary decision-making authority, such as an organizational chart, detailed job duties, board meeting minutes, strategic planning documents, and delegation records.[14]

New office petitions will face even greater scrutiny. USCIS usually requires business plans with clear revenue projections, staffing commitments, and signed contracts to establish credibility. These stricter standards reinforce the need for a well-structured corporate framework to support L-1A approvals.[15]

USCIS began placing strong emphasis on preventing fraud and abuse in visa programs. The agency has already increased site visits and audits under the "Fraud Detection and National Security" (FDNS) program.[16] Employers are required to provide detailed evidence of office operations and employee activities during audits.[17] Companies filing new office L-1A petitions may face heightened security through site visits to confirm that the U.S. office is actively operating and capable of supporting an executive or managerial role.

To mitigate potential impacts under the Trump administration, companies should: (1) strengthen the L-1A documentation, such as providing an organizational chart showing clear lines of authority, detailed job descriptions of the executive or managerial role and direct subordinate employees, and comprehensive business plans for new office petitioners;

(2) prepare robust initial filings with anticipation for possible RFEs; (3) stay updated on new executive orders or regulatory changes affecting employment-based immigration; and (4) engage experienced immigration counsel to navigate complex adjudicatory trends and to ensure compliance with evolving policies.

Strategic Corporate Law Approaches to Facilitate L-1A Approvals

Foreign businesses seeking to streamline the L-1A visa process must integrate corporate law strategies with immigration planning. A key step is drafting corporate agreements that reflect the qualifying corporate relationship. Corporate bylaws, operating agreements, and shareholder agreements should clearly outline the foreign parent's ownership and control over the U.S. entity.

Another critical strategy is demonstrating business viability through financial documentation. A well-prepared business plan with financial projections, client contracts, and supplier agreements helps establish credibility. Companies should also maintain detailed payroll records and hiring plans to prove they have a sufficient workforce to support the executive or managerial role. Finally, proper corporate governance further strengthens an L-1A case. By establishing a structured reporting hierarchy, businesses can demonstrate that the executive is truly overseeing operations rather than engaging in daily tasks. Clearly defined job descriptions, performance reports, and executive oversight responsibilities provide further evidence of compliance.

Top Legal, Corporate, and Immigration Issues Facing Foreign Businesses Investing in the United States

When foreign companies seek to establish or expand their operations in the United States, they are met with a host of strategic opportunities—and an equally significant array of legal and regulatory complexities. From entity formation to immigration compliance, understanding the U.S. legal landscape is essential for a successful market entry. Below is a detailed overview of the top ten corporate and immigration issues that foreign investors must consider when launching U.S. operations.

1. Selecting the Appropriate U.S. Legal Entity

One of the earliest and most impactful decisions is determining what type of legal entity to form. Common options include C-Corps, LLCs, and, less frequently, branch offices or partnerships. This choice affects liability, tax obligations, operational control, and visa eligibility for key personnel.

For instance, LLCs offer flexibility and pass-through taxation, but C-Corps are often favored for scalability and foreign ownership. C-Corps also tend to align better with L-1A visa requirements due to their clearly defined corporate governance structure. Foreign businesses often establish wholly owned U.S. subsidiaries to maintain a qualifying corporate relationship for immigration purposes.[18]

2. Insufficient Evidence for the L-1A Visa Application

Foreign companies frequently wish to relocate key executives or managers to the United States to launch or oversee operations. The L-1A nonimmigrant visa allows such transfers if the U.S. entity maintains a qualifying relationship with the foreign company and if the individual has worked in an executive or managerial role abroad for at least one of the past three years and will continue to work in an executive or managerial role after being transferred to the United States.

However, USCIS has been tightening its interpretation of what constitutes an executive or manager, especially under the scrutiny of the Trump-era policy environment, requiring detailed organizational charts, job descriptions, and evidence of high-level decision-making.[19]

3. Identifying Immigration Options Beyond the L-1A

Not all employees fall into the L-1A category. Companies may need to explore alternative visa routes, including the L-1B visa for specialized knowledge employees, the O-1 visa for employees with extraordinary abilities, TN visas for Mexican or Canadian professionals, or an E-2 treaty-investor visa, etc. Each category has its own eligibility requirements and adjudication risks, especially under shifting political landscapes.[20]

4. Complying With U.S. Federal, State, and Local Regulations

The United States operates under a federalist system, meaning businesses must comply simultaneously with federal, state, and sometimes local regulations. This includes registration requirements, industry-specific licenses, data protection laws, and consumer protection rules. Overlooking state-level compliance can result in fines, operational delays, or loss of good standing.[21]

5. Navigating CFIUS Review for Sensitive Investments

CFIUS reviews transactions involving foreign investments into U.S. businesses to assess national security risks. CFIUS has become increasingly active, particularly in sectors such as semiconductors, energy, data, and critical technologies. In 2023-2024, CFIUS imposed over US$70 million in penalties for violations, including failures to file mandatory declarations and breaches of mitigation agreements.[22]

6. Protecting Intellectual Property (IP)

For many foreign companies, especially in tech, biotech, or consumer brands, intellectual property is the backbone of their value proposition. However, IP rights granted abroad do not automatically apply in the United States. Businesses must register trademarks, patents, and copyrights with U.S. authorities to be enforceable domestically. Failing to secure IP rights can result in loss of exclusivity or costly litigation.[23]

7. Understanding U.S. Tax Implications and Structuring

The U.S. tax system presents one of the most complex challenges to foreign investors. It includes federal corporate income taxes, state income taxes, sales taxes, and a host of specialized regulations. The IRS also requires extensive reporting from foreign-owned U.S. businesses (e.g., Form 5472). Double taxation treaties between the United States and many countries can provide some relief, but tax structuring and compliance must be addressed early with U.S. counsel or accountants.[24]

8. Complying With Labor and Employment Laws

Labor laws in the United States are strict and vary by state. Employers must comply with rules concerning minimum wage, overtime, worker safety (Occupational Safety and Health Administration), antidiscrimination laws, and I-9 employment eligibility verification. For foreign companies unfamiliar with these rules, even unintentional violations can lead to lawsuits, penalties, or regulatory actions.[25]

9. Opening U.S. Bank Accounts and Establishing Business Credit

Opening a U.S. business bank account can be unexpectedly complex. Banks require a U.S. employer identification number (EIN), the social security number (SSN) of a person opening the account on behalf of the U.S. company, corporate formation documents, and often a U.S.-based office or address. Additionally, building U.S. business credit is essential for leasing, loans, or establishing supplier relationships. Delays in banking setup can significantly impact the business launch timeline.[26]

10. Navigating Anticorruption Laws (FCPA Compliance)

FCPA prohibits U.S. and foreign companies operating in the United States from engaging in bribery or corrupt practices involving foreign officials. Companies must maintain accurate records and implement internal compliance programs. In 2025, despite a pause on initiating new FCPA investigations under the current Trump administration, prosecutions have continued, highlighting the law's enduring relevance.[27]

In short, successfully entering the U.S. market involves more than just capital and vision—it requires thorough preparation and a comprehensive understanding of U.S. legal, tax, and immigration systems. By anticipating these top ten issues, foreign businesses can reduce risk, enhance compliance, and ensure a smoother transition into the U.S. commercial landscape.

Case Study: Samsung's Strategic U.S. Expansion – Navigating Corporate Law and Immigration Compliance

Samsung Electronics' US$17 billion semiconductor investment in Taylor, Texas—the company's largest in the United States to date—highlights how even multinational corporations must carefully navigate U.S. corporate structuring, foreign investment review, and immigration compliance to secure operational success. Through Samsung Austin Semiconductor LLC (SAS), a Texas-based limited liability company wholly owned by Samsung Electronics Co., Ltd., the company ensured limited liability protection, centralized control, and compliance with U.S. tax and immigration requirements, including eligibility for L-1 visa transfers.[28] The expansion triggered a CFIUS review due to national security implications, which Samsung successfully cleared through transparent ownership disclosures and governance.[29] Additionally, to qualify for federal incentives under the CHIPS and Science Act of 2022, Samsung's legal and compliance teams coordinated with agencies such as the Department of Commerce, IRS, and CFIUS to meet stringent national security, reporting, and foreign control standards.[30] This case underscores the critical importance of strategic legal planning for global companies seeking to establish or expand high-tech operations into the United States.

Immigration Strategy: L-1 and O-1 Visas

Samsung's new Texas facility required not just physical infrastructure, but also a highly skilled workforce. While the company committed to hiring thousands of U.S. workers, it also needed to transfer engineers, project managers, and executives from its South Korean operations to lead the buildout.

To accomplish this, Samsung utilized L-1A and L-1B visas. The L-1A visa allowed the company to transfer executives and senior managers with deep institutional knowledge, while the L-1B visa facilitated the transfer of specialized knowledge workers essential to chip design and production processes. Samsung also supplemented this with O-1 visas for employees with extraordinary abilities recruited into U.S. roles.

Navigating these immigration pathways involved compliance with USCIS rules,[31] including extensive documentation of intra-company relationships, employment history, and job duties. USCIS scrutiny—especially under Trump-era policies—meant

Samsung had to clearly show that transferees were not filling entry-level roles, but instead were fulfilling critical leadership or technical functions.

A Coordinated Legal Approach

Samsung's U.S. expansion illustrates how immigration strategy, foreign investment compliance, and corporate law must work in tandem. The company's ability to mobilize capital, relocate talent, and structure its U.S. entity in compliance with federal regulations has made it a model for other global businesses considering investment in the United States.

Conclusion

In an era of renewed protectionism, businesses eyeing U.S. expansion face heightened legal and regulatory hurdles under the Trump administration's tightened immigration and investment policies. Under the current administration, significant policy shifts in immigration and foreign direct investment (FDI) have created a more protectionist environment for businesses seeking to establish or expand operations into the United States. On 20 January 2025, the administration reinstated "extreme vetting" through the executive order "Protecting the United States from Foreign Terrorists and Other National Security and Public Safety Threats," mandating heightened background checks and additional security clearances for all visa applicants, particularly those from countries labeled as high-risk, irrespective of citizenship.[32] Employment-based visa programs are also under review for national security implications, with anticipated restrictions on applicants from nations perceived as adversarial, including China and state sponsors of terrorism.[33]

Concurrently, the February 2025 America First Investment Policy memorandum outlines a stricter framework for FDI, maintaining openness toward passive investments but imposing tighter controls on non-passive investments from countries designated as "foreign adversaries" such as China, Iran, North Korea, and Russia.[34] The memorandum further expands the powers of CFIUS to review and block transactions, particularly those involving real estate near sensitive infrastructure or government sites.[35] These evolving regulations reflect a strategic shift toward safeguarding national security while selectively welcoming foreign capital that aligns with U.S. interests. For foreign businesses, success in the United States now hinges not just on capital and innovation, but on navigating a complex legal landscape with precision and foresight. Understanding and aligning with these evolving regulations is essential to unlocking long-term growth and opportunity in the American market.

Nouvelle L. Gonzalo *is a dynamic corporate lawyer, speaker, and strategist with over fifteen years of experience advising U.S. and international companies. As managing attorney of Gonzalo Law PLLC, she leads the boutique yet global law firm with offices in Florida, Ohio, and New York with expansion underway to London and Singapore. A former law professor at the University of Florida Levin College of Law and on-air legal correspondent for major networks including Bloomberg Business, she has spoken to audiences ranging from twenty individuals to 16 million at a time. Recognized by Super Lawyers for the last five years and named one of the 100 most impactful women in the last 100 years by Our Lady of the Elms School, she is committed to advancing legal strategy, leadership, global business growth, and impacting communities.*

Yunjuan (Sarah) Bai *is the founder and managing attorney of BW Law PLLC, the first and only Chinese-owned law firm in Gainesville, Florida. With solid academic training from the JD program at the University of Wisconsin – Madison Law school and over a decade of exclusive experience in U.S. immigration and naturalization law, Ms. Bai is widely recognized as an expert in her field. She has successfully represented a broad spectrum of clients, from Fortune 500 companies and innovative startups to distinguished individuals—including researchers, scholars, entrepreneurs, investors, and artists.*

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NGOs, Organized Crime, and Tax Evasion , continued from page 27

This WEF report indicates that the social and economic costs of these activities are realized with serious risks to the environment, to the freedom and to the health of people.

Massive tax evasion makes it difficult to implement social policies. In addition, this *shadow* economy will feed a chain of bribery and administrative malpractice that can jeopardize the stability of states, as some independent journalists have repeatedly reported, even at risk of their lives.[6]

The most notable financial crimes perpetrated by organized crime were, ranked by their volume, in financial losses to the State, society, and/or persons: (a) Financial fraud;[7] (b) Tax evasion;[8] (c) Misappropriation;[9] (d) Misuse of public funds.[10]

The actions of these organizations have three elements: a) criminal, b) economic; c) social coexistence.

The ***criminal*** characteristic is typical of the operation of these criminal structures, which comprise crimes of trafficking, as well as evasion, terrorism, and laundering; the latter as a means of introducing part of the crime produced into the legal economy.

The ***economic*** particularity is the result of the content and purpose of the trafficking crimes, it is the object of the activity, which is aimed at obtaining significant wealth.

Social coexistence is the area in which both these organizations, as well as their members, belong to a society, and that social role, especially of members and, even their families, coexists with other congeners. They demand, because they are human persons, public services of the State; as a result, they do not escape the duty to tax, for the activities they carry out, in addition to being legal or illegal. This duty today has a conventional content, according to the clause cited above. Therefore, they are taxpayers in spite of their illicit activity; ergo, they must pay taxes.

The actions of these organizations tend to have the permissiveness of the States and among the reasons that can be mentioned that motivate the continuation of this mistake are the benefits reported to the State, by having: (a) Investments for economies; (b) Greater economic activity; (c) The economic volume caused by investments and the subsequent greater activity that improves tax collection.

The data cited demonstrate the economic level of organized crime; the worldwide spread; the growing trend, and the consequences they cause in States, Societies, and People.

3. Evasion in illicit activity

This is a topic discussed, both by doctrine and by case law, for the purpose of illustrating how they provide some considerations with respect to each.

Position contrary to taxing illegal activity: Opinions and pronouncements in favor of this position are based, among other arguments, on the following: (a) The State assumes the character of accomplice if it intends to collect taxes from illegal transactions; (b) The State incurs immorality, because it obtains resources from illicit or criminal sources; (c) The State is considered to incur a contradictory position of State action that is to ensure faithful compliance with the law, complying with and enforcing it; (d) The State makes use of, and to its advantage, behaviors that it suppresses and censors if not executed by citizens; (e) The receipt of taxes on illegal activities would be covered by these activities.

Case law has had pronouncements favorable to this position, in the case of "MAIDA, Roberto et al. re. Violation of Law 23,771," C F A San Martin, Room I, 10-12-1995. These were clandestine bets at off-track betting agencies outside of the official system; the reasons for not admitting the taxation were affected by the unity of the legal system, respect for the principle of legality, legitimized, indirectly, activities that are contradictory or suppressed as anti-legal in specific legislation. Another case was "PCA re. Law 23,771. Economic Criminal CNA, Chamber B, 12-26-1994, the case referred to the activity of pimping or procuring, and the tax is in contradiction with the legislation on the matter, Law 12,331 (similar activity PERCIVALLE, Carlos, CN Economic Criminal, Chamber 8, 12-16-1995).[11]

BACIGALUPO has ruled against encumbering illicit activities because it would be converting the State into a participant, by means of taxation of the crime of illicit proceeds, when the origin thereof is relevant.[12] At the same time, she said on another occasion *"it is questioned whether a lucrative activity qualifying as a crime can be considered a contribution capacity index equivalent to the benefits derived from lawful activity."*[13]

Position in favor of taxing illicit activity: Doctrine and case law have ruled in favor of this position. The arguments are supported: (a) The person who commits an illegal activity despite being

reproachable is involved in the scope of a society, making use of its benefits; therefore, by the principle of solidarity, he is obliged to pay taxes; (b) Requiring the payment of taxes, although the activity is illicit, is demanding its share for living in society; (c) Illicit activity and those that have economic content, are presumed to have taxation capacity; as a result, taxes can be paid for that economic activity; (d) Failure to collect the tax from those who carry out these illegal activities would be granting them privileged treatment with respect to those who operate in the field of legality; (e) Tax laws, Income Tax, Personal Property and VAT do not distinguish between lawful or unlawful taxable facts; (f) The principle of equality would be altered, which is in line with competition disruption considerations.

U.S. legislation records an interesting fact, the Income Tax Act of 1913, amended in 1916, and which replaces the term "legal" with that which was referred to in the origin of the income, with "all income from any source of income."

Case law has held that in cases of failing to declare the benefit of illegal acts can constitute a source of taxation, the reason *"for tax law is indifferent with respect to the illegality of the activity in which the generating event is substantiated, considering only its economic aspect or its ability to serve as an index of tax capacity."*[14]

The Argentine Treasury expressed its opinion according to ruling 182/1971 DATJ, 12-17-1971: Illicit Operations in Income Tax, an opportunity in which it was indicated *"The sums arising from the embezzlement and emptying of a corporation, constitute illegal operations, taxable in the income tax."*

U.S. jurisprudence has favorable rulings to tax profits arising from illegal activities.[15]

Spain's case law has similar criteria in this regard, stating that *". . . the tax return, by including hard-to-justify gains or assets acquired from illicit funds, can contribute to the outbreak of illegal activities, and it cannot be configured as a privileged cause of exemption from the obligation to declare, allegedly covered by a constitutional law and from which citizens who violate the Law would benefit to the detriment of those respectful of the Law; well, we are not facing 'directly incriminating content contributions.'"*[16]

The Court of Justice of the European Community noted that the Court of Justice of the European Community dispatches stating that *"it has understood that VAT taxation is appropriate, despite the illegality of the taxed act, when fraudulently traded goods compete with operations carried out under a legal circuit, violating the basic principle of tax neutrality that governs VAT taxation"* (sale of counterfeit perfumes, the exploitation of gambling, illegal exploitation of computer systems; and smuggling ethyl alcohol), but it has not considered unlawful transactions on goods that are totally excluded from the legal commercial circuit subject to VAT, and that, therefore, could not mean they are in competition with similar lawful business operations (for example, counterfeit currency trafficking).[17]

The official comment on the 1946 reform was noted "Please also note that the law has, in some way, a repressive purpose, since it taxes profits and does not admit the breaches derived from illicit operations."[18]

DINO JARACH, in this regard, pointed out the inequality by arguing *"Taxes would be paid by those who comply with the laws and those who violate or act outside the law with activities that are unclean or simply tolerated or criminal, would be exempt"*; and adds*, "Those living from pimping, systematic and professional theft and other activities of the same nature, as well as those that contravene the laws of goodwill and speculation, must not be exempt from the tax levied on the results of the activities that are defined by their economic content, and not because of their lawfulness or illegality,"* in terms of background, he mentions the taxation of tolerated prostitution activities in Germany.[19]

BERLINI, *"the taxation of illicit activity may appear non-repugnant to social consciousness, but rather, on the contrary, timely and morally laudable, whereby the principle of "pecunia non olet: "money does not smell" is applicable. The origin of the phrase dates back to ancient Rome, an expression that is attributed to Vespasiano in response to his son Tito, who suggested that he extinguish the taxes that had been created on sewers and public urinals. The Roman emperor meant with this that money had no odor, essentially alluding to the fact that, for the State, it must tax the employment it makes of its tributes, and not the circumstances of reputing to be ridiculous or repudiating the source from which they come."*[20]

GIULIANI FONROUGE and NAVARRINE contend that the benefits of illicit activity are included in the regime of law 20628 (Income Tax).[21] In a similar sense, the Treasury ruled on the following questions from the CPCE CABA.[22]

The conclusion is that the positions are heterogeneous, plus **this authorship adheres to the position that illicit activities are taxed**. Reasons are as follows: (a) The fiscal-legal relationship between Tax Authorities—Taxpayer is regulated by the principle of Distributive Justice, whereby the company demands equitable distribution from the State, that is proportional, reasonable, contemplating the healthy principle of solidarity; and the principle of Mutual Justice by which there is a link between people and the State, where it provides service, and those who receive it; as a result, it is obligated to pay a price, called in generic terms tributes, specific "fee," "tax," "contributions"; (b) Conventional orders, which have constitutional rank, because the Argentine constituent in 1994, included in subsection 22 of Article 75 of the CN the American Declaration of the Rights and Duties of

Man; these contain two duties, that, due to the range granted, they become unavoidable, one being Article 33: The duty to respect the law, and the other one, Article 36: the duty to tax to sustain the services of the State. The conjugation of both, in the case of Argentine tax laws, does not indicate any limitation or prohibition in not taxing illegal activities (Tax on Profit, Personal Property, and VAT); ergo, it is admissible to tax illegal activities, otherwise, if these activities are not taxed just because they are illegal, the State would provide the service to you, but could not charge for it. The other grounds cited above are added to this.

The argumentative statements leave no doubt, the position in favor of taxing illicit activities must prevail.

4. The relationship between NGOs, criminal organizations, and tax control

This subjective-objective trident promotes the suggestion that State Policies should change the current approach, especially systemic controls, which are generally formal and provide guidelines regarding amounts and are NOT found in the qualities of subjects. This omission promotes a partial appreciation of the person and their economic activity, and allows numerous cases to flow, causing conditions favorable to organized crime, penetration into society, into government spheres, and having NGOs, as "legal screens."

The reality described above motivates the need to rethink current control systems, where those organizations must be the subject of adequate and comprehensive oversights, especially if there is government input.

Criminal activity when it comes to trafficking crimes that have strong economic connotations, beyond human and social ones, must be conjured with evasion. The reasons for doing so are, as stated, its members live in society and make use of State services, sufficient reasons to achieve them with tax control.

The importance of tax control is one more alternative of penetration into one of the sensitive aspects of these organizations, financial flow; it should be remembered that the expansion of the 21st century is linked to economic-financial expansion.

NGOs are mentioned in this note because, although the conception is altruistic, the misuse or abuse of these entities shows incompatibilities, that in some cases are serious because, as said, the little control that is followed, whether qualitative or quantitative, enables conditions favorable to providing illegal activities with legal masks (covering); to use them for money laundering, promoting financial aid programs that are usually constituted in covert modalities of this criminal practice.

Therefore, tax control must be directed and designed on the basis of strategies where tax administrations are acting jointly with the other State agencies whose competences encompass the persecution of trafficking crimes, comprising under this concept the trafficking of narcotics, persons, entities, influence, weapons, etc.

The damage caused by evasion is immeasurable; in order to have a notion of the meaning, it is sufficient to keep in mind that the tax pressure rates are estimated at an average of 25% over GDP. Latin America, from the Rio Bravo to Tierra del Fuego which, if applied to an estimated GDP of $5.6 trillion dollars, represents an annual collection, today nonexistent, of $1.4 trillion dollars, if, due to inefficiency, lack of interest or ineptness of tax administrations will barely scratch 15% of that figure, you can say that with that funding, a ten-year program would eradicate Latin American structural poverty, and would lead to an improvement in cultural and educational levels, that would result in effective and full enjoyment and the free exercise of civic rights; ergo, this would hamper the penetration of the recalcitrant leftist demagogies, and, Latin America would surely regain the qualities it had.

Conclusion

The global reality, the social structure, the State, NGOs, shows that recognition of the ADHR, of legality, and of taxes as a substantial support of the State organization promotes the following conclusions:

a. Man must pay taxes; this resource is limited, the needs are unlimited and growing.

b. The State must provide services that enable human needs to be met.

c. The State is a guardian of the conditions of peace and social coexistence, of human well-being, enabling the means to grant humans access to the long-awaited dignified human life.

d. The State must provide sufficient and necessary controls, which allow it to properly collect the needs demanded, in addition to arbitrate the means for "all" inhabitants to pay taxes, and thus avoid evasions.

e. Evasion is an economic crime, but it has social content, due to the seriousness of events that occur when the State does not have adequate resources.

f. Illicit activities must be taxed because their omission does NOT allow for the improvement of a people's quality of life, and they boast better education and culture, including civic culture. A civically educated people have a greater

chance of discerning between the euphemism of the left and balanced ideas.

g. NGOs must be subject to comprehensive, quantitative, qualitative controls by the State, both on their objective (financial economic) and subjective aspects (real purposes) to ensure that society has adequate organizations free of all risk to wrong influences.

The improvement of the economic socio-level foretells the ability to enter into stable, safe, peaceful long-term policies for those peoples, which will favor dignified human life and human beings, and as such, they will be carried out comprehensively. Humanity craves a change of path today; the current state of affairs is concerning, so these contributions are necessary.

CAROLINA OBARRIO LANGDON

GERARDO E. VEGA

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[4] Gang: a group of people who, in certain crimes, bear a special severity that the law must compute against the criminal for the greatest magnitude due to the danger that this joint participation implies for the legal assets at stake, thus increasing the content of the offense, resulting in said commission of crime being less difficult for the criminal. SAIJ, summary of ruling 03-12-2012, SAIJ: SU70016438.

[5] Argentina Criminal Code: Article 210: establishes that it must have a minimum of three members when it says *". . . an association or gang of three or more people intended to commit crimes for the mere fact of being a member of the association."* Article 210 bis defines an aggravated figure requiring, with respect to the number of members, ten or more. Comparative law finds this figure in numerous punitive orders, Spain, Article 570 bis (requires at least two people), France: Article 450-1 and related articles, according to Law No. 2001-420, 05-15-2001 Art. 45 Official Gazette, 05-16-2001; Guatemala: In Rem Forfeiture Act. Mexico: Federal Law on In Rem Forfeiture, regulation of Article 22 of the Political Constitution of the United Mexican States. Official Gazette of the Federation 05-29-[2009], last reform DOF 03-14-2014; Chile: Law 20,000; Colombia: Laws 793/2002 and 1708/2014; United Nations Office on Drugs and Crime Model Act on In Rem Forfeiture; among others.

[6] Cases worth mentioning are Malta journalist DAPHNE CARUANA GALIZIA, murdered with a car bomb in 2017 while investigating businessman YORGEN FENECH, known in Malta as the "King of Casinos." Another threatened journalist is Italian Roberto SAVIANO, for his investigation into the Neapolitan Camorra: the threat of this mafia forced him to live for many years under permanent police protection.

[7] Financial Fraud: These are cases where money and/or financial assets are obtained through deception and include, but are not limited to, fraudulent hiring, identity theft, mass marketing fraud, bank fraud, etc.

[8] Tax Evasion: (includes activities such as deceptive billing) and abusive tax avoidance; this is the use of illicit means not to pay taxes by the taxpayer by facilitating misleading statements of its financial economic situation, reducing the payment to the Treasury. In the case of misleading billing, the plaintiff maximizing their earnings will overcharge or undercharge, and the misrepresentation depends on the applicable taxes and duties. Tax dodging must be distinguished from tax evasion: in the case of tax evasion, someone acts against the law or abuses the letter of the law. Conversely, abusive tax dodging complies with the letter of the law, plus the taxpayer incurs a strategy by which he makes his tax structure subject to a lower tax cost.

[9] Misappropriation: This consists of the fraudulent appropriation of goods or funds that have been entrusted to an individual to manage and keep them safe, with the intention of using them for their own benefit. It differs from ordinary fraud, because the plaintiff who owns the money or property has reliable and legitimate access to them before using them for his own benefit.

[10] Misuse of funds: this is the misuse of funds from the State or international or regional bodies for purposes other than those for which they were granted. This is a form of financial fraud, the activities mentioned must be committed by a criminal organization to obtain an economic benefit or a professional advantage. When these activities are attributed to another criminal market listed in the Index, they are recorded in the respective market indicator. The use of funds intended for a different purpose, in the case of forest exploitations, not to make the proper replacement, according to the provisions agreed in the forest plan with the State.

[11] SORIA, Daniel, Research on illicit activity and taxation, Separate Theme No. 21, AFIP, 2011.

[12] BACIGALUPO, Silvia, Dr. in Law at the University of Madrid, Professor of Criminal Law, "Tax Crime and Taxation of Illicitly Earned Earnings," La Ley, Spain, 2001-6; SORIA, Daniel quote, Investigation on Illicit Activity and Taxation, Thematic Separation No. 21, AFIP, year 2011.

[13] BAIGALUPO, Silvina: "Illicit profits and criminal law," Editorial Centro de Estudios Ramón Areces S.A.

[14] "INGEMIN S A" TFN, Chamber A, 06-28-2000, SORIA, Daniel quote, Investigation on illicit activity and taxation, Separate Theme No. 21, AFIP, year 2011.

[15] U.S. Court James v United States, 366 U. S. 213, 05-15-1961, American case law has the precedent "AL CAPONE."

[16] Judgment No. 1493/1999, Considering thirty-seventh. Supreme Court of Madrid, Criminal Chamber. Appeal for Cassation for Violation of the Law, Violation of the Constitutional Precept and Breach of Form. Case "State v Roldán Ibáñez and Rodríguez Porto-Pérez," SORIA, Daniel quote, Investigation on illicit activity and taxation, Thematic Separation No. 21, AFIP, year 2011. GALARZA, César J.: The taxation of illegal acts, in Criminal Tax Law, Volume I, p 257 et seq., Ed. Marcial Pons, Madrid Barcelona Buenos Aires, 2008.

[17] SORIA, Daniel, Research on illicit activity and taxation, Separate Theme No. 21, AFIP, 2011.

[18] Ministry of Finance. Amendments to laws 11682 and 11683 and Decree Law 18.229/1943, Buenos Aires 1946, p. 116, quote in GIULIANI FONOROUGE, Carlos M and NAVARRINE, Susana C: Income Tax, p. 79; 4th Edition, Lexis Nexis, Buenos Aires, 11-2007.

[19] JARACH, Dino: "Superior Course in Tax Law," chapter VI: Nature and interpretation of substantive tax rules, paragraph 4: Relationships between Material Tax Law and Private Law, p. 285/286, Cima Professional School, Buenos Aires, 04-1969.

[20] BERLIRI, SORIA, Daniel quote, Research on illegal activity and taxation, Thematic Separation No. 21, AFIP, year 2011.

[21] GIULIANI FONOROUGE, Carlos M and NAVARRINE, Susana C: Income Tax, p. 79; 4th Edition, Lexis Nexis, Buenos Aires, 11-2007.

[22] CPCE CABA, consultations raised with the Treasury within the framework of the AFIP-DGI Liaison Group / CPCE CABA, dated 12-04-2002 and 11-30-2005.

Las ONG, el crimen organizado y la evasion tributaria , continued from page 29

Este informe del FEM indica que los costes sociales y económicos de estas actividades se concretan con graves riesgos para el medio ambiente, para la libertad y para la salud de las personas.

La evasión masiva de tributos dificulta la puesta en marcha de políticas sociales. Además, esta economía en la *sombra*, **alimentará una cadena de sobornos y malas prácticas administrativas que pueden poner en riesgo la estabilidad de los estados**, como han denunciado reiteradamente algunos periodistas independientes, incluso a riesgo de su vida.[6]

Los delitos financieros más destacables utilizados por el crimen organizado, fuera, por su volumen, por las pérdidas financieras al Estado, a la sociedad, y/o a las personas son: a) Fraude financiero[7]; b) Evasión Fiscal[8]; c) Malversación[9]; d) Uso indebido de fondos públicos[10].

El accionar de estas organizaciones presenta tres aristas: a) la delictiva, b) la económica; c) la convivencia social.

La característica ***delictiva*** es propia de la operatoria de estas estructuras criminales, las cuales, comprenden los delitos de tráficos, más allá de la evasión, el terrorismo, y el lavado; este último como medio de introducir parte del producido delictivo en la economía legal.

La particularidad ***económica***, es la resulta del contenido y fin de los delitos de tráfico, es el objeto de la actividad, la cual esta direccionada a obtener cuantiosas riquezas.

La ***convivencia social*** es el ámbito en el cual, tanto estas organizaciones, como sus integrantes, pertenecen a una sociedad y, ese rol social, especialmente de los miembros e, incluso sus familias, conviven con otros congéneres, demandan, por ser personas humanas, servicios públicos del Estado, razón por la cual no escapan del deber de tributar, por las actividades que desarrollan, más allá de ser legal o ilegal. Este deber hoy tiene contenido convencional, según cláusula citada anteriormente. Por lo tanto, son contribuyentes más allá de su actividad ilícita; ergo, deben pagar impuesto.

El accionar de estas organizaciones suelen contar con la permisividad de los Estados y entre las razones que motivan este equivoco proceder se puede mencionar los beneficios que reporta al Estado al contar con: a) Inversiones para las economías; b) Mayor actividad económica; c) El volumen económico provocado por las inversiones y la consecuente mayor actividad mejora la recaudación tributaria.

Los datos citados demuestran el nivel económico del crimen organizado; el derrame por todo el mundo; la tendencia creciente y, las consecuencias que provocan en los Estaos, las Sociedades, y las Personas.

3. La evasión en la actividad ilícita

Este es un tema discutido, tanto por la doctrina, como por la jurisprudencia, a los efectos de ilustrar aportan algunas consideraciones respecto a cada una.

Postura Contraria a gravar la actividad ilícita: Las opiniones y pronunciamientos en favor de esta posición se basan, entre otros argumentos, en los siguientes: a) El Estado asume el carácter de cómplice si pretende cobrar tributos de operaciones ilícitas; b) El Estado incurre en inmoralidad, por cuanto obtiene recursos de fuentes ilícitas o delictivas; c) Se considera que el Estado incursiona en una postura contradictoria del accionar estatal que es velar por el fiel cumplimiento de la ley, cumpliéndola y haciéndola cumplir; d) El Estado hace uso y en su provecho de conductas que reprime y censura si no ejecutadas por los ciudadanos; e) La percepción de tributos sobre actividades ilícitas estaría amparando estas actividades.

La jurisprudencia ha tenido pronunciamientos favorables a esta postura, causa "MAIDA, Roberto y otros s/ Infracción Ley 23.771", C F A San Martín, Sala I, 12-10-1995, se trató de apuestas clandestinas en agencias hípicas al margen del sistema oficial; las razones para no admitir la imposición fueron resulta afectada la unidad del ordenamiento jurídico, respeto al principio de legalidad, se legitima, por vía indirecta, actividades que están en contradicción o reprimidas como antijurídicas en la legislación específica. Otra causa fue "PCA s/ Ley 23.771. CNA Penal Económica, Sala B, 26-12-1994, la causa refería a la actividad de proxeneta o rufianería, y el gravar está en contradicción con la legislación en la materia, Ley 12.331 (similar actividad "PERCIVALLE, Carlos, CN Penal Económico, Sala 8, 16-12-1995).[11]

BACIGALUPO se ha pronunciado en contra de gravar las actividades ilícitas porque sería convertir al Estado en participe, vía tributaria del delito del proceden las ganancias ilícitas, cuando tiene relevancia el origen de las mismas.[12] A su vez, en otra oportunidad expresó *"se cuestiona si una actividad lucrativa calificable como delito puede ser considerada un índice de capacidad contributiva equivalente a los beneficios provenientes de actividad lícita"*.[13]

Postura Favorable a gravar la actividad ilícita: La doctrina y la jurisprudencia se han pronunciado en favor de esta postura. Los argumentos se sustenta: a) La persona que comete una actividad ilícita pese a ser reprochable su cometido se

desenvuelve en el ámbito de una sociedad, usufructúa sus beneficios, ergo, por el principio de solidaridad está obligado a abonar los impuestos; b) El requerir el pago de los tributos, aún, siendo la actividad ilícita está exigiendo su cuota por vivir en sociedad; c) La actividad ilícita y estas que tienen contenido económico, se presume que existe capacidad contributiva, motivo por el cual está en condiciones de pagar los tributos por esa actividad económica; d) El no cobro del impuesto a quienes desarrollan estas actividades ilícitas se le estaría concediendo un trato privilegiado respecto a quienes se desempeñan en el ámbito de la licitud; e) Las leyes tributarias, Impuesto a las Ganancias, Bienes Personales e IVA, no establecen distinción entre hechos imponibles lícitos o ilícitos; f) El principio de igualdad se vería alterado, el cual está en línea con las consideraciones sobre alteración de la competencia.

La legislación estadounidense registra un dato interesante, el Income Tax Act de 1913, se modifica en 1916, y reemplaza el vocablo "legal" con que se refería al origen de la renta, por "todo ingreso procedente de cualquier fuente de ingreso."

La jurisprudencia ha sostenido que en supuestos de omitir declarar el provecho de actos ilícitos puede constituir fuente de imposición, la razón *"para el derecho tributario es indiferente la ilicitud de la actividad en que se consustancie el hecho generador, considerando sólo su aspecto económico o su aptitud para servir de índice de capacidad contributiva"*.[14]

El Fisco argentino expresó su opinión según dictamen 182/1971 DATJ, 17-12-1971: Operaciones Ilícitas en el Impuesto a los Réditos, oportunidad en que señaló *"Las sumas provenientes del desfalco y vaciamiento de una sociedad anónima, constituyen operaciones ilícitas, imponibles en el impuesto a los réditos"*.

La jurisprudencia estadounidense tiene pronunciamientos favorables a gravar las ganancias originadas en actividades ilegales.[15]

La jurisprudencia de España tiene similar criterio, al respecto dijo que *"…la declaración fiscal, al incluir ganancias de difícil justificación o bienes adquiridos con fondos de ilícita procedencia, pueda contribuir al afloramiento de actividades ilícitas no puede configurarse como una causa privilegiada de exención de la obligación de declarar, supuestamente amparada en un derecho constitucional y de la que se beneficiarían los ciudadanos incumplidores de la Ley en detrimento de los respetuosos del Derecho, pues no nos encontramos ante 'contribuciones de contenido directamente incriminatorio"*.[16]

El Tribunal de Justicia de la Comunidad Europea señaló que El Tribunal de Justicia de la Comunidad Europea se despacha señalando que *"ha entendido que la tributación del IVA es procedente, pese a la ilicitud del acto gravado, cuando las mercancías fraudulentamente comerciadas compiten con las operaciones realizadas en el marco de un circuito legal, vulnerando el principio básico de neutralidad fiscal que rige la imposición del IVA"* (venta de perfumes falsificados, la explotación de juegos de azar, explotación ilegal de sistemas informáticos; y del alcohol etílico de contrabando), pero no ha considerado sujetas al IVA de las transacciones ilícitas sobre mercaderías que se hallasen totalmente excluidas del circuito comercial legal, y que, por tanto, no podrían significar una competencia con las operaciones comerciales lícitas similares (por caso, tráfico de moneda falsificada).[17]

El comentario oficial con motivo de la reforma de 1946 se señaló "Obsérvese, además, que la ley tiene, en cierta forma, un fin represivo, puesto que grava las utilidades y no admite los quebrantos derivados de las operaciones ilícitas".[18]

DINO JARACH, al respecto puntualizó la desigualdad al sostener *"Los que cumplen con las leyes pagarían los impuestos y los que las violan o actúan al margen del derecho con actividades poco limpias o simplemente toleradas o delictuosas, estarían exentos"*; y agrega *"Los que viven del lenocinio, del robo sistemático y profesional y de otras actividades de la misma naturaleza, como también los que contravienen las leyes del agio y de la especulación, no deben estar exentos del impuesto que grava los resultados de las actividades que son definidas por su contenido económico, y no por su licitud o ilicitud"*, en cuanto a antecedentes menciona la imposición a actividades toleradas de prostitución en Alemania.[19]

BERLINI, *"la imposición de la actividad ilícita puede parecer a la conciencia social no repugnante, sino, por el contrario, oportuna y moralmente laudable, siéndole aplicable el principio de "pecunia non olet: "el dinero no huele." .El origen de la frase, se remonta a la antigua Roma, expresión que es atribuida a Vespasiano en respuesta a su hijo Tito, que le sugería extinguir los impuestos que se habían creado sobre las cloacas y los mingitorios públicos. El emperador romano quiso significar con esto que el dinero no tenía olor, aludiendo esencialmente que para el Estado debe importar el empleo que hace de sus tributos y no las circunstancias de reputarse ridícula o repugnante la fuente de la que provienen"*.[20]

GIULIANI FONROUGE y NAVARRINE sostienen que los beneficios de la actividad ilícita están incluidos en el régimen de la ley 20628 (Impuesto a las Ganancias).[21] En similar sentido se pronunció el Fisco a sendas preguntas del CPCE CABA.[22]

La conclusión es que las posturas son heterogéneas, más **esta autoría adhiere a la postura que las actividades ilícitas están gravadas**. Las razones son las siguientes: a) La relación jurídica tributaria Fisco – Contribuyente se regula por el

principio de Justicia Distributiva, por el cual la sociedad demanda al Estado una distribución equitativa, proporcional, razonable, contemplando el sano principio de solidaridad; y el principio de Justicia Conmutativa por el cual hay un vínculo entre las personas y el Estado, donde este presta servicio y aquellas lo reciben; por esta razón se obliga a pagar un precio, llamado en términos genéricos tributos, específico "tasa", "impuesto", "contribuciones"; b) Las mandas convencionales, las cuales tienen rango constitucional, porque el constituyente argentino en 1994, incluyó en el inciso 22 del artículo 75 de la CN la Declaración Americana de los Derechos y Deberes del Hombre; estas contiene dos deberes, que por el rango otorgado se tornan ineludible, una el artículo 33: deber de respetar la ley; la otra, el artículo 36: deber de tributar para sostener los servicios del Estado. La conjugación de ambos, en el caso de las leyes tributarias argentinas no señalan ninguna limitación o prohibición de no gravar las actividades ilícitas (Impuesto a las Ganancias, a los Bienes Personales y al IVA), ergo, es admisible gravar las actividades ilícitas, en contrario, si estas actividades no se gravaran solo por ser ilícitas, el Estado le prestaría el servicio, pero no podría cobrárselo. A ello se agregan los demás fundamentos citados precedentemente.

Los señalamientos argumentales no dejan duda, debe prevalecer la postura en favor de gravar con impuestos las actividades ilícitas.

4. La relación entre las ONG, las organizaciones criminales y el control tributario

Este tridente subjetivo – objetivo propicia la sugerencia que las Políticas de Estado debería cambiar el enfoque actual, especialmente los controles sistémicos, que generalmente son formales y propician pautas referidas a las cuantías y NO se depara en las cualidades de los sujetos. Esta omisión propicia una apreciación parcial de la persona y su actividad económica, y posibilita que fluyan numerosos casos, provocando condiciones favorables al crimen organizado, la penetración en la sociedad, en las esferas gubernamentales, y contar con las ONG, como "pantallas legales".

La realidad descripta anteriormente motiva la necesidad de replantear los actuales sistemas de control, donde esas organizaciones deben ser objeto adecuadas e integrales fiscalizaciones, especialmente, si media aportes gubernamentales.

La actividad delictiva cuando se trata de delitos de tráficos que tienen fuerte connotaciones económicas, más allá de las humanas y sociales, debe conjugársela con la evasión. Las razones para hacerlo son, según se expresó, sus integrantes conviven en sociedad y, utilizan servicios estatales, motivos suficientes para alcanzarlos con el control tributario.

La importancia del control tributario constituye una alternativa más de penetración en uno de los aspectos sensible de estas organizaciones, el flujo financiero; debe recordarse que la expansión del siglo XXI está ligada a lo económico – financiero.

Las ONG son mencionadas en esta nota, porque, si bien, la concepción es altruista, el mal uso o abuso de estos entes, muestran incompatibilidades, que en algunos casos son graves, porque tal cual se ha dicho, el escaso control que se sigue, tanto cualitativo, como cuantitativo posibilita condiciones favorables a dotar las actividades ilícitas de máscaras legales (encubrimiento); utilizarlas para el lavado de dinero, propiciando programas de ayudas económicas que suelen constituirse en modalidades encubierta de esta práctica delictiva.

Por lo tanto, el control tributario debe direccionarse y diseñarse sobre la base de estrategias donde se actúe conjuntamente, las administraciones tributarias con las demás dependencias estatales cuyas competencias abarcan la persecución de los delitos de tráficos, comprendiendo bajo este concepto, al tráfico de narcótico, persona, órganos, influencia, armas, etc.

El daño provocado por la evasión es inconmensurable, para tener noción del significado basta tener presente que las tasas de presión tributaria se estiman como media un 25 % sobre el PBI. Latinoamérica, del Rio Bravo a Tierra del Fuego que si se aplica sobre un PBI estimado de 5.6 billones de dólares, representa una recaudación anual, hoy inexistente, 1,4 billones de dólares, si, por ineficiencia, desidia o ineptitud de las administraciones tributarias arañaran el 15 % de esa cifra, puede decirse que con esa financiación, un programa de diez años erradicaría la pobreza estructural de Latinoamérica, y propiciaría una mejora del nivel cultural y educativo, que traería aparejado un goce y ejercicio libre efectivo y pleno de los derechos cívicos, ergo, la penetración de las demagogias de izquierdas recalcitrante, se les dificultaría la penetración y, seguramente Latinoamérica recuperaría las cualidades que supo ostentar.

Conclusión

La realidad mundial, la estructura social, el Estado, las ONG, muestra que aquel reconocimiento de la DADDH de la legalidad y los tributos como sostén sustancial de la organización estatal propicia las siguientes conclusiones:

a. El Hombre debe pagar tributos; este recurso es limitado, las necesidades son ilimitadas y crecientes.

b. El Estado debe prestar servicios que posibiliten satisfacer las necesidades humanas.

c. El Estado es guardián de las condiciones de paz y

convivencia social, del bienestar humano, posibilitando los medios para otorgarle al ser humano acceder a la ansiada vida humana digna.

d. El Estado debe proveer los controles suficientes y necesarios, que le posibiliten la adecuada recaudación que demandan las necesidades, además arbitrar los medios para que "todos" los habitantes abonen impuestos, y así evitar las evasiones.

e. La evasión es un delito económico, pero que tiene contenido social, por la gravedad de hechos que acontecen cuando el Estado no cuenta con los recursos adecuados.

f. Las actividades ilícitas deben gravarse porque su omisión NO permite el mejoramiento de la calidad de vida de las personas, y ostentar una mejor educación y cultura, incluida la cultura cívica. Un pueblo culto cívicamente tiene mayor posibilidad de discernir entre el eufemismo de las izquierdas y las ideas equilibradas.

g. Las ONG deben ser objeto, por parte del Estado, de controles integrales, cuantitativos, cualitativos, tanto sobre sus aspectos objetivos (económico financiero) como subjetivos (fines reales) para asegurar a la sociedad contar organizaciones adecuadas libre de todo riesgo a influencias equivocas.

El mejoramiento del nivel socio económico augura para aquellos pueblos que los logren incursionar en políticas de largo plazo estables, seguras, pacíficas, favorecerán la vida humana digna y los seres humanos, como tales, se realizaran integralmente. La humanidad ansía hoy un cambio de senda, la realidad es preocupante, por lo tanto, estos aportes son necesarios.

Notas Finales

[1] OBARRIO LANGDON, Carolina: Abogada, Doctora en Derecho Penal U. Salvador, Miembro de la NATIONAL SOCIETY DAUGHTERS OF THE AMERICAN REVOLUTION (NSDAR).

[2] VEGA, Gerardo Enrique: Magister en Derecho U Austral 2023, Doctorando en Derecho U austral 2024, Metodología de la comparación Jurídica. Modelo de Justicia constitucional, supranacional, electoral y ambiental: U. Bolonia, Italia, 2020; Procedimiento Tributario: Estudio y Análisis comparado de los Códigos Vigentes en América Latina, IEFPA, Naciones Unidas 2018. Especialista en Tributación, Facultad C E y S, U. N. Mar del Plata, 2009. Contador Público UNLP, 1975.

[3] CRESSEY, Donald: Robo de la Nación: La Estructura y Operaciones del Crimen Organizado en América (en inglés "*Theft of the Nation*"), p. 319, Transaction Publisher New Brunswick, New Jersey, 1969, citado por MALAMUD HERRERA, Samuel, revista Chilena de Derecho y Ciencia Política, enero-abril 2016, volumen 7 Nº 1. En ingles la cita es: "An organized crime is any crime committed by a person occupying, in an established division of labor, a position designed for the commission of crimes providing that such division of labor includes at least one position for a corrupter, one position for a corruptee, and one position for an enforcer."

[4] Banda: conjunto de personas que en ciertos delitos asume por sí una especial gravedad que la ley debe computar en contra del delincuente por la mayor magnitud del peligro que implica esa participación conjunta para los bienes jurídicos en juego, aumentando así el contenido del injusto, resultando dicho atentado menos dificultoso para el delincuente. SAIJ, sumario de fallo 12-03-2012, SAIJ: SU70016438.

[5] Código Penal Argentina: artículo 210: establece que debe contar con un mínimo de tres integrantes cuando dice *". . . una asociación o banda de tres o más personas destinada a cometer delitos por el solo hecho de ser miembro de la asociación"*. El artículo 210 bis define una figura agravada requiriendo, respecto a la cantidad de miembros que fueran diez o más. El derecho comparado encuentra en numerosos ordenamientos punitivos esta figura, España, artículo 570 bis (exige dos personas como mínimo), Francia: Artículo 450-1 y concordantes, según Ley nº 2001-420, 15-05-2001 art 45 Diario Oficial, 16-05-2001; Guatemala: Ley de Extinción de Dominio. México: Ley Federal de Extinción de Dominio, reglamentaria del artículo 22 de la Constitución Política de los Estados Unidos Mexicanos. Diario Oficial de la Federación 29-05-20099, última reforma DOF 14-03-2014; Chile: Ley 20.000; Colombia: Leyes 793/2002 y 1708/2014; Ley Modelo sobre Extinción de Dominio de la Oficina de las Naciones Unidas contra la Droga y el Delito; entre otros.

[6] Los casos que merecen mención son la periodista de Malta DAPHNE CARUANA GALIZIA, asesinada con un coche bomba en 2017 mientras investigaba al empresario YORGEN FENECH, conocido en Malta como el «rey de los casinos». Otro periodista amenazado es el italiano Roberto SAVIANO, por su investigación sobre la Camorra napolitana, la amenaza de esta mafia, obligó a vivir durante muchos años bajo permanente protección policial.

[7] Fraude Financiero: Son casos en los que se obtiene dinero y/o activos financieros mediante el engaño e incluye, entre otros, la contratación fraudulenta, el robo de identidad, el fraude de marketing masivo, el fraude bancario, etc.

[8] Evasión Fiscal: (incluye actividades como la facturación engañosa) y elusión fiscal abusiva, es el uso de medios ilícitos para no pagar impuestos por parte del contribuyente al propiciar declaraciones engañosas de su situación económico financiera, mermando el pago al Fisco. En el caso de la facturación engañosa, el actor que maximiza sus ganancias facturará de más o de menos y la declaración falsa depende de los impuestos y los aranceles correspondientes. Hay que distinguir la elusión fiscal de la evasión fiscal: en el caso de esta última, alguien actúa contra la ley o abusa de la letra de la ley. En cambio, la elusión fiscal abusiva cumple con la letra de la ley, más el contribuyente incurre en una estrategia por la cual logra que su estructura tributaria esté sujeta a un menor costo tributario.

[9] Malversación: Consiste en la apropiación fraudulenta de bienes o fondos que han sido confiados a una persona para que los gestione y los mantenga a salvo, con la intención de usarlos en beneficio propio. Difiere del fraude común, porque el actor que se apropia del dinero o de los bienes tiene acceso confiable y legítimo a ellos antes de usarlos en su propio provecho.

[10] Uso indebido de fondos: se trata del incorrecto uso de fondos del Estado o de organismos internacionales o regionales para fines diferentes de aquellos para los que fueron concedidos. Se trata de una modalidad de fraude financiero, las actividades mencionadas deben ser cometidas por una organización criminal para obtener un beneficio económico o una ventaja profesional. Cuando estas actividades se atribuyen a otro mercado criminal que figura en el Índice, se hacen constar en el indicador del mercado respectivo. El uso de fondos que se destinan un fin distinto, en el caso de las explotaciones forestales, no realizar la debida reposición, según las previsiones pactadas en el plan forestal con el Estado.

[11] SORIA, Daniel, Investigación sobre actividad ilícita y la tributación, Separata Temática Nº 21, AFIP, año 2011.

[12] BACIGALUPO Silvia, Dra. en Derecho en la Universidad de Madrid, Catedrática habilitada Derecho Penal, "Delito Fiscal y tributación de ganancias ilícitamente obtenidas", La Ley, España, 2001-6; cita de SORIA, Daniel, Investigación sobre actividad ilícita y la tributación, Separata Temática Nº 21, AFIP, año 2011.

[13] BAIGALUPO, Silvina: "Ganancias ilícitas y derecho penal", Editorial Centro de Estudios Ramón Areces S.A.

[14] "INGEMIN S A" TFN, Sala A, 28-06-2000, cita SORIA, Daniel, Investigación sobre actividad ilícita y la tributación, Separata Temática Nº 21, AFIP, año 2011.

[15] U.S. Court James vs United States, 366 U. S. 213, 15-05-1961, la jurisprudencia americana tiene el precedente "AL CAPONE".

[16] Sentencia N° 1493/1999, Considerando trigésimo séptimo. Tribunal Supremo de Madrid, Sala de lo Penal. Recurso de Casación por Infracción de la Ley, Infracción del Precepto Constitucional y Quebrantamiento de Forma. Causa "Estado c/ Roldán Ibáñez y Rodríguez Porto-Pérez", cita SORIA, Daniel, Investigación sobre actividad ilícita y la tributación, Separata Temática Nº 21, AFIP, año 2011. GALARZA, César J.: La tributación de los actos ilícitos, en Derecho Pernal Tributario, Tomo I, p 257 y siguientes, Ed. Marcial Pons, Madrid Barcelona Buenos Aires, 2008.

[17] SORIA, Daniel, Investigación sobre actividad ilícita y la tributación, Separata Temática Nº 21, AFIP, año 2011.

[18] Ministerio de Hacienda. Modificaciones de las leyes 11682 y 11683 y Decreto Ley 18.229/1943, Buenos Aires 1946, p. 116, cita en GIULIANI FONOROUGE, Carlos M y NAVARRINE, Susana C: Impuesto a las Ganancias, p. 79; 4ª Edición, Lexis Nexis, Buenos Aires, 11-2007.

[19] JARACH, Dino: "Curso Superior de Derecho Tributario", capítulo VI: Naturaleza e interpretación de las normas tributarias sustantivas, parágrafo 4: Relaciones entre Derecho Tributario material y Derecho Privado, p. 285/286, Liceo Profesional Cima, Buenos Aires, 04-1969.

[20] BERLIRI, cita SORIA, Daniel, Investigación sobre actividad ilícita y la tributación, Separata Temática Nº 21, AFIP, año 2011.

[21] GIULIANI FONOROUGE, Carlos M y NAVARRINE, Susana C: Impuesto a las Ganancias, p. 79; 4ª Edición, Lexis Nexis, Buenos Aires, 11-2007.

[22] CPCE CABA, consultas elevadas al Fisco en el marco del Grupo de Enlace AFIP-DGI / CPCE CABA, de fecha 04-12-2002 y 30-11-2005.

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