5. Taking Stock of the World Trading System

'President Trump Begins Second Term by Withdrawing the United States from International Agreements and Institutions and Contravening U.S. International Legal Obligations,' Jacob Katz Cogan (ed.), American Journal of International Law Vol 119(2) (2025) (academic article)

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President Trump Begins Second Term by Withdrawing the United States from International Agreements and Institutions and Contravening U.S. International Legal Obligations

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President Donald J. Trump began his second term by withdrawing the United States from international agreements and institutions, targeting international organizations, undermining U.S. commitments to international law, ordering a review of U.S. participation in all international institutions and treaties, and making comments and taking actions that contravene fundamental tenets of the international legal system. Many of these acts reinstated decisions that President Trump took over the course of his first term that had been reversed by President Joseph R. Biden, Jr.[1] and so were not unanticipated or novel, but others were more radical versions of prior policies and some were entirely new. Cumulatively, they denote an "America First" program that, more intensely than before, questions, ignores, weakens, and undercuts, without compunction or hesitation, existing international processes, understandings, rules, institutions, and multilateral frameworks, including security commitments and alliances, that have helped maintain the global order for decades.[2]

Within hours of President Trump's inauguration, the White House announced the United States' withdrawal from the World Health Organization (WHO), the Paris Agreement, and the Organisation for Economic Co-operation and Development (OECD)'s tax agreement.[3]

[1] On the reversal by President Biden of some, though not all, of President Trump's first term decisions that relate to international law, see Kristen E. Eichensehr, Contemporary Practice of the United States, 115 AJIL 309, 323 (2021). The contemporary practice reviewed in this story covers the first eight weeks of the new administration, until approximately the middle of March 2025.

[2] *See* America First Policy Directive to the Secretary of State, Exec. Order 14150, 90 Fed. Reg. 8337 (Jan. 20, 2025).

[3] *See* Withdrawing the United States from the World Health Organization, Exec. Order 14155, 90 Fed. Reg. 8361 (Jan. 20, 2025) [hereinafter WHO Executive Order]; The Organization for Economic Co-operation and Development (OECD) Global Tax Deal (Global Tax Deal), 90 Fed. Reg. 8483 (Jan. 20, 2025) [hereinafter OECD Memorandum]; Putting America First in International Environmental Agreements, Exec. Order 14162, 90 Fed. Reg. 8455 (Jan. 20, 2025) [hereinafter International Environmental Agreements Executive Order]. In 2021, the United States made a political commitment to endorse the OECD's Two-Pillar Solution to Address the Tax Challenges Arising from the Digitalisation of the Economy (OECD agreement), but the United States has not entered into any binding international agreement related to the OECD agreement, nor has the United States implemented any part of it through domestic legislation. *See* Jacob Katz Cogan, Contemporary Practice of the United States, 116 AJIL 858, 863 (2022). The president's memorandum on the OECD agreement thus represents a withdrawal of that political commitment. But it is more than that. The memorandum also seeks to undermine the agreement by directing the secretary of the treasury to "investigate whether any foreign countries are not in compliance with any tax treaty with the United States or have any tax rules in place, or are likely to put tax rules in place, that are extraterritorial or disproportionately affect American companies." OECD Memorandum, *supra* note 3. Following such investigation, the memorandum indicates that the United States may impose "protective measures" on the offending country. *Id.* A separate memorandum clarified that protective measures could include those available pursuant to Section 891 of the Internal Revenue Code. *See* America First Trade Policy, Sec. 2(j), 90 Fed. Reg. 8471 (Jan. 20, 2025); 26 U.S.C. § 891. Though the OECD agreement has not been incorporated into U.S. law, the Internal Revenue Service (IRS) issued two notices related to it during the Biden administration. *See* IRS Notice 2023-80, 2023-52 IRB 1583 (Dec. 26, 2023); IRS Notice 2025-4, 2025-3 IRB 419 (Jan. 13, 2025). U.S. businesses have indicated their support for Amount B, the simplified transfer pricing method that is part of the OECD Agreement's Pillar One, and they have asked the IRS to encourage other jurisdictions to adopt it. *See* Caleb Harshberger & Lauren Vella, *Business Groups Press Treasury for Optional, Expanded Amount B*, Bloomberg Tax (Mar. 7, 2025), *at* https://www.bloomberglaw.com/product/

The moves were not unexpected, as the president had taken the same actions regarding the WHO and the Paris Agreement during his first term in office,[4] and Republican elected officials had decried the OECD agreement since it was first announced in 2021.[5] The withdrawals, if and when effective,[6] will end U.S. commitments and obligations, including to the recently adopted amendments to the International Health Regulations, which the United States was instrumental in developing, as well as to the U.S. nationally determined contribution for reducing greenhouse gases that the Biden administration submitted at the end of 2024.[7] The withdrawals will end, as well, U.S. input (at least formally) in ongoing negotiations in all three fora, such as those at the WHO for a pandemic agreement (scheduled for completion in May 2025), those in the conference of the parties of the UN Framework Convention on Climate Change in regards to the Paris Agreement, and those at the OECD related to the global tax agreement.[8] The withdrawals and related provisions of the president's announcements will end, too, U.S. involvement in the regular work of these organizations pertaining to the

tax/bloombergtaxnews/daily-tax-report/XBVPDJUK000000; Caleb Harshberger & Lauren Vella, *Global Tax Upheaval Stalls Adoption of New Transfer Pricing Plan*, BLOOMBERG TAX (Mar. 14, 2025), *at* https://www.bloomberglaw.com/product/tax/bloombergtaxnews/daily-tax-report-international/BNA%2000000191-6c3d-d65e-af9b-ecffa35e0003.

[4] *See* Jean Galbraith, Contemporary Practice of the United States, 114 AJIL 124, 132 (2020); Jean Galbraith, Contemporary Practice of the United States, 114 AJIL 757, 765 (2020); Kristina Daugirdas & Julian Davis Mortenson, Contemporary Practice of the United States, 111 AJIL 1014, 1036 (2017).

[5] *See* Cogan, *supra* note 3, at 867.

[6] The secretary-general of the United Nations, in his role as depositary, indicated that U.S. withdrawal from the Paris Agreement "shall take effect" after a year, in accordance with Article 28 of the agreement. Article 28 provides that withdrawal will be effective "upon expiry of one year from the date of receipt by the Depositary of the notification of withdrawal, or on such later date as may be specified in the notification of withdrawal." *See* UN Doc. C.N.71.2025.TREATIES-XXVII.7.d (Jan. 27, 2025) (depositary notification). President Trump's executive order announcing the U.S. withdrawal indicated, without explanation, that the "United States will consider its withdrawal [from the Paris Agreement] . . . to be effective immediately upon [the] provision of notification." International Environmental Agreements Executive Order, *supra* note 3, Sec. 3(a). The secretary-general stated that U.S. withdrawal from the WHO Constitution "would take effect" after a year, "pursuant to the provisions of the Joint Resolution of the Congress of the United States to which the acceptance of the Constitution of the World Health Organization by the United States of America is subject." UN Doc. C.N.68.2025.TREATIES-IX.1 (Jan. 23, 2025) (depositary notification). The use of the conditional "would" (in contrast to the definitive "shall" employed in the Paris Agreement depositary notification) reflects the terms of the United States' acceptance of WHO Constitution. U.S. acceptance of the WHO Constitution, which does not contain a withdrawal provision, was done in accordance with a joint resolution of Congress. The resolution provided that (1) "the United States reserves its right to withdraw from the Organization on a one-year notice" so long as (2) "the financial obligations of the United States to the Organization shall be met in full for the Organization's current fiscal year." Pub. L. 643, § 4, 80th Cong., 2d Sess., 62 Stat. 441 (June 14, 1948); *see also* 62 Stat. 2792 (1948) (statement by President Harry Truman that, with regard to his deposit of U.S. acceptance of the WHO Constitution, he was "acting pursuant to the authority granted by the joint resolution of the Congress . . . and subject to the provisions of that joint resolution"). President Trump impliedly acknowledged that withdrawal from the WHO would not be immediate. *See* WHO Executive Order, *supra* note 3, Sec. 4 (directing the secretary of state to "cease [U.S. participation in certain specified] negotiations" at the WHO "[w]hile withdrawal is in progress"). President Trump did not specify, however, when he considered withdrawal would become effective. His directive to "pause the future transfer of any United States Government funds, support, or resources to the WHO" may have the effect of delaying withdrawal if that pause prevents the United States from "[meeting] in full" its "financial obligations" to the organization, as required by the joint resolution for withdrawal to be effective. *Id.*, Sec. 2(d)(i).

[7] *See* Jacob Katz Cogan, Contemporary Practice of the United States, 118 AJIL 717, 723 (2024); United States, Nationally Determined Contribution – Reducing Greenhouse Gases in the United States: A 2035 Emissions Target (Dec. 19, 2024), *at* https://unfccc.int/sites/default/files/2024-12/United%20States%202035%20NDC.pdf [https://perma.cc/G35L-LKMC].

[8] *See, e.g.*, WHO Executive Order, *supra* note 3, Sec. 4. The United States remains a party to the UN Framework Convention on Climate Change.

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contribution and exchange of information and expertise, such as through the collaboration of Centers for Disease Control and Prevention (CDC) staff with WHO officials and colleagues from other national health offices and the support given by U.S. government-funded scientists to reports developed by the Intergovernmental Panel on Climate Change.[9] The president's actions will also end U.S. participation in institutional governance bodies, including membership on the boards of the WHO and the Fund for Responding to Loss and Damage.[10] U.S. departure from the WHO will end U.S. financial contributions to the organization, which in recent years have amounted to between ten and fifteen percent of the WHO's budget.[11] U.S. contributions to global climate financing will also end.[12] Renunciation of the U.S. commitment to the OECD tax agreement will, among other things, renew a clash, which was paused during the Biden administration, between the United States and Canada, France, India, and other countries over digital services taxes.[13] Together, these withdrawals will undermine global health, including U.S. health security, decrease U.S. contributions to climate change mitigation, and create uncertainty regarding international tax.

These initial actions were prelude to a broader assault on international law and organizations. A subsequent executive order targeted three United Nations (UN) bodies: the UN Human Rights Council (HRC), the UN Educational, Scientific, and Cultural Organization (UNESCO), and the UN Relief and Works Agency for Palestine Refugees in the Near East (UNRWA).[14] U.S. participation in and funding of the Human Rights Council was terminated, and seeking election to that body in the future was ruled out.[15] U.S. funding for UNRWA, which comprises a significant portion of that organization's budget, was cut off.[16] And a review of U.S. membership in UNESCO, including an "evaluation of

[9] *See* Mike Stobbe, *CDC Ordered to Stop Working with WHO Immediately, Upending Expectations of an Extended Withdrawal*, AP (Jan. 27, 2025), *at* https://apnews.com/article/cdc-who-trump-548cf18b1c409c7d22e17311ccdfe1f6; William J. Broad, *Trump's W.H.O. Exit Throws Smallpox Defenses Into Upheaval*, N.Y. Times (Feb. 12, 2025), *at* https://www.nytimes.com/2025/02/12/health/smallpox-who-cdc-bioweapons.html; Scott Dance, *How Trump Could Be Derailing a Major Global Climate Report*, Wash. Post (Feb. 23, 2025), *at* https://www.washingtonpost.com/climate-environment/2025/02/22/trump-federal-scientists-climate-work-ipcc; Lawrence O. Gostin & Benjamin Mason Meier, *A World Less Safe and Secure*, Science (Jan. 22, 2025), *at* https://www.science.org/doi/10.1126/science.adw1554.

[10] On the U.S. withdrawal from the board of the Fund for Responding to Loss and Damage, see Chico Harlan, *Trump Just Reversed Course on Two Key U.S. Climate Pledges*, Wash. Post (Mar. 8, 2025), *at* https://www.washingtonpost.com/climate-environment/2025/03/08/trump-climate-finance-funds. The United States agreed to the creation of a loss and damage fund at the twenty-seventh Conference of the Parties of the UNFCCC. *See* Jacob Katz Cogan, Contemporary Practice of the United States, 117 AJIL 330, 331 (2023).

[11] *See* World Health Organization, Contributors: United States of America, *at* https://open.who.int/2024-25/contributors/contributor?name=United%20States%20of%20America [https://perma.cc/TLS5-BZVQ] (updated through Feb. 2025).

[12] *See* Harlan, *supra* note 10.

[13] *See* Defending American Companies and Innovators from Overseas Extortion and Unfair Fines and Penalties, 90 Fed. Reg. 10685 (Feb. 21, 2025); Nandita Bose, David Lawder & Steve Holland, *Trump Orders Trade Chief to Revive Tariff Retaliation Against Digital Taxes*, Reuters (Feb. 21, 2025), *at* https://www.reuters.com/world/us/trump-says-he-will-impose-retaliatory-tariffs-digital-taxes-may-come-friday-2025-02-21.

[14] *See* Withdrawing the United States from and Ending Funding to Certain United Nations Organizations and Reviewing United States Support to All International Organizations, Exec. Order 14199, 90 Fed. Reg. 9275 (Feb. 4, 2025) [hereinafter IO Executive Order].

[15] *See id.*, Secs. 2(a), 3(a).

[16] *See id.*, Sec. 3(a); Adam Rasgon & Robert Jimison, *Congress Seeks to Bar Funding for U.N. Agency for Palestinians*, N.Y. Times (Mar. 20, 2024), *at* https://www.nytimes.com/2024/03/20/world/middleeast/unrwa-senate-gaza.html.

how and if UNESCO supports United States interests," was directed.[17] The president's order expressed concern that these institutions "act[ed] contrary to the interests of the United States," "propogat[ed] anti-Semitism," and "demonstrat[ed] anti-Israel sentiment."[18] As with the moves against the WHO and the Paris Agreement, the actions against the three organizations were expected, since they reprised those President Trump undertook years before.[19] Their immediate effect was mostly negligible. In March 2024, Congress prohibited U.S. funding of UNRWA through March 31, 2025, which the Biden administration had already previously paused,[20] and the United States is not currently a member of the Human Rights Council, the Biden administration having decided not to run for a second consecutive three-year term in the October 2024 elections.[21] A decision on UNESCO membership awaits a report by the secretary of state. Even though these acts did not have direct consequences, the targeting of organizations that focus on human rights and human welfare was not for show. It signaled a disregard for humanitarian work and the plight of the needy, the sick, and the vulnerable that was reflected as well, and more severely, in the president's pausing, and then the cancellation, of billions of dollars of U.S. foreign assistance and the dismantling of the U.S. Agency for International Development (USAID), which will harm and take the lives of many.[22]

[17] *See* IO Executive Order, *supra* note 14, Sec. 2(b).

[18] *Id.*, Sec. 1.

[19] The United States announced its withdrawal from UNESCO in 2017, terminated UNRWA funding in 2018, did not seek election in the 2018 HRC elections, and withheld funding from the HRC. *See* Jean Galbraith, Contemporary Practice of the United States, 112 AJIL 94, 107 (2018); Jean Galbraith, Contemporary Practice of the United States, 112 AJIL 734, 745 (2018); Edward Wong, *U.S. to End Funding to U.N. Agency That Helps Palestinian Refugees*, N.Y. TIMES (Aug. 31, 2018), *at* https://www.nytimes.com/2018/08/31/us/politics/trump-unrwa-palestinians.html. The United States restored funding to UNRWA in 2021, was elected to the Human Rights Council in 2021, and rejoined UNESCO in 2023. *See* Pranshu Verma & Rick Gladstone, *Reversing Trump, Biden Restores Aid to Palestinians*, N.Y. TIMES (Apr. 7, 2021), *at* https://www.nytimes.com/2021/04/07/world/middleeast/biden-aid-palestinians.html; Rick Gladstone, *U.S. Regains Seat at U.N. Human Rights Council, 3 Years After Quitting*, N.Y. TIMES (Oct. 14, 2021), *at* https://www.nytimes.com/2021/10/14/world/un-us-human-rights-council.html; Aurelien Breeden, *U.S. Will Rejoin UNESCO in July, Agency Says*, N.Y. TIMES (June 12, 2023), *at* https://www.nytimes.com/2023/06/12/world/europe/us-china-unesco.html. The United States first joined UNESCO at its founding. It withdrew from the organization in 1984 and rejoined in 2003. *See* U.S. Dep't of State Press Release, About the U.S. and UNESCO (Sept. 29, 2011), *at* https://2009-2017.state.gov/p/io/unesco/usunesco/index.htm [https://perma.cc/2BCB-VCA2]. The George W. Bush administration voted against the resolution establishing the HRC in 2006, did not seek election to it, and withheld funding. Under the Obama administration, the United States was elected to the Council in 2009, 2012, and 2016. *See* CONG. RES. SERV., THE UNITED NATIONS HUMAN RIGHTS COUNCIL: BACKGROUND AND POLICY ISSUES (Jan. 26, 2022).

[20] *See* Pub. L. 118-47, Tit. III, Div. G, § 301, 138 Stat. 460, 858 (Mar. 23, 2024); Michael Crowley, *Frozen U.S. Spending for U.N. in Gaza Is Minimal, State Dept. Says*, N.Y. TIMES (Jan. 30, 2024), *at* https://www.nytimes.com/2024/01/30/us/politics/aid-gaza-israel.html.

[21] *See* Matthew Lee, *US Opts Out of Running for Reelection on UN Human Rights Counc*il, AP (Sept. 30, 2024), *at* https://apnews.com/article/us-un-human-rights-council-dafc1b0484cab70d0661460c163f7bba.

[22] *See, e.g.*, Reevaluating and Realigning United States Foreign Aid, Exec. Order 14169, 90 Fed. Reg. 8619 (Jan. 20, 2025); Ellen Knickmeyer, *Secretary of State Rubio Says Purge of USAID Programs Complete, with 83% of Agency's Programs Gone*, AP (Mar. 10, 2025), *at* https://apnews.com/article/trump-musk-rubio-usaid-foreign-aid-bf442d62af67918a6fc5eee839074601; note 77 *infra*; Stephanie Nolen, *Tuberculosis Resurgent as Trump Funding Cut Disrupts Treatment Globally*, N.Y. TIMES (Mar. 11, 2025), *at* https://www.nytimes.com/2025/03/11/health/tuberculosis-kenya-us-cuts.html; Aaron Ross, Tim Cocks & Vivianne Wandera, *Kenya HIV Patients Live in Fear as US Aid Freeze Strands Drugs in Warehouse*, REUTERS (Mar. 11, 2025), *at* https://www.reuters.com/business/healthcare-pharmaceuticals/kenya-hiv-patients-live-fear-us-aid-freeze-strand-drugs-warehouse-2025-03-11. The cancellation of USAID contracts, the termination of USAID employees, and the dismantling of the agency itself are subject to litigation. *See, e.g.*, Annie Gowen & Justin Jouvenal, *Judge Says Trump Must Pay Past Aid Bills But Can Cancel Future Contracts*, WASH. POST (Mar. 11, 2025), *at* https://www.washingtonpost.com/

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In addition to these UN entities, the president took aim at the International Criminal Court (ICC), another recurring target. He authorized sanctions, as he did in 2020,[23] against those investigating and prosecuting "protected persons," including citizens of the United States and those of U.S. allies that have not consented to the court's jurisdiction.[24] The president's order highlighted the court's recent issuance of arrest warrants for Israeli Prime Minister Benjamin Netanyahu and Israel's former minister of defense, Yoav Gallant, indicating that the warrants "set a dangerous precedent . . . [that] directly endanger[] current and former United States personnel."[25] The order did not explain why, if the ICC's assertion of jurisdiction over the nationals of non-state parties was "illegitimate" (the word used in the president's order) in the absence of a Security Council referral, sanctions would not be imposed on ICC personnel for investigating and prosecuting citizens of all non-state parties (including Russia). In this regard, the United States' inconsistency regarding the ICC's jurisdiction has been consistent, as President Biden lauded the arrest warrant issued for Russian President Vladimir Putin, a citizen of a non-state party, and encouraged cooperation with that prosecution but criticized the ICC prosecutor's applications for arrest warrants for Prime Minister Netanyahu and Defense Minister Gallant.[26] President Biden, however, did not endorse imposing sanctions on the court.[27] The only person specifically designated for sanctions by President Trump's order was ICC Prosecutor Karim A.A. Khan, though others can be named later by the secretary of state.[28] A bill is pending in Congress that would codify the sanctions.[29]

Other actions signaled U.S. indifference to a broad range of international obligations. President Trump issued a proclamation on "Guaranteeing the States Protection Against Invasion" that prohibited asylum applications at the southern border and an executive order on "Realigning the United States Refugee Admissions Program" that suspended the entry of

nation/2025/03/11/usaid-foreign-funding-suspension-unlawful; Steve Thompson, *Maryland Judge Orders DOGE to Stop Efforts to Dismantle USAID*, WASH. POST (Mar. 19, 2025), *at* https://www.washingtonpost.com/dc-md-va/2025/03/18/maryland-judge-blocks-doge; AIDS Vaccine Coalition v. U.S. Dep't of State, No. 1:25-cv-00402 (D.D.C.); Global Health Council v. Trump, No. 1:25-cv-00402 (D.D.C.); J. Does 1-26 v. Musk, No. 8:25-cv-00462 (D. Md.).

[23] *See* Jean Galbraith, Contemporary Practice of the United States, 114 AJIL 757, 775 (2020); Kristen Eichensehr, Contemporary Practice of the United States, 115 AJIL 115, 138 (2021).

[24] *See* Imposing Sanctions on the International Criminal Court, Exec. Order 14203, 90 Fed. Reg. 9369 (Feb. 6, 2025) [hereinafter ICC Sanctions Executive Order].

[25] *See id.*, pmbl.

[26] *See* Jacob Katz Cogan, Contemporary Practice of the United States, 118 AJIL 533, 561 (2024); Jacob Katz Cogan, Contemporary Practice of the United States, 117 AJIL 330, 362–63 (2023).

[27] President Biden revoked President Trump's 2020 executive order authorizing ICC sanctions. *See* Kristen Eichensehr, Contemporary Practice of the United States, 115 AJIL 714, 729 (2021). The Biden administration also opposed an ICC sanctions bill that was introduced following the prosecutor's application for arrest warrants for Prime Minister Netanyahu and Defense Minister Gallant. *See* Cogan, *supra* note 26, at 564. Upon taking office in January 2025, President Trump revoked President Biden's executive order that revoked President Trump's prior order. *See* Initial Rescissions of Harmful Executive Orders and Actions, Exec. Order 14148, Sec. 2(dd), 90 Fed. Reg. 8237 (Jan. 20, 2025) (revoking Executive Order 14022). This revocation of a revocation did not have the effect, however, of reviving the 2020 ICC sanctions.

[28] *See* ICC Sanctions Executive Order, *supra* note 24, Sec. 1(a), Annex.

[29] *See* Illegitimate Court Counteraction Act, H.R. 23, 119th Cong., 1st Sess. (2025). The House of Representatives passed the bill, but it was blocked in the Senate. *See* Robert Jimison, *Democrats Block Bill to Impose Sanctions on International Criminal Court Officials*, N.Y. TIMES (Jan. 28, 2025), *at* https://www.nytimes.com/2025/01/28/us/politics/democrats-icc-sanctions.html.

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refugees globally.[30] All previously scheduled asylum appointments were cancelled, stranding in Mexico tens of thousands of migrants who were adhering to the requirements of the restrictive asylum regulations issued by the Biden administration.[31] Thousands of refugees whose applications were in process, including some who had flights scheduled, were also left in limbo.[32] These orders were broader than those from President Trump's first term, as they applied to everyone at the border and everyone in the refugee process rather than to specific groups.[33] President Trump has shut down programs—humanitarian parole and temporary protected status—that have provided safe haven to more than a million people from Cuba, Haiti, Nicaragua, and Venezuela, removing their legal status in the United States.[34] He has sought to significantly increase deportations. To this end, the administration has entered into agreements with Costa Rica, El Salvador, Guatemala, Honduras, Mexico, Panama, and Venezuela to take deportees.[35] Arrangements with other countries, including Colombia, Ecuador, Guatemala, India, and Peru have also been reported.[36] The push to remove migrants from

[30] *See* Guaranteeing the States Protection Against Invasion, Proclamation 10888, Sec. 2, 90 Fed. Reg. 8333 (Jan. 20, 2025); Realigning the United States Refugee Admissions Program, Exec. Order 14163, 90 Fed. Reg. 8459 (Jan. 20, 2025). These actions are being challenged in court. *See* Refugee and Immigrant Center for Education and Legal Services v. Noem, No. 1:25-cv-00306 (D.D.C.); Pacito v. Trump, No. 2:25-cv-00255 (W.D. Wash.); U.S. Conference of Catholic Bishops v. Department of State, No. 1:25-cv-00465 (D.D.C.). The federal judge in *Pacito* issued a preliminary injunction enjoining the enforcement or implementation of the executive order suspending the U.S. Refugee Admissions Program. *See* Findings of Fact, Conclusions of Law, and Order Issuing Preliminary Injunction, Pacito v. Trump, No. 2:25-cv-00255 (W.D. Wash., Feb. 28, 2025). The administration said it could take months to comply with the judge's order. *See* David Nakamura, *Trump Administration Says It Could Take Months to Resume Refugee Admissions*, WASH. POST (Mar. 11, 2025), *at* https://www.washingtonpost.com/immigration/2025/03/11/trump-refugees-resettlement-judge-immigration.

[31] *See* Patrick J. McDonnell, *Disappointment at Border as Trump Cancels Immigration Program*, L.A. TIMES (Jan. 20, 2025), *at* https://www.latimes.com/world-nation/story/2025-01-20/disappointment-at-border-as-trump-cancels-immigration-program. On the Biden administration's rules regulating asylum at the southern border, see Jacob Katz Cogan, Contemporary Practice of the United States, 117 AJIL 500, 528 (2023); and Jacob Katz Cogan, Contemporary Practice of the United States, 118 AJIL 717, 745 (2024).

[32] *See* Yonette Joseph, *Trump's Suspension of Refugee Admissions Puts Afghans at Risk, Advocate Says*, N.Y. TIMES (Jan. 20, 2025), *at* https://www.nytimes.com/2025/01/20/world/asia/refugees-afghanistan-trump.html; Hamed Aleaziz, *Groups Sue Over Trump's Pause on Refugee Admissions*, N.Y. TIMES (Feb. 10, 2025), *at* https://www.nytimes.com/2025/02/10/us/politics/refugee-lawsuit-trump.html.

[33] *See* Jean Galbraith, Contemporary Practice of the United States, 113 AJIL 376, 377 (2019); Jean Galbraith, Contemporary Practice of the United States, 113 AJIL 812, 833 (2019); Jean Galbraith, Contemporary Practice of the United States, 114 AJIL 494, 504 (2020).

[34] *See* Protecting the American People Against Invasion, Sec. 16(a), (b), Exec. Order 14159, 90 Fed. Reg. 8443 (Jan. 20, 2025); Securing Our Borders, Sec. 7(b), Exec. Order 14165, Exec. Order 14165 (Jan. 20, 2025); Vacatur of 2025 Temporary Protected Status Decision for Venezuela, 90 Fed. Reg. 8805 (Feb. 3, 2025); Termination of the October 3, 2023 Designation of Venezuela for Temporary Protected Status, 90 Fed. Reg. 9040 (Feb. 5, 2025); Partial Vacatur of 2024 Temporary Protected Status Decision for Haiti, 90 Fed. Reg. 10511 (Feb. 24, 2025); Termination of Parole Processes for Cubans, Haitians, Nicaraguans, and Venezuelans, 90 Fed. Reg. 13611 (Mar. 25, 2025); *see also* Michelle Hackman, *They Thought They Came to the U.S. Legally. Now They're at Risk for Deportation*, N.Y. TIMES (Mar. 17, 2025), *at* https://www.wsj.com/politics/policy/trump-deportation-biden-immigration-program-a4e7a729.

[35] *See* María Verza & Megan Janetsky, *The US Lines Up Latin American Cooperation for Migrant Deportations*, AP (Feb. 26, 2025), *at* https://apnews.com/article/deportees-migrants-trump-latin-america-mexico-panama-27320f15ad6c316f242eae53e45f19c8; Annie Correal & David Bolaños, *Trump Deportees Arrived in "Visible Distress," Costa Rica's Ombudsman Says*, N.Y. TIMES (Feb. 21, 2025), *at* https://www.nytimes.com/2025/02/21/us/politics/trump-deportations-costa-rica-migrants.html.

[36] *See* Muzaffar Chishti & Colleen Putzel-Kavanaugh, *Trump Administration Bends U.S. Government in Extraordinary Ways Towards Aim of Mass Deportations*, MIGRATION POL'Y INST. (Feb. 27, 2025), *at* https://www.migrationpolicy.org/article/trump-immigration-mass-deportation-priority.

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the United States has extended to the administration's resort to the Alien Enemies Act.[37] Many of these actions effectively repudiate U.S. commitments under the 1967 Protocol Relating to the Status of Refugees.[38]

By executive order, President Trump "cease[d] [the] initiation of any new [Foreign Corrupt Practices Act] investigations or enforcement actions" for a period of 180 days, calling into question U.S. compliance with the OECD Anti-Bribery Convention and the UN Convention Against Corruption (UNCAC).[39] This decision, which had not been taken during President Trump's first term, signaled to foreign governments and the international business community that the United States no longer views anti-corruption as a foreign policy priority, reversing a bipartisan consensus that goes back decades.[40] Of note, the executive order claims that ceasing the enforcement of the FCPA—a criminal statute governing foreign commerce—"impedes the United States' foreign policy objectives and therefore implicates the President's Article II authority over foreign affairs."[41] In other words, President Trump claims the right not to enforce criminal statutes if they involve extraterritorial activity on constitutional grounds, a potentially dramatic expansion of the preclusive effects of the president's Article II powers over foreign affairs.

As he did during his first term, President Trump threatened and imposed tariffs regardless of U.S. obligations under applicable trade agreements.[42] He increased duties worldwide on

[37] *See* Invocation of the Alien Enemies Act Regarding the Invasion of the United States by Tren De Aragua, Proclamation 10903, 90 Fed. Reg. 13033 (Mar. 14, 2025); Tim Balk, *Judge Blocks Deportations of Venezuelans Under Wartime Law*, N.Y. TIMES (Mar. 15, 2025), *at* https://www.nytimes.com/2025/03/15/us/politics/trump-alien-enemies-act-deportations-venezuelans.html; J.G.G. v. Trump, No. 1:25-cv-00766 (D.D.C).

[38] *See* Protocol Relating to the Status of Refugees, Art. 1(1), *entered into force* Oct. 4, 1967, 606 UNTS 267 (incorporating Articles 2 to 34 inclusive of the Convention Relating to the Status of Refugees, *entered into force* Apr. 22, 1954, 189 UNTS 137 [hereinafter Refugee Convention]). Closing the border to asylum seekers runs afoul of Articles 31(1) and 33 of Refugee Convention. The deportation of refugees lawfully in the United States pursuant to the Alien Enemies Act amounts to expulsion, contrary to Articles 32 and 33 of the convention.

[39] *See* Pausing Foreign Corrupt Practices Act Enforcement to Further American Economic and National Security, Exec. Order 14209, 90 Fed. Reg. 9587 (Feb. 10, 2025) [hereinafter FCPA Order]. Both the OECD Anti-Bribery Convention and the UNCAC require parties to criminalize the bribery of foreign public officials. The OECD Convention makes clear that "[i]nvestigation and prosecution [of that crime] . . . shall not be influenced by considerations of national economic interest, the potential effect upon relations with another State or the identity of the natural or legal persons involved." Convention on Combating Bribery of Foreign Public Officials in International Business Transactions, Arts. 1, 5, *entered into force* Feb. 15, 1999, 2802 UNTS 225. The UNCAC requires state parties "to ensure that any discretionary legal powers under its domestic law relating to the prosecution of persons for offences established in accordance with this Convention are exercised to maximize the effectiveness of law enforcement measures in respect of those offences and with due regard to the need to deter the commission of such offences." UN Convention Against Corruption, Arts. 16(1), 30, *entered into force* Dec. 14, 2005, 2349 UNTS 41.

[40] The FCPA executive order, like other actions described here, including those regarding the Paris Agreement and the firing of top military lawyers, have domestic parallels in the United States and so should not be seen in isolation. The actions also signal to foreign governments what the United States views as permissible. *See, e.g.*, David Gelles, Lisa Friedman & Brad Plumer, *"Full on Fight Club": How Trump Is Crushing U.S. Climate Policy*, N.Y. TIMES (Mar. 2, 2025), *at* https://www.nytimes.com/2025/03/02/climate/trump-us-climate-policy-changes.html; Glenn Thrush & Alan Feuer, *Justice Dept. Moving to Downsize Units Investigating Fraud and Corruption*, N.Y. TIMES (Mar. 12, 2025), *at* https://www.nytimes.com/2025/03/12/us/politics/justice-dept-fraud-corruption.html; Charlie Savage, *Trump Team Tightens Control Over Government Lawyers Who Might Say "No*,*"* N.Y. TIMES (Feb. 27, 2025), *at* https://www.nytimes.com/2025/02/27/us/politics/trump-government-lawyers.html.

[41] FCPA Order, *supra* note 39, Sec. 1.

[42] *See* Jean Galbraith, Contemporary Practice of the United States, 112 AJIL 295, 315 (2018); Kristina Daugirdas & Julian Davis Mortenson, Contemporary Practice of the United States, 111 AJIL 1014, 1045 (2017).

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imports of steel and aluminum, drawing on his finding from his first term under Section 232 of the Trade Expansion Act[43] that such imports threaten U.S. national security.[44] President Biden had rolled back these duties on many countries.[45] He declined, however, to find that steel and aluminum imports no longer constituted a threat to national security, relieving President Trump from having to task the Commerce Department with initiating a new investigation.[46] In the first weeks of his second term, President Trump also targeted Canada, China, and Mexico for tariffs, citing their failure to take sufficient actions to prevent the entry of illicit drugs into the United States, particularly fentanyl,[47] and he threatened tariffs against Colombia if it did not allow U.S. military aircraft carrying migrants to land there.[48] These tariffs or threats thereof rest on the International Emergency Economic Powers Act, a statute that—unlike the statutes on which President Trump relied during his first term—allows the immediate imposition of tariffs without any administrative process following a presidential declaration of an emergency.[49] Canada, China, and the European Union (but not yet Mexico) responded to these actions with retaliatory tariffs.[50] More broadly, President

[43] *See* 19 U.S.C. § 1862.

[44] The increases stemmed from a combination of measures, including the ending of exemptions and the raising of rates. *See* Adjusting Imports of Steel into the United States, Proclamation 10896, 90 Fed. Reg. 9817 (Feb. 10, 2025); Adjusting Imports of Aluminum into the United States, Proclamation 10895, 90 Fed. Reg. 9807 (Feb. 10, 2025).

[45] President Biden added, increased, and maintained other tariffs, under Section 301, from President Trump's first term. *See* Jacob Katz Cogan, Contemporary Practice of the United States, 118 AJIL 717, 727 (2024).

[46] 19 U.S.C. § 1862(b).

[47] *See* Imposing Duties to Address the Flow of Illicit Drugs Across Our Northern Border, Exec. Order 14193, 90 Fed. Reg. 9113 (Feb. 1, 2025); Imposing Duties to Address the Situation at Our Southern Border, Exec. Order, 14194, 90 Fed. Reg. 9117 (Feb. 1, 2025); Amendment to Duties to Address the Flow of Illicit Drugs Across Our Northern Border, Exec. Order 14226, 90 Fed. Reg. 11369 (Mar. 2, 2025); Amendment to Duties to Address the Situation at Our Southern Border, Exec. Order 14227, 90 Fed. Reg. 11371 (Mar. 2, 2025); Amendment to Duties to Address the Flow of Illicit Drugs Across Our Northern Border, Exec. Order 14231, 90 Fed. Reg. 11785 (Mar. 6, 2025); Imposing Duties to Address the Synthetic Opioid Supply Chain in the People's Republic of China, Exec. Order 14195, 90 Fed. Reg. 9121 (Feb. 1, 2025); Amendment to Duties Addressing the Synthetic Opioid Supply Chain in the People's Republic of China, Exec. Order 14200, 90 Fed. Reg. 9277 (Feb. 5, 2025); Further Amendment to Duties Addressing the Synthetic Opioid Supply Chain in the People's Republic of China, Exec. Order 14228, 90 Fed. Reg. 11463 (Mar. 3, 2025). Some of the announced tariffs were delayed or subsequently altered by exemptions. *See* Alan Rappeport, *Trump Bows to Economic Reality with Tariff Delays and Exemptions*, N.Y. TIMES (Mar. 7, 2025), *at* https://www.nytimes.com/2025/03/07/us/politics/trump-tariff-delays.html. On the Biden administration's response to international fentanyl trafficking, see Jacob Katz Cogan, Contemporary Practice of the United States, 118 AJIL 168, 183 (2024).

[48] *See* Genevieve Glatsky, Simon Romero & Annie Correal, *Colombia Agrees to Accept Deportation Flights After Trump Threatens Tariffs*, N.Y. TIMES (Jan. 26, 2025), *at* https://www.nytimes.com/2025/01/26/world/americas/colombia-us-deportation-flights.html.

[49] *See* 50 U.S.C. § 1701 *et seq*.

[50] *See* Ellen Francis, Maham Javaid & Terrence McCoy, *E.U., Canada Retaliate Against Trump's Tariffs as Trade War Escalates*, WASH. POST (Mar. 12, 2025), *at* https://www.washingtonpost.com/world/2025/03/12/europe-tariff-retaliation-trump; Gavin Bade, Vipal Monga & Santiago Pérez, *Trump Pares Back Canada, Mexico Tariffs in Latest Whipsaw on Trade*, WALL ST. J. (Mar. 6, 2025), *at* https://www.wsj.com/economy/trade/trump-pares-back-canada-mexico-tariffs-in-latest-whipsaw-on-trade-5eb75f88; Hannah Miao & Liza Lin, *China Sets Strong Growth Target as It Hits Back at U.S. Tariffs*, WALL ST. J. (Mar. 4, 2025), *at* https://www.wsj.com/economy/trade/china-retaliatory-tariffs-37b727b9. Canada and China have also initiated disputes at the World Trade Organization (WTO), though these, like those brought against the United States during President Trump's first term, will not lead to much, due to the nonfunctioning of the Appellate Body. *See* Request for Consultations by China, United States – Additional Tariff Measures on Goods from China, WTO Doc. WT/DS633/1 – G/L/1561 (Feb. 5, 2025); Request for Consultations by Canada, United States – Additional Import Duties on Goods from Canada, WTO Doc. WT/DS634/1 – G/L/1562 – G/TFA/D5/1 (Mar. 5, 2025); Request for Consultations by Canada, United States – Additional Import Duties on

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Trump ordered a review of all U.S. trade relationships on the basis of "reciprocity," which the administration defined extensively to include foreign government subsidies, value-added taxes, "burdensome" regulations, and exchange-rate manipulation.[51] In the *2025 Trade Policy Agenda and 2024 Annual Report*, issued by the new administration, the Office of the U.S. Trade Representative indicated that "the United States will continue to look for new avenues to make the WTO more relevant and viable in light of the realities of today," but it also commented that "patience wears thin."[52] President Trump, during his first term, had called for WTO reform, including of its dispute settlement system, a position that President Biden fundamentally maintained.[53]

In keeping with Secretary of Defense Pete Hegseth's avowed skepticism for the laws of war,[54] his focus on "lethality," and his desire to restore a "warrior ethos,"[55] the administration took a series of actions that will reduce operational constraints on combatants, both U.S. and foreign, and will thus likely increase civilian casualties. Among the administration's first Defense Department (DoD) directives was the drafting of a plan, subsequently approved,[56] to defund and abolish the Civilian Protection Center of Excellence, a

Steel and Aluminium Articles from Canada, WTO Doc. WT/DS635/1 – G/L/1563 (Mar. 13, 2025). The United States accepted the requests to enter into consultations, but it noted that the "actions cited [by Canada and China] . . . are issues of national security not susceptible to review or capable of resolution by WTO dispute settlement." Communication from the United States, United States – Additional Tariff Measures on Goods from China, WTO Doc. WT/DS633/3 (Mar. 18, 2025); Communication from the United States, United States – Additional Import Duties on Goods from Canada, WTO Doc. WT/DS634/2 (Mar. 18, 2025); Communication from the United States, United States – Additional Import Duties on Steel and Aluminium Articles from Canada, WTO Doc. WT/DS635/3 (Mar. 25, 2025). The European Union has made a request to join the consultations in "United States – Additional Import Duties on Steel and Aluminium Articles from Canada." See WTO Doc. WT/DS635/2 (Mar. 21, 2025).

[51] *See* Reciprocal Trade and Tariffs, 90 Fed. Reg. 9837 (Feb. 13, 2025). The concern was also raised in President Trump's first term. *See* Omnibus Report on Significant Trade Deficits, Sec. 2, Exec. Order 13786, 82 Fed. Reg. 16721 (Mar. 31, 2017). As he had done during his first term as well, President Trump also directed a review of all trade agreements. *See* note 76 *infra.*

[52] U.S. Trade Representative, 2025 Trade Policy Agenda and 2024 Annual Report of the President of the United States on the Trade Agreements Program 9 (Mar. 2025), *at* https://ustr.gov/sites/default/files/files/reports/2025/2025%20Trade%20Policy%20Agenda%20WTO%20at%2030%20and%202024%20Annual%20Report%2002282025%20–%20FINAL.pdf [https://perma.cc/4H48-LRKS].

[53] *See* Jean Galbraith, Contemporary Practice of the United States, 114 AJIL 494, 518 (2020); Yuka Hayashi, *U.S. Seeks to Fix WTO's Broken Trade Dispute Process*, WALL ST. J. (July 11, 2022), *at* https://www.wsj.com/articles/u-s-seeks-to-fix-wtos-broken-trade-dispute-process-11657540800.

[54] In his 2024 book, *The War on Warriors: Behind the Betrayal of the Men Who Keep Us Free*, Secretary Hegseth disparaged the rules of engagement that he operated under while a soldier, called into question the Geneva Conventions, criticized Biden administration changes to the DoD *Law of War Manual*, and advocated for "more lethality, less lawyers." PETE HEGSETH, THE WAR ON WARRIORS: BEHIND THE BETRAYAL OF THE MEN WHO KEEP US FREE 155, 162–63, 181, 183 (2024); Jacob Katz Cogan, Contemporary Practice of the United States, 118 AJIL 168, 178 (2024). "Modern warfighters fight lawyers as much as we fight bad guys," he wrote. HEGSETH, *supra* note 54, at 175. In the book, he also used a derogatory term for JAG officers, *see id.* at 162, to suggest, as he stated during his confirmation hearing when pressed about the term's meaning, that those officers put their "own priorities in front of the war fighters, their promotions, their medals, in front of having the backs of those making the tough calls on the front lines." Kate Kelly, *Hegseth Spars with Senator Over What He Meant by Slang Term*, N.Y. TIMES (Jan. 14, 2025), *at* https://www.nytimes.com/2025/01/14/us/politics/hegseth-jagoff-confirmation-hearing.html.

[55] Dep't of Defense Press Release, Secretary Hegseth's Message to the Force (Jan. 25, 2025), *at* https://www.defense.gov/News/Releases/Release/Article/4040940/secretary-hegseths-message-to-the-force [https://perma.cc/448L-ZQCJ].

[56] *See* Alex Horton, Meg Kelly & Dan Lamothe, *Pentagon Moves to Gut Operations Focused on Reducing Civilian Harm*, WASH. POST (Mar. 4, 2025), *at* https://www.washingtonpost.com/national-security/2025/03/04/trump-hegseth-pentagon-firings-civilian-harm.

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congressionally mandated office designed to serve as the DoD hub for preventing, mitigating, and responding to civilian harm.[57] The DoD Instruction on Civilian Harm Mitigation and Response[58] was to be rescinded as well, and DoD personnel who provide advice on limiting civilian casualties at the Pentagon and combatant commands were to be fired or reassigned.[59] Separately, Secretary Hegseth fired the judge advocates general (TJAG) of the Army and the Air Force, intensifying concerns previously raised during his confirmation hearing that he would seek to relax the military's rules of engagement.[60] Secretary Hegseth said that the current TJAGs were not "well-suited," and he would prefer lawyers who "don't exist to attempt to be roadblocks to anything."[61] The firings are reportedly part of a broader overhaul of the JAG Corps designed to retrain military lawyers to "provide more expansive legal advice to commanders to pursue more aggressive tactics and take a more lenient approach in charging soldiers with battlefield crimes."[62] President Trump, reverting to rules from his first term,[63] eliminated the need for high-level authorization of drone strikes and raids by special operation forces in counterterrorism operations and broadened the range of persons who could be targeted, moves that will in all probability increase the number of such operations and raise the risk of attendant civilian harm.[64] Further signaling the new administration's diminished

[57] *See* Meg Kelly, Alex Horton & Missy Ryan, *Trump Moves to Close Pentagon Office Focused on Curbing Civilian Deaths*, Wash. Post (Jan. 23, 2025), *at* https://www.washingtonpost.com/national-security/2025/01/23/trump-pentagon-civilian-deaths; John Ismay, *U.S. Army Plans to Eliminate Office for Reducing Civilian Harm in War*, N.Y. Times (Jan. 23, 2024), *at* https://www.nytimes.com/2025/01/23/us/pentagon-civilian-deaths.html; John Ismay & Azmat Khan, *Hegseth Cuts Pentagon Work on Preventing Civilian Harm*, N.Y. Times (Mar. 4, 2025), *at* https://www.nytimes.com/2025/03/04/us/politics/hegseth-pentagon-civilian-harm.html; James M. Inhofe National Defense Authorization Act for Fiscal Year 2023, Pub. L. 117–263, Div. A, Tit. X, § 1082(a)(1), 136 Stat. 2395, 2799 (Dec. 23, 2022). The center was part of the Civilian Harm Mitigation and Response Action Plan, a Defense Department initiative instigated by congressional and public pressure following reports of thousands of civilian deaths during the U.S. "war on terror." *See* Jacob Katz Cogan, Contemporary Practice of the United States, 117 AJIL 330, 352 (2023).

[58] DoD Instruction 3000.17 – Civilian Harm Mitigation and Response (Dec. 21, 2023), *at* https://www.esd.whs.mil/Portals/54/Documents/DD/issuances/dodi/300017p.pdf [https://perma.cc/Y9NB-HA2Y].

[59] *See* Horton, Kelly & Lamothe, *supra* note 56.

[60] *See* U.S. Dep't of Defense Press Release, Secretary of Defense Pete Hegseth Statement on General Officer Nominations (Feb. 21, 2025), *at* https://www.defense.gov/News/Releases/Release/Article/4074482/secretary-of-defense-pete-hegseth-statement-on-general-officer-nominations [https://perma.cc/RL37-2AKL]; Pete Hegseth Senate Confirmation Hearing (Jan. 14, 2025), *at* https://www.rev.com/transcripts/pete-hegseth-senate-confirmation-hearing [https://perma.cc/ZW64-YJ8K]; Greg Jaffe, *In Pursuit of a "Warrior Ethos," Hegseth Targets Military's Top Lawyers*, N.Y. Times (Feb. 22, 2025), *at* https://www.nytimes.com/2025/02/22/us/politics/hegseth-firings-military-lawyers-jag.html. Some reports suggested that the judge advocate general of the Navy had also been fired, but that position was already open due to the incumbent's retirement. *See* Lolita C. Baldor, *Hegseth Says He Fired the Top Military Lawyers Because They Weren't Well Suited for the Jobs*, Wash. Post (Feb. 24, 2025), *at* https://www.washingtonpost.com/politics/2025/02/24/pentagon-hegseth-firing-chairman-lawyers/3d316770-f311-11ef-acb5-08900d482a27_story.html.

[61] Baldor, *supra* note 60; Sarah Fortinsky, *Hegseth: Fired Military Lawyers Were Potential "Roadblocks" to Trump Orders*, The Hill (Feb. 24, 2025), *at* https://thehill.com/policy/defense/5162069-pentagon-officers-fired.

[62] Hugo Lowell, *Pete Hegseth to Overhaul US Military Lawyers in Effort to Relax Rules of War*, Guardian (Mar. 13, 2025), *at* https://www.theguardian.com/us-news/2025/mar/13/pete-hegseth-pentagon-lawyers-rules-of-war.

[63] *See* Charlie Savage, *Trump's Secret Rules for Drone Strikes Outside War Zones Are Disclosed*, N.Y. Times (May 1, 2021), *at* https://www.nytimes.com/2021/05/01/us/politics/trump-drone-strike-rules.html.

[64] *See* James LaPorta, *Trump Eases Rules on Military Raids and Airstrikes, Expanding Range of Who Can Be Targeted*, CBS News (Feb. 28, 2025), *at* https://www.cbsnews.com/news/trump-eases-rules-military-raids-airstrikes-targets; Dan Lamothe, *Pentagon Streamlines Clearances on Airstrikes And Raids, Officials Say*, Wash. Post (Feb. 28, 2025), *at* https://www.washingtonpost.com/national-security/2025/02/28/trump-pentagon-hegseth-airstrikes-rules; Charlie Savage & Eric Schmitt, *Trump Relaxes Limits on Counterterrorism Strikes Outside Conventional War Zones*, N.Y. Times (Mar. 1, 2025), *at* https://www.nytimes.com/2025/03/01/us/

commitment to the protection of civilians during armed conflict, National Security Adviser Michael Waltz rescinded President Biden's National Security Memorandum on Safeguards and Accountability with Respect to Transferred Defense Articles and Defense Services, which had required states receiving U.S. arms transfers to provide written assurances that they would use those arms in accordance with international humanitarian law and would facilitate the delivery of U.S. humanitarian assistance in areas of armed conflict where those arms were used.[65] Altogether, these actions rolled back Biden administration initiatives to mitigate civilian harm and indicated impatience with legal limits on military operations.

The United States, under the new administration, has contravened, or threatened to contravene, core principles and obligations of international law, including those in the UN Charter. President Trump has threatened the sovereignty and territorial integrity of Canada,[66] Denmark (Greenland),[67] and Panama (the Panama Canal).[68] His defense secretary has intimated that the United States would violate the prohibition on the use of force by taking military action in Mexico without consent to counter drug cartels operating there (an idea reportedly floated by the president during his first term).[69] President Trump has proposed that the United States take over Gaza, remove its population of approximately two million Palestinians, and not allow them to return,[70] a plan that would breach the

politics/counterterrorism-drone-strikes.html. On the Biden administration's policy, see Cogan, *supra* note 57, at 357.

[65] *See* Meg Kelly, Missy Ryan & Alex Horton, *Trump Repeals Biden Directive Linking U.S. Arms to Human Rights*, WASH. POST (Feb. 24, 2025), *at* https://www.washingtonpost.com/national-security/2025/02/24/trump-israel-gaza-us-weapons. For background on the memorandum, see Jacob Katz Cogan, Contemporary Practice of the United States, 118 AJIL 533, 549 (2024).

[66] *See* Vjosa Isai, *Behind Closed Doors, Trudeau Says Trump Threat to Take Over Canada Is Real*, N.Y. TIMES (Feb. 7, 2025), *at* https://www.nytimes.com/2025/02/07/world/canada/trump-canada-trudeau.html; Matina Stevis-Gridneff, *Trump Intensifies Statehood Threats in Attack on Canada*, N.Y. TIMES (Mar. 11, 2025), *at* https://www.nytimes.com/2025/03/11/us/politics/canada-trump-statehood-attacks.html. Reportedly, President Trump questioned the validity of the treaty demarcating the border between Canada and the United States. *See* Matina Stevis-Gridneff, *How Trump's "51st State" Canada Talk Came to Be Seen as Deadly Serious*, N.Y. TIMES (Mar. 7, 2025), *at* https://www.nytimes.com/2025/03/07/world/canada/trump-trudeau-canada-51st-state.html.

[67] *See* Steven Erlanger & Jeanna Smialek, *Trump Alarms Denmark in an Icy Exchange Over Greenland*, N.Y. TIMES (Jan. 26, 2025), *at* https://www.nytimes.com/2025/01/26/world/europe/trump-greenland-denmark.html; *Full Transcript of President Trump's Speech to Congress*, N.Y. TIMES (Mar. 4, 2025) [hereinafter Trump Speech to Congress] ("one way or the other, we're going to get it").

[68] *See* David E. Sanger & Lisa Friedman, *Trump's Wish to Control Greenland and Panama Canal: Not a Joke This Time*, N.Y. TIMES (Dec. 23, 2024), *at* https://www.nytimes.com/2024/12/23/us/politics/trump-greenland-panama-canal.html; Trump Speech to Congress, *supra* note 67 ("we gave it to Panama, and we're taking it back").

[69] *See* José de Córdoba, Santiago Pérez & Vera Bergengruen, *Hegseth Warned of Military Action if Mexico Fails to Meet Trump's Border Demands*, WALL ST. J. (Feb. 28, 2025), *at* https://www.wsj.com/politics/policy/trump-mexico-drug-cartel-tariff-hegseth-military-action-5f507ab0; Eyder Peralta, *Mexico Warns the US Not to "Invade Our Sovereignty" in Fight Against Cartels*, NPR (Feb. 20, 2025), *at* https://www.npr.org/2025/02/20/nx-s1-5304248/mexico-warns-the-us-not-to-invade-our-sovereignty-in-fight-against-cartels; Maggie Haberman, *Trump Proposed Launching Missiles into Mexico to "Destroy the Drug Labs," Esper Says*, N.Y. TIMES (May 5, 2022), *at* https://www.nytimes.com/2022/05/05/us/politics/mark-esper-book-trump.html.

[70] At a news conference with Prime Minister Netanyahu, President Trump said: "The U.S. will take over the Gaza Strip and we will do a job with it too. We'll own it and [will] level the site and get rid of the destroyed buildings, level it out. Create an economic development that will supply unlimited numbers of jobs and housing for the people of the area. Do a real job, do something different. . . . I do see a long-term ownership position and I see it bringing great stability to that part of the Middle East, and maybe the entire Middle East." *Full Text of Trump and Netanyahu's Explosive News Conference*, MIDDLE EAST EYE (Feb. 5, 2025), *at* https://www.middleeasteye.net/news/full-text-trump-and-netanyahus-explosive-news-conference [https://perma.cc/N84S-9DFP]. Asked later if the

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prohibitions against the forcible transfer of civilian populations and the forcible annexation of territory.[71] The Trump administration has changed the U.S. position on the Russia-Ukraine war—from denouncing Russia's invasion as a violation of international law to voting against a General Assembly resolution sponsored by Ukraine and European states that condemned Russia and emphasized the territorial integrity of Ukraine—thereby undermining the prohibitions on aggression and the forcible annexation of territory and possibly portending a realignment toward Russia.[72] The United States also withheld military and intelligence support for Ukraine, before resuming assistance following Ukraine's acceding to an administration proposal for a thirty-day ceasefire with Russia and an agreement that the United States and Ukraine would conclude "as soon as possible" a deal to develop Ukraine's natural resources, including oil, gas, and minerals.[73] President Trump, who hinted during his first term that the United

Palestinians could return to Gaza, he said: "No, they wouldn't. Because they're going to have much better housing—in other words, I'm talking about building a permanent place for them." Claire Moses & Shawn McCreesh, *Trump Says Palestinians Will Not Be Allowed to Return to Gaza Under His Proposal*, N.Y. Times (Feb. 10, 2025), *at* https://www.nytimes.com/2025/02/10/world/middleeast/trump-gaza-us-takeover.html (quoting President Trump).

[71] For discussion, see Amanda Taub, *What International Law Says About Trump's Proposal to Remove Palestinians from Gaza*, N.Y. Times (Feb. 11, 2025), *at* https://www.nytimes.com/2025/02/11/world/middleeast/international-law-trump-gaza.html.

[72] *See* U.S. Mission to the United Nations Press Release, Remarks at a UN General Assembly Emergency Special Session on Ukraine (Feb. 24, 2025), *at* https://usun.usmission.gov/remarks-at-a-un-general-assembly-emergency-special-session-on-ukraine [https://perma.cc/RZK3-9Y5U]; Farnaz Fassihi, *U.S. and European Allies Split Sharply at the U.N. Over Ukraine*, N.Y. Times (Feb. 24, 2025), *at* https://www.nytimes.com/2025/02/24/world/middleeast/us-eurpe-russia-ukraine-un.html; GA Res. ES-11/7 (Feb. 24, 2025); UN Press Release, At Three-Year Mark of Russian Federation's Invasion, General Assembly Upholds Ukraine's Territorial Integrity, Adopting Two Resolutions, GA/12675 (Feb. 24, 2025), *at* https://press.un.org/en/2025/ga12675.doc.htm [https://perma.cc/B3V2-6QMR] [hereinafter GA Russia Resolution Report]. Beyond opposing the General Assembly resolution, the United States proposed an alternative resolution in the Assembly and a resolution in the Security Council that did not denounce Russia's invasion. The three-paragraph U.S.-proposed General Assembly resolution "*[i]mplore[d]* a swift end to the conflict and further urge[d] a lasting peace between Ukraine and the Russian Federation." UN Doc. A/ES-11/L.11 (Feb. 21, 2025). The U.S. representative said that previous resolutions "have failed to stop the war. . . . What we need is a resolution marking the commitment from all UN Member States to bring a durable end to the war." GA Russia Resolution Report, *supra* note 72. The United States abstained from its own General Assembly resolution after it was amended by European states to include references to "the full-scale invasion of Ukraine by" Russia and the need for a "just, lasting and comprehensive peace between Ukraine and the Russian Federation, in line with the Charter of the United Nations and the principles of sovereign equality and territorial integrity of States." GA Res. ES-11/8 (Feb. 24, 2025); GA Russia Resolution Report, *supra* note 72. The U.S. resolution in the Council, which was identical to its proposed Assembly resolution, was approved by a vote of ten to zero, with the five European members abstaining. *See* SC Res. 2774 (Feb. 24, 2025); UN Press Release, With 10 Votes in Favour, 5 Abstentions, Security Council Adopts Resolution 2774 (2025) Mourning Loss of Life, as Russian Federation's Invasion of Ukraine Enters Fourth Year, SC/16005 (Feb. 24, 2025), *at* https://press.un.org/en/2025/sc16005.doc.htm [https://perma.cc/U75X-AMUB]. The United States also watered down a G7 statement marking the third anniversary of Russia's invasion of Ukraine, objecting to labeling Russia as the "aggressor." *See* Steven Erlanger, Matina Stevis-Gridneff & David E. Sanger, *U.S. Objects to Calling Russia "Aggressor" in G7 Statement on Invasion*, N.Y. Times (Feb. 20, 2025), *at* https://www.nytimes.com/2025/02/20/world/europe/us-g7-russia-ukraine-war.html. The Department of Justice has also announced that it would no longer support the International Center for the Prosecution of the Crime of Aggression against Ukraine. *See* Glenn Thrush, *U.S. to Withdraw from Group Investigating Responsibility for Ukraine Invasion*, N.Y. Times (Mar. 17, 2025), *at* https://www.nytimes.com/2025/03/17/us/politics/trump-ukraine-invasion-accountability.html. The Biden administration had promoted individual criminal accountability for aggression and atrocity crimes committed by Russians in Ukraine. *See* Jacob Katz Cogan, Contemporary Practice of the United States, 117 AJIL 500, 516 (2023).

[73] *See* Andrew E. Kramer & Alan Rappeport, *Ukraine Supports 30-Day Cease-Fire as U.S. Says It Will Resume Military Aid*, N.Y. Times (Mar. 11, 2025), *at* https://www.nytimes.com/2025/03/11/world/europe/ukraine-us-saudi-cease-fire-talks.html.

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States might quit NATO, has suggested that the North Atlantic Treaty's Article 5 mutual security guarantee might be conditional and not ironclad, undercutting the crux of the alliance precisely when a number of members feel threatened by Russia.[74]

In addition to the specific actions just described that weaken U.S. adherence to international law and U.S. support for international institutions, the president called into question U.S. participation in all treaties and international organizations. He directed the secretary of state to "conduct a review of all international intergovernmental organizations of which the United States is a member and provides any type of funding or other support, and all conventions and treaties to which the United States is a party, to determine which organizations, conventions, and treaties are contrary to the interests of the United States and whether such organizations, conventions, or treaties can be reformed."[75] Based on this review, the secretary was to "provide recommendations [to the president] as to whether the United States should withdraw from any . . . organizations, conventions, or treaties."[76] Already the cancellation of $60 billion in USAID and State Department foreign assistance contracts have severely undermined the work of international organizations, including the International Organization for Migration, the Office of the United Nations High Commissioner for Human Rights, the Office of the United Nations High Commissioner for Refugees, the United Nations Children's Fund, the UN Population Fund, the World Food Programme, and the World Health Organization.[77]

Many of President Trump's actions at the start of his second term reinstated measures taken during his first term or were extensions of those measures. What differs, aside from the concentrated adoption of these policies in a matter of weeks as opposed to years, is not the unilateralism, unpredictability, unreliability, and aggressive transactionalism, nor is it the attacks on allies or the contempt for soft power. Those characteristics marked President Trump's first term,

[74] *See* David E. Sanger, *Europe's New Reality: Trump May Not Quit NATO, but He's Already Undercutting It*, N.Y. Times (Feb. 20, 2025), *at* https://www.nytimes.com/2025/02/20/us/politics/trump-nato.html; Michelle L. Price, *Trump Casts Doubt on NATO Solidarity, Despite It Aiding the US After Sept. 11*, AP (Mar. 6, 2025), *at* https://apnews.com/article/trump-nato-ukraine-c5fef35ca057a31a61cba6f611393999.

[75] IO Executive Order, *supra* note 14, Sec. 3(b).

[76] *Id.* An earlier memorandum had tasked the U.S. Trade Representative with reviewing existing trade agreements. *See* America First Trade Policy, Secs. 2(d), (f), 90 Fed. Reg. 8471 (Jan. 20, 2025).

[77] *See, e.g.*, Colum Lynch, *Exclusive: UN Refugee Agency Braces for Thousands of Job Cuts*, Devex (Mar. 20, 2025), *at* https://www.devex.com/news/exclusive-un-refugee-agency-braces-for-thousands-of-job-cuts-109693; Emma Farge, *Millions of Lives at Risk from "Brutal" Funding Cuts, UN Refugee Chief Says*, Reuters (Mar. 20, 2025), *at* https://www.reuters.com/world/millions-lives-risk-brutal-funding-cuts-un-refugee-chief-says-2025-03-20; Colum Lynch, *Scoop: UN Migration Agency Cuts More Jobs, Shutters Lifesaving Programs*, Devex (Mar. 13, 2025), *at* https://www.devex.com/news/scoop-un-migration-agency-cuts-more-jobs-shutters-lifesaving-programs-109639; UN Press Release, UN Geneva Press Briefing (Mar. 11, 2025), *at* https://www.ungeneva.org/en/news-media/press-briefing/2025/03/un-geneva-press-briefing-1 [https://perma.cc/2273-D67F]; Stanley Widianto, *Exclusive: UN Slashes Support for Rohingya Refugees in Indonesia Due to U.S. Cuts, Sources Say*, Reuters (Mar. 6, 2025), *at* https://www.reuters.com/world/asia-pacific/un-slashes-support-rohingya-refugees-indonesia-due-us-cuts-sources-say-2025-03-06; Gerald Imray & Farai Mutsaka, *UN Food Program Closes Its Southern Africa Office in the Wake of Trump Administration Aid Cuts*, AP (Mar. 3, 2025), *at* https://apnews.com/article/un-food-program-trump-aid-africa-9eda0a4309af8c5950231c9cd2f4365b; UN Press Release, US Cuts Mean "Essential" UN Mental Health Teams in Ukraine Risk Closure (Mar. 3, 2025), *at* https://news.un.org/en/story/2025/03/1160681; Colum Lynch, *Scoop: UN Migration Agency Sends Out 3,000 Pink Slips in Mass Layoffs*, Devex (Feb. 11, 2025), *at* https://www.devex.com/news/scoop-un-migration-agency-sends-out-3-000-pink-slips-in-mass-layoffs-109372; Olivia Le Poidevin, *US Aid Cuts Force UNICEF to Reduce Lebanon Nutrition Programmes, Official Says*, Reuters (Feb. 28, 2025), *at* https://www.reuters.com/world/middle-east/us-aid-cuts-force-unicef-reduce-lebanon-nutrition-programmes-official-says-2025-02-28.

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though, on occasion, in somewhat milder form. Instead, what differs, it seems, from what can be discerned at this early stage, is the possibility of a shift in the Western alliance that championed (however imperfectly and inconsistently) human rights, democracy, law, international institutions, trade, and the sanctity of national territory, with the United States, led by a president unchecked by his own officials or by Congress, abandoning its allegiance to those commitments and those states, and switching sides, aligning with, and adopting some of the characteristics and policies of, the authoritarian states that were once the United States' rivals.

International Economic Law

The United States Sanctions Georgians Overseeing Crackdown

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The United States has imposed sanctions and visa restrictions on Georgian officials and pro-Russia far-right political activists, including Bidzina Ivanishvili, the founder and honorary chairman of Georgia's ruling party, Georgian Dream.[1] The penalties, first issued in September 2024 and expanded in December, followed the government's enactment of a law requiring the registration of foreign-funded organizations, its violent suppression of those protesting the law's passage, and its crackdown on political opponents following parliamentary elections in October. The unrest stems from fundamental differences between the governing party, which has increasingly sought closer relations with Russia, and the opposition, which has favored deeper ties with the West, including membership in the European Union (EU) and the North Atlantic Treaty Organization (NATO). Since its electoral victory, which was marred by irregularities, the government has passed new laws further expanding its power to stifle opposition and stripping opposition members of parliament of their credentials.

In May 2024, the Georgian parliament adopted, over a presidential veto, a law "On Transparency of Foreign Influence."[2] The law requires organizations (non-profits,

[1] *See* U.S. Dep't of the Treasury Press Release, Treasury Sanctions Georgian Officials and Extremists for Serious Human Rights Abuse (Sept. 16, 2024), *at* https://home.treasury.gov/news/press-releases/jy2580 [https://perma.cc/776V-3WVX] [hereinafter Treasury Department September Sanctions]; U.S. Dep't of State Press Release, Promoting Accountability for Serious Human Rights Abuse and Anti-democratic Actions in Georgia (Sept. 16, 2024), *at* https://2021-2025.state.gov/promoting-accountability-for-serious-human-rights-abuse-and-anti-democratic-actions-in-georgia [https://perma.cc/GGZ2-5RXC]; U.S. Dep't of State Press Release, Pursuing Visa Restrictions for Individuals Involved in Undermining Democracy in Georgia (Dec. 12, 2024), *at* https://2021-2025.state.gov/pursuing-visa-restrictions-for-individuals-involved-in-undermining-democracy-in-georgia [https://perma.cc/7GLW-F5TZ] [hereinafter December Visa Restrictions]; U.S. Dep't of State Press Release, Sanctioning Georgian Ministry of Internal Affairs Officials Involved in Serious Human Rights Abuses Against Protesters (Dec. 19, 2024), *at* https://2021-2025.state.gov/sanctioning-georgian-ministry-of-internal-affairs-officials-involved-in-serious-human-rights-abuses-against-protesters [https://perma.cc/G7LK-PV6K] [hereinafter Sanctioning Georgian Officials]; U.S. Dep't of the Treasury Press Release, Treasury Sanctions Georgian Ministry of Internal Affairs Officials for Brutality Against Protesters, Journalists, and Politicians (Dec. 19, 2024), *at* https://home.treasury.gov/news/press-releases/jy2759 [https://perma.cc/CJG3-UMTU] [hereinafter Treasury Department December Sanctions]; U.S. Dep't of State Press Release, Sanctioning Georgian Dream Founder Bidzina Ivanishvili (Dec. 27, 2024), *at* https://2021-2025.state.gov/sanctioning-georgian-dream-founder-bidzina-ivanishvili [https://perma.cc/8R7G-TQRG] [hereinafter Ivanishvili Sanctions].

[2] Law of Georgia on Transparency of Foreign Influence (May 28, 2024), *at* https://www.matsne.gov.ge/en/document/view/6171895?publication=0 [https://perma.cc/2UUZ-FGGW] [hereinafter Foreign Influence

PROTOCOL REPLACING THE NORTH AMERICAN FREE TRADE AGREEMENT WITH THE AGREEMENT BETWEEN CANADA, THE UNITED STATES OF AMERICA, AND THE UNITED MEXICAN STATES

Canada, the United States of America, and the United Mexican States (the "Parties"),

Having regard to the *North American Free Trade Agreement*, which entered into force on January 1, 1994 (the "NAFTA"),

Having undertaken negotiations to amend the NAFTA pursuant to Article 2202 of the NAFTA that resulted in the Agreement between Canada, the United States of America, and the United Mexican States (the "CUSMA");

HAVE AGREED as follows:

1. Upon entry into force of this Protocol, the CUSMA, attached as an Annex to this Protocol, shall supersede the NAFTA, without prejudice to those provisions set forth in the CUSMA that refer to provisions of the NAFTA.

2. Each Party shall notify the other Parties, in writing, once it has completed the internal procedures required for the entry into force of this Protocol. This Protocol and its Annex shall enter into force on the first day of the third month following the last notification.

3. Upon entry into force of this Protocol, the *North American Agreement on Labor Cooperation*, done at Mexico, Washington, and Ottawa on September 8, 9, 12, and 14, 1993 shall be terminated.

IN WITNESS WHEREOF, the undersigned, being duly authorized by their respective Governments, have signed this Protocol.

DONE at Buenos Aires, this 30th day of November, 2018, in triplicate, in the English, French, and Spanish languages, each text being equally authentic.

____

FOR THE GOVERNMENT OF
CANADA

____

FOR THE GOVERNMENT OF
THE UNITED STATES OF AMERICA

____

FOR THE GOVERNMENT OF
THE UNITED MEXICAN STATES

AGREEMENT BETWEEN THE UNITED STATES OF AMERICA, THE UNITED MEXICAN STATES, AND CANADA

PREAMBLE

The Government of the United States of America, the Government of the United Mexican States, and the Government of Canada (collectively "the Parties"), resolving to:

STRENGTHEN ANEW the longstanding friendship between them and their peoples, and the strong economic cooperation that has developed through trade and investment;

FURTHER strengthen their close economic relationship;

REPLACE the 1994 North American Free Trade Agreement with a 21st Century, high standard new agreement to support mutually beneficial trade leading to freer, fairer markets, and to robust economic growth in the region;

PRESERVE AND EXPAND regional trade and production by further incentivizing the production and sourcing of goods and materials in the region;

ENHANCE AND PROMOTE the competitiveness of regional exports and firms in global markets, and conditions of fair competition in the region;

RECOGNIZE that small and medium-sized enterprises (SMEs), including micro-sized enterprises, contribute significantly to economic growth, employment, community development, youth engagement and innovation, and seek to support their growth and development by enhancing their ability to participate in and benefit from the opportunities created by this Agreement;

ESTABLISH a clear, transparent, and predictable legal and commercial framework for business planning, that supports further expansion of trade and investment;

FACILITATE trade between the Parties by promoting efficient and transparent customs procedures that reduce costs and ensure predictability for importers and exporters, and encourage expanding cooperation in the area of trade facilitation and enforcement;

RECOGNIZE their inherent right to regulate and resolve to preserve the flexibility of the Parties to set legislative and regulatory priorities, and protect legitimate public welfare objectives, such as health, safety, environmental protection, conservation of living or non-living exhaustible natural resources, integrity and stability of the financial system, and public morals, in accordance with the rights and obligations provided in this Agreement;

FACILITATE trade in goods and services between the Parties by preventing, identifying, and eliminating unnecessary technical barriers to trade, enhancing transparency, and promoting good regulatory practices;

PROTECT human, animal, or plant life or health in the territories of the Parties and advance science-based decision making while facilitating trade between them;

ELIMINATE obstacles to international trade which are more trade-restrictive than necessary;

PROMOTE high levels of environmental protection, including through effective enforcement by each Party of its environmental laws, as well as through enhanced environmental cooperation, and further the aims of sustainable development, including through mutually supportive trade and environmental policies and practices;

PROMOTE the protection and enforcement of labor rights, the improvement of working conditions, the strengthening of cooperation and the Parties' capacity on labor issues;

RECOGNIZE that the implementation of government-wide practices to promote regulatory quality through greater transparency, objective analysis, accountability, and predictability can facilitate international trade, investment, and economic growth, while contributing to each Party's ability to achieve its public policy objectives;

PROMOTE transparency, good governance and the rule of law, and eliminate bribery and corruption in trade and investment;

RECOGNIZE the importance of increased engagement by indigenous peoples in trade and investment;

SEEK to facilitate women's and men's equal access to and ability to benefit from the opportunities created by this Agreement and to support the conditions for women's full participation in domestic, regional, and international trade and investment;

RECOGNIZE the important work that their relevant authorities are doing to strengthen macroeconomic cooperation; and

ESTABLISH an Agreement to address future trade and investment challenges and opportunities, and contribute to advancing their respective priorities over time,

HAVE AGREED as follows:

CHAPTER 1

INITIAL PROVISIONS AND GENERAL DEFINITIONS

Section A: Initial Provisions

Article 1.1: Establishment of a Free Trade Area

The Parties, consistent with Article XXIV of the GATT 1994 and Article V of the GATS, hereby establish a free trade area.

Article 1.2: Relation to Other Agreements

Each Party affirms its existing rights and obligations with respect to each other under the WTO Agreement and other agreements to which it and another Party are party.

Article 1.3: Persons Exercising Delegated Governmental Authority

Each Party shall ensure that a person that has been delegated regulatory, administrative, or other governmental authority by a Party acts in accordance with the Party's obligations as set out under this Agreement in the exercise of that authority.

Section B: General Definitions

Article 1.4: General Definitions

For the purposes of this Agreement, unless otherwise provided:

AD Agreement means the *Agreement on Implementation of Article VI of the General Agreement on Tariffs and Trade 1994*, set out in Annex 1A to the WTO Agreement;

central level of government means:

(a) for Canada, the Government of Canada;

(b) for Mexico, the federal level of government; and

(c) for the United States, the federal level of government;

Commission means the Free Trade Commission established under Article 30.1 (Establishment of the Free Trade Commission);

covered investment means, with respect to a Party, an investment in its territory of an investor of another Party in existence as of the date of entry into force of this Agreement or established, acquired, or expanded thereafter;

customs administration means the competent authority that is responsible under the law of a Party for the administration of customs laws and regulations or any successor of such customs administration;

customs duty includes a duty or charge of any kind imposed on or in connection with the importation of a good, and any surtax or surcharge imposed in connection with such importation, but does not include any:

(a) charge equivalent to an internal tax imposed consistently with Article III:2 of the GATT 1994;

(b) fee or other charge in connection with the importation commensurate with the cost of services rendered;

(c) antidumping or countervailing duty; and

(d) premium offered or collected on an imported good arising out of any tendering system in respect of the administration of quantitative import restrictions, tariff rate quotas, or tariff preference levels;

customs offense means any act committed for the purpose of, or having the effect of, avoiding a Party's laws or regulations pertaining to the provisions of this Agreement governing importations or exportations of goods between, or transit of goods through, the territories of the Parties, specifically those that violate a customs law or regulation for restrictions or prohibitions on imports or exports, duty evasion, transshipment, falsification of documents relating to the importation or exportation of goods, fraud, or smuggling of goods;

Customs Valuation Agreement means the *Agreement on Implementation of Article VII of the General Agreement on Tariffs and Trade,* set out in Annex 1A to the WTO Agreement;

days means calendar days, including weekends and holidays;

Dispute Settlement Understanding (DSU) means the *Understanding on Rules and Procedures Governing the Settlement of Disputes*, set out in Annex 2 to the WTO Agreement;

duty deferral program includes measures such as those governing foreign trade zones, temporary importations under bond, bonded warehouses, "maquiladoras", and inward processing programs;

enterprise means an entity constituted or organized under applicable law, whether or not for profit, and whether privately-owned or governmentally-owned or controlled, including a corporation, trust, partnership, sole proprietorship, joint venture, association or similar organization;

enterprise of a Party means an enterprise constituted or organized under the law of a Party;

existing means in effect on the date of entry into force of this Agreement;

GATS means the *General Agreement on Trade in Services*, set out in Annex 1B to the WTO Agreement;

GATT 1994 means the *General Agreement on Tariffs and Trade 1994*, set out in Annex 1A to the WTO Agreement;

goods means a merchandise, product, article, or material;

goods of a Party means domestic products as these are understood in the GATT 1994 or such goods as the Parties may agree, and includes originating goods of a Party;

government procurement means the process by which a government obtains the use of or acquires goods or services, or any combination thereof, for governmental purposes and not with a view to commercial sale or resale or use in the production or supply of goods or services for commercial sale or resale;

Harmonized System (HS) means the *Harmonized Commodity Description and Coding Systems*, including its General Rules of Interpretation, Section Notes, Chapter Notes, and Subheading Notes as adopted and implemented by the Parties in their respective laws;

heading means the first four digits in the tariff classification number under the Harmonized System;

IMF Articles of Agreement means the *Articles of Agreement of the International Monetary Fund*, done at Bretton Woods, United States on July 22, 1944;

individual means a natural person;

measure includes any law, regulation, procedure, requirement, or practice;

NAFTA 1994 means the *North American Free Trade Agreement* that entered into force on January 1, 1994;

national means a "natural person who has the nationality of a Party" as set out below for each Party or a permanent resident of a Party:

(a) for Canada, a citizen of Canada;

(b) for Mexico, a person who has the nationality of Mexico in accordance with its applicable laws; and

(c) for the United States, a "national of the United States" as defined in the *Immigration and Nationality Act*;

originating means qualifying as originating under the rules of origin set out in Chapter 4 (Rules of Origin) or Chapter 6 (Textile and Apparel Goods);

person means a natural person or an enterprise;

person of a Party means a national of a Party or an enterprise of a Party;

preferential tariff treatment means the duty rate applicable to an originating good;

publish means to disseminate information through paper or electronic means that is distributed widely and is readily accessible to the general public;

recovered material means a material in the form of one or more individual parts that results from:

(a) the disassembly of a used good into individual parts; and

(b) the cleaning, inspecting, testing or other processing of those parts as necessary for improvement to sound working condition;

remanufactured good means a good classified in HS Chapters 84 through 90 or under heading 94.02 except goods classified under HS headings 84.18, 85.09, 85.10, and 85.16, 87.03 or subheadings 8414.51, 8450.11, 8450.12, 8508.11, and 8517.11, that is entirely or partially composed of recovered materials and:

(a) has a similar life expectancy and performs the same as or similar to such a good when new; and

(b) has a factory warranty similar to that applicable to such a good when new;

regional level of government means:

(a) for Canada, a province or territory of Canada;

(b) for Mexico, a state of the United Mexican States; and

(b) for the United States, a state of the United States, the District of Columbia, or Puerto Rico;

Safeguards Agreement means the *Agreement on Safeguards*, set out in Annex 1A to the WTO Agreement;

sanitary or phytosanitary measure means a measure referred to in paragraph 1 of Annex A to the SPS Agreement;

SCM Agreement means the *Agreement on Subsidies and Countervailing Measures* set out in Annex 1A to the WTO Agreement;

Secretariat means the Secretariat established under Article 30.6 (The Secretariat);

SME means a small and medium-sized enterprise, including a micro-sized enterprise;

SPS Agreement means the *Agreement on the Application of Sanitary and Phytosanitary Measures*, set out in Annex 1A to the WTO Agreement;

state enterprise means an enterprise that is owned, or controlled through ownership interests, by a Party;

subheading means the first six digits in the tariff classification number under the Harmonized System;

territory has for each Party the meaning set out in Section C (Country-Specific Definitions);

textile or apparel good means a textile or apparel good classified in HS subheading 4202.12, 4202.22, 4202.32, or 4202.92 (luggage, handbags and similar articles with an outer surface of textile materials), heading 50.04 through 50.07, 51.04 through 51.13, 52.04 through 52.12, 53.03 through 53.11, Chapter 54 through 63, heading 66.01 (umbrellas) or heading 70.19 (yarns and fabrics of glass fiber), subheading 9404.90 (articles of bedding and similar furnishing), or heading 96.19 (babies diapers and other sanitary textile articles);

TRIPS Agreement means the *Agreement on Trade-Related Aspects of Intellectual Property Rights*, set out in Annex 1C to the WTO Agreement;[1]

Uniform Regulations means the regulations described in Article 5.16 (Uniform Regulations);

WTO means the World Trade Organization; and

WTO Agreement means the *Marrakesh Agreement Establishing the World Trade Organization*, done at Marrakesh on April 15, 1994.

[1] For greater certainty, TRIPS Agreement includes any waiver in force between the Parties of any provision of the TRIPS Agreement granted by WTO Members in accordance with the WTO Agreement.

Section C: Country-Specific Definitions

For the purposes of this Agreement, unless otherwise provided:

territory means:

(a) for Canada,

(i) the land territory, air space, internal waters, and territorial sea of Canada,

(ii) the exclusive economic zone of Canada, and

(iii) the continental shelf of Canada,

as determined by its domestic law and consistent with international law.

(b) for Mexico,

(i) the land territory, including the states of the Federation and Mexico City,

(ii) the air space, and

(iii) the internal waters, territorial sea, and any areas beyond the territorial seas of Mexico within which Mexico may exercise sovereign rights and jurisdiction, as determined by its domestic law, consistent with the *United Nations Convention on the Law of the Sea*, done at Montego Bay on December 10, 1982; and

(c) for the United States,

(i) the customs territory of the United States, which includes the 50 states, the District of Columbia, and Puerto Rico,

(ii) the foreign trade zones located in the United States and Puerto Rico, and

(iii) the territorial sea and air space of the United States and any area beyond the territorial sea within which, in accordance with customary international law as reflected in the *United Nations Convention on the Law of the Sea*, the United States may exercise sovereign rights or jurisdiction.

CHAPTER 2

NATIONAL TREATMENT AND MARKET ACCESS FOR GOODS

Article 2.1: Definitions

For the purposes of this Chapter:

advertising films and recordings means recorded visual media or audio materials that exhibit for prospective customers the nature or operation of goods or services offered for sale or lease by a person established or resident in the territory of a Party, provided that the films and recordings are not for broadcast to the general public;

commercial samples of negligible value means commercial samples having a value, individually or in the aggregate as shipped, of not more than one U.S. dollar, or the equivalent amount in the currency of another Party, or so marked, torn, perforated, or otherwise treated that they are unsuitable for sale or use except as commercial samples;

consular transactions means requirements that goods of a Party intended for export to the territory of another Party must first be submitted to the supervision of the consul of the importing Party in the territory of the exporting Party, or in the territory of a non-Party, for the purpose of obtaining a consular invoice or a consular visa for a commercial invoice, certificate of origin, manifest, shipper's export declaration, or any other customs documentation in connection with the importation of the good;

consumed means:

(a) actually consumed; or

(b) further processed or manufactured so as to result in a substantial change in the value, form, or use of the good or in the production of another good;

customs duty includes a duty or charge of any kind imposed on or in connection with the importation of a good, and any surtax or surcharge imposed in connection with such importation, but does not include any:

(a) charge equivalent to an internal tax imposed consistently with Article III:2 of the GATT 1994;

(b) fee or other charge in connection with the importation commensurate with the cost of the services rendered;

(c) anti-dumping or countervailing duty; and

(d) premium offered or collected on an imported good arising out of any tendering system in respect of the administration of quantitative import restrictions, tariff rate quotas, or tariff preference levels;

distributor means a person of a Party who is responsible for the commercial distribution, agency, concession, or representation in the territory of the Party of goods of another Party;

duty deferral program includes measures such as those governing foreign trade zones, temporary importations under bond, bonded warehouses, "maquiladoras", and inward processing programs;

duty-free means free of customs duty;

goods admitted for sports purposes means sports requisites admitted into the territory of the importing Party for use in sports contests, demonstrations, or training in the territory of the Party;

import licensing means an administrative procedure requiring the submission of an application or other documentation (other than that generally required for customs clearance purposes) to the relevant administrative body as a prior condition for importation into the territory of the importing Party;

Import Licensing Agreement means the *Agreement on Import Licensing Procedures*, set out in Annex 1A to the WTO Agreement;

performance requirement means a requirement that:

(a) a given level or percentage of goods or services be exported;

(b) a domestic good or service of the Party granting a waiver of a custom duty or an import license be substituted for an imported good or service;

(c) a person benefitting from a waiver of a custom duty or a grant of an import license, purchase a good or service in the territory of the Party granting the waiver or the import license or accord a preference to a domestically produced good or service;

(d) a person benefitting from a waiver of a custom duty or a grant of an import license produce a good or provide a service, in the territory of the Party granting the waiver or import license, with a given level or percentage of domestic content; or

(e) relates in any way the volume or value of imports to the volume or value of exports or to the amount of foreign exchange inflows;

but does not include a requirement that an imported good be:

(f) subsequently exported;

(g) used as a material in the production of another good that is subsequently exported;

(h) substituted by an identical or similar good used as a material in the production of another good that is subsequently exported; or

(i) substituted by an identical or similar good that is subsequently exported;

printed advertising materials means those goods classified in Chapter 49 of the Harmonized System, including brochures, pamphlets, leaflets, trade catalogues, yearbooks published by trade associations, tourist promotional materials, and posters, that are used to promote, publicize, or advertise a good or service, are essentially intended to advertise a good or service, and are supplied free of charge;

satisfactory evidence means:

(a) a receipt, or a copy of a receipt, evidencing payment of a customs duty on a particular entry;

(b) a copy of the entry document with evidence that it was received by a customs administration;

(c) a copy of a final customs duty determination by a customs administration respecting the relevant entry; or

(d) any other evidence of payment of a customs duty acceptable under the Uniform Regulations; and

used vehicle means an automobile, a truck, a bus, or a special purpose motor vehicle, not including a motorcycle, that:

(a) has been sold, leased, or loaned;

(b) has been driven for more than:

(i) 1,000 kilometers if the vehicle has a gross weight of less than five metric tons, or

(ii) 5,000 kilometers if the vehicle has a gross weight of five metric tons or more; or

(c) was manufactured prior to the current year and at least 90 days have elapsed since the date of manufacture.

Article 2.2: Scope

Except as otherwise provided in this Agreement, this Chapter applies to trade in goods of a Party.

Article 2.3: National Treatment

1. Each Party shall accord national treatment to the goods of another Party in accordance with Article III of the GATT 1994, including its interpretative notes, and to this end, Article III of the GATT 1994 and its interpretative notes are incorporated into and made part of this Agreement, *mutatis mutandis*.

2. The treatment to be accorded by a Party under paragraph 1 means, with respect to a regional level of government, treatment no less favorable than the most favorable treatment that regional level of government accords to any like, directly competitive, or substitutable goods, as the case may be, of the Party of which it forms a part.

3. Paragraphs 1 and 2 do not apply to the measures set out in Annex 2-A (Exceptions to Article 2.3 (National Treatment) and Article 2.11 (Import and Export Restrictions)).

Article 2.4: Treatment of Customs Duties

1. Unless otherwise provided in this Agreement, no Party shall increase any existing customs duty, or adopt any new customs duty, on an originating good.

2. Unless otherwise provided in this Agreement, each Party shall apply a customs duty on an originating good in accordance with its Schedule to Annex 2-B (Tariff Commitments).

3. On the request of a Party, the Parties shall consult to consider accelerating or broadening the scope of the elimination of customs duties set out in their Schedules to Annex 2-B (Tariff Commitments). An agreement between two or more Parties to accelerate or broaden the scope of the elimination of a customs duty on an originating good shall supersede any customs duty rate determined pursuant to those Parties' Schedules to Annex 2-B (Tariff Commitments) for that good once approved by each Party in accordance with its applicable legal procedures.

4. A Party may at any time unilaterally accelerate the elimination of customs duties set out in its Schedule to Annex 2-B (Tariff Commitments) on originating goods.

5. Annex 2-C (Provisions Between Mexico and the United States on Automotive Goods) contains additional provisions between Mexico and the United States relating to customs duties on automotive goods that are not originating under Chapter 4 (Rules of Origin).

Article 2.5: Drawback and Duty Deferral Programs

1. Except as otherwise provided in this Article, no Party shall refund the amount of customs duties paid, or waive or reduce the amount of customs duties owed, on a good imported into its territory, on condition that the good is:

(a) subsequently exported to the territory of another Party;

(b) used as a material in the production of another good that is subsequently exported to the territory of another Party; or

(c) substituted by an identical or similar good used as a material in the production of another good that is subsequently exported to the territory of another Party,

in an amount that exceeds the lesser of the total amount of customs duties paid or owed on the good on importation into its territory and the total amount of customs duties paid to another Party on the good that has been subsequently exported to the territory of that other Party.

2. No Party shall, on condition of export, refund, waive, or reduce:

(a) an antidumping or countervailing duty;

(b) a premium offered or collected on an imported good arising out of any tendering system in respect of the administration of quantitative import restrictions, or tariff rate quotas or tariff preference levels; or

(c) customs duties paid or owed on a good imported into its territory and substituted by an identical or similar good that is subsequently exported to the territory of another Party.

3. If a good is imported into the territory of a Party pursuant to a duty deferral program and is subsequently exported to the territory of another Party, or is used as a material in the production of another good that is subsequently exported to the territory of another Party, or is substituted by an identical or similar good used as a material in the production of another good that is subsequently exported to the territory of another Party, the Party from whose territory the good is exported:

(a) shall assess the customs duty as if the exported good had been withdrawn for domestic consumption; and

(b) may waive or reduce such customs duty to the extent permitted under paragraph 1.

4. In determining the amount of a customs duty that may be refunded, waived, or reduced pursuant to paragraph 1 on a good imported into its territory, each Party shall require presentation of satisfactory evidence of the amount of customs duties paid to another Party on the good that has been subsequently exported to the territory of that other Party.

5. If satisfactory evidence of the customs duty paid to the Party to which a good is subsequently exported under a duty deferral program described in paragraph 3 is not presented within 60 days after the date of exportation, the Party from whose territory the good was exported:

(a) shall collect the customs duty as if the exported good had been withdrawn for domestic consumption; and

(b) may refund such customs duty, to the extent permitted under paragraph 1, on the timely presentation of such evidence under its laws and regulations.

6. This Article does not apply to:

(a) a good entered under bond for transportation and exportation to the territory of another Party;

(b) a good exported to the territory of another Party in the same condition as when imported into the territory of the Party from which the good was exported.[1] If that good has been commingled with fungible goods and exported in the same condition, its origin for purposes of this subparagraph may be determined on the basis of inventory management methods such as first-in, first-out or last-in, first-out. For greater certainty, nothing in this subparagraph shall be construed to permit a Party to waive, refund, or reduce a customs duty contrary to paragraph 2(c);

(c) a good imported into the territory of a Party that is deemed to be exported from its territory, is used as a material in the production of another good that is deemed to be exported to the territory of another Party, or is substituted by an identical or similar good used as a material in the production of another good that is deemed to be exported to the territory of another Party, by reason of:

*______________________________

[1] Processes such as testing, cleaning, repacking, inspecting, sorting, or marking a good, or preserving a good in its same condition, shall not be considered to change the good's condition.

(i) delivery to a duty-free shop,

(ii) delivery for ship's stores or supplies for ships or aircraft, or

(iii) delivery for use in joint undertakings of two or more of the Parties and that will subsequently become the property of the Party into whose territory the good was deemed to be exported;

(d) a refund of customs duties by a Party on a particular good imported into its territory and subsequently exported to the territory of another Party, if that refund is granted by reason of the failure of that good to conform to sample or specification, or by reason of the shipment of that good without the consent of the consignee;

(e) an originating good that is imported into the territory of a Party and is subsequently exported to the territory of another Party, or used as a material in the production of another good that is subsequently exported to the territory of another Party, or is substituted by an identical or similar good used as a material in the production of another good that is subsequently exported to the territory of another Party;

(f) for exports from the territory of the United States to the territory of Canada or Mexico, goods provided for in U.S. tariff items 1701.13.20 or 1701.14.20 that are imported into the territory of the United States under any re-export program or any like program and used as a material in the production of, or substituted by an identical or similar good used as a material in the production of:

(i) a good provided for in Canadian tariff item 1701.99.00 or Mexican tariff items 1701.99.01, 1701.99.02, and 1701.99.99 (refined sugar), or

(ii) sugar containing products that are prepared foodstuffs or beverages classified in headings 17.04 and 18.06 or in Chapters 19, 20, 21, or 22; or

(g) for trade between Canada and the United States:

(i) imported citrus products,

(ii) an imported good used as a material in the production of, or substituted by an identical or similar good used as a material in the production of, a good provided for in U.S. tariff items 5811.00.20 (quilted cotton piece goods), 5811.00.30 (quilted man-made piece goods) or 6307.90.99 (furniture moving pads), or Canadian tariff items 5811.00.10 (quilted cotton piece goods), 5811.00.20 (quilted man-made piece goods) or 6307.90.30

(furniture moving pads), that are subject to the most-favored-nation rate of duty when exported to the territory of the other Party, and

(iii) an imported good used as a material in the production of apparel that is subject to the most-favored-nation rate of duty when exported to the territory of the other Party.

7. For the purposes of this Article:

identical or similar goods means "identical goods" and "similar goods," respectively, as defined in the Customs Valuation Agreement, or as otherwise provided for under the law of the importing Party;

material means "material" as defined in Article 4.1 (Definitions);

used means "used" as defined in Article 4.1 (Definitions).

8. If a good referred to by a tariff item number in this Article is described in parentheses following the tariff item number, the description is provided for purposes of reference only.

Article 2.6: Waiver of Customs Duties

No Party shall adopt or maintain any waiver of a customs duty if the waiver is conditioned, explicitly or implicitly, on the fulfillment of a performance requirement.

Article 2.7: Temporary Admission of Goods

1. Each Party shall grant duty-free temporary admission for:

(a) professional equipment, including equipment for the press or television, software, and broadcasting and cinematographic equipment, that is necessary for carrying out the business activity, trade, or profession of a person who qualifies for temporary entry in accordance with the law of the importing Party;

(b) a good intended for display or demonstration, including its component parts, ancillary apparatus and accessories;

(c) commercial samples and advertising films and recordings; and

(d) a good admitted for sports purposes, admitted from the territory of another Party, regardless of their origin and regardless of whether like, directly competitive, or substitutable goods are available in the territory of the Party.

2. No Party shall condition the duty-free temporary admission of a good referred to in paragraph 1, other than to require that the good:

(a) be imported by a national of another Party who seeks temporary entry;

(b) be used solely by or under the personal supervision of a national of another Party in the exercise of the business activity, trade, profession, or sport of that person;

(c) not be sold, leased, or, for goods referred to in paragraph 1(c), not be put to any use other than exhibition or demonstration, while in its territory;

(d) be accompanied by a security in an amount no greater than 110 percent of the charges that would otherwise be owed on entry or importation, and releasable on exportation of the good except that a bond for customs duties shall not be required for an originating good;

(e) be capable of identification when exported;

(f) be exported on the departure of the person referenced in subparagraph (a), or within any other period reasonably related to the purpose of the temporary admission as the Party may establish, unless extended;

(g) be admitted in no greater quantity than is reasonable for its intended use; and

(h) be otherwise admissible into the Party's territory under its law.

3. Subject to its law, each Party shall extend the time limit for temporary admission beyond the period initially fixed at the request of the person concerned.

4. Each Party shall adopt or maintain procedures providing for the expeditious release of a good admitted under this Article. To the extent possible, those procedures must provide that when such a good accompanies a national of another Party who is seeking temporary entry, the good shall be released simultaneously with the entry of that national.

5. Each Party shall permit a good temporarily admitted under this Article to be exported through a customs port other than the port through which it was admitted.

6. Each Party shall provide, in accordance with its law, that the person responsible for a good admitted under this Article shall not be liable for failure to export the good upon presentation of proof satisfactory to the Party into whose territory the good was admitted that the

good has been destroyed within the original time period fixed for temporary admission or any lawful extension.

7. If any condition that a Party imposes under paragraph 2 has not been fulfilled, the Party may apply the customs duty and any other charge that would normally be owed on entry or importation of the good in addition to any other charges or penalties provided for under its law.

8. Subject to Chapters 14 (Investment) and Chapter 15 (Cross Border Trade in Services):

(a) each Party shall allow a vehicle, or shipping container or other substantial holder, that enters its territory from the territory of another Party to exit its territory on any route that is reasonably related to the economic and prompt departure of that vehicle, or shipping container or other substantial holder;

(b) no Party shall require any security or impose any penalty or charge solely by reason of any difference between the port of entry and the port of departure of a vehicle, or shipping container or other substantial holder;

(c) no Party shall condition the release of any obligation, including any security, that it imposes in respect of the entry of a vehicle, or shipping container or other substantial holder, into its territory on the exit of that vehicle, or shipping container or other substantial holder, through any particular port of departure; and

(d) no Party shall require that the vehicle or carrier bringing a shipping container or other substantial holder from the territory of another Party into its territory be the same vehicle or carrier that takes that shipping container or other substantial holder to the territory of another Party.

9. For the purposes of paragraph 8, **vehicle** means a truck, a truck tractor, a tractor, a trailer unit or trailer, a locomotive, or a railway car or other railroad equipment, if used in international traffic.

10. Each Party shall adopt or maintain procedures allowing for the arrival and release from customs custody, such as through a procedure that provides for temporary admission as set forth in this Article, of a shipping container or other substantial holder being used or to be used in the shipment of goods in international traffic, whether arriving full or empty and of any size, volume, or dimension, with relief from custom duties and allowing it to remain within its territory for at least 90 consecutive days.

11. Each Party shall, in accordance with its laws, regulations, and procedures, extend the timeframe for temporary admission of a shipping container or other substantial holder beyond the period initially fixed at the request of the person concerned.

12. A Party may require that a shipping container or other substantial holder be registered with the customs authority the first time it arrives in its territory, as a condition for the treatment described in paragraphs 10 and 11.

13. Each Party shall include in the treatment of any shipping container or other substantial holder that has an internal volume of one cubic meter or more, the accessories or equipment accompanying it as defined by the importing Party.

14. For the purposes of paragraph 8 and paragraphs 10 through 13, a "shipping container or other substantial holder" includes any container or holder, whether collapsible or not, that is constructed of a sturdy material capable of repeated use, and is used in the shipment of goods in international traffic.

Article 2.8: Goods Re-Entered after Repair or Alteration

1. No Party shall apply a customs duty to a good, regardless of its origin, that re-enters its territory after that good has been temporarily exported from its territory to the territory of another Party for repair or alteration, regardless of whether that repair or alteration could have been performed in the territory of the Party from which the good was exported for repair or alteration or has increased the value of the good.

2. Paragraph 1 does not apply to a good imported under a duty deferral program that is exported for repair or alteration and is not re-imported under a duty deferral program.

3. Notwithstanding Article 2.5 (Drawback and Duty Deferral Programs), no Party shall apply a customs duty to a good, regardless of its origin, admitted temporarily from the territory of another Party for repair or alteration.

4. For the purposes of this Article, repair or alteration does not include an operation or process that:

(a) destroys a good's essential characteristics or creates a new or commercially different good; or

(b) transforms an unfinished good into a finished good.

Article 2.9: Duty-Free Entry of Commercial Samples of Negligible Value and Printed Advertising Materials

No Party shall apply a customs duty to commercial samples of negligible value or to printed advertising materials imported from the territory of another Party, regardless of their origin, but a Party may require that:

(a) the samples be imported solely for the solicitation of orders for goods, or services provided from the territory, of another Party or a non-Party; or

(b) the advertising materials be imported in packets that each contain no more than one copy of each such material and that neither the materials nor the packets form part of a larger consignment.

Article 2.10: Most-Favored-Nation Rates of Duty on Certain Goods

1. Each Party shall accord most-favored-nation duty-free treatment to a good provided for under the tariff provisions set out in Tables 2.10.1, 2.10.2, and 2.10.3.

2. Notwithstanding Chapter 4 (Rules of Origin), each Party shall consider a good set out in Table 2.10.1, if imported into its territory from the territory of another Party, to be an originating good.

Table 2.10.1		
A. Automatic Data Processing Machines (ADP)		
	8471.30	
	8471.41	
	8471.49	
B. Digital Processing Units		
	8471.50	
C. Input or Output Units		
Combined Input/Output Units		
Canada	8471.60.00	
Mexico	8471.60.02	
United States	8471.60.10	
Display Units		
Canada	8528.42.00 8528.52.00	

	8528.62.00	
Mexico	8528.41.99 8528.51.01 8528.51.99 8528.61.01	
United States	8528.42.00 8528.52.00 8528.62.00	
Other Input or Output Units		
Canada	8471.60.00	
Mexico	8471.60.03 8471.60.99	
United States	8471.60.20 8471.60.70 8471.60.80 8471.60.90	
D. Storage Units		
	8471.70	
E. Other Units of Automatic Data Processing Machines		
	8471.80	
F. Parts of Computers		
	8443.99	parts of machines of subheading 8443.31 and 8443.32, excluding facsimile machines and teleprinters
	8473.30	parts of ADP machines and units thereof
	8517.70	parts of LAN equipment of subheading 8517.62
Canada	8529.90.19 8529.90.50 8529.90.90	parts of monitors and projectors of subheading 8528.42, 8528.52, and 8528.62
Mexico	8529.90.01 8529.90.06	parts of monitors or projectors of subheadings 8528.41, 8528.51, and 8528.61
United States	8529.90.22 8529.90.75 8529.90.99	parts of monitors and projectors of subheading 8528.42, 8528.52, and 8528.62
G. Computer Power Supplies		
Canada	8504.40.30 8504.40.90 8504.90.10 8504.90.20	

	8504.90.90	
Mexico	8504.40.12 8504.40.14 8504.90.02 8504.90.07 8504.90.08	parts of goods classified in tariff item 8504.40.12
United States	8504.40.60 8504.40.70 8504.90.20 8504.90.41	

Table 2.10.2	
A. Metal Oxide Varistors	
Canada	8533.40.00
Mexico	8533.40.05
United States	8533.40.40
B. Diodes, Transistors and Similar Semiconductor Devices; Photosensitive Semiconductor Devices; Light Emitting Diodes; Mounted Piezo-electric Crystals	
	8541.10
	8541.21
	8541.29
	8541.30
	8541.50
	8541.60
	8541.90
Canada	8541.40
Mexico	8541.40.01 8541.40.02 8541.40.03
United States	8541.40.20 8541.40.60 8541.40.70 8541.40.80 8541.40.95
C. Electronic Integrated Circuits and Microassemblies	
	8542
Canada	8548.90.00
Mexico	8548.90.04
United States	8548.90.01

Table 2.10.3 **Local Area Network (LAN) Apparatus**	
Canada	8517.62.00
Mexico	8517.62.01
United States	8517.62.00

Article 2.11: Import and Export Restrictions

1. Except as otherwise provided in this Agreement, no Party shall adopt or maintain any prohibition or restriction on the importation of any good of another Party or on the exportation or sale for export of any good destined for the territory of another Party, except in accordance with Article XI of the GATT 1994, including its interpretative notes, and to this end Article XI of the GATT 1994 and its interpretative notes are incorporated into and made a part of this Agreement, *mutatis mutandis*.

2. The Parties understand that GATT 1994 rights and obligations incorporated by paragraph 1 prohibit, in any circumstances in which any other form of restriction is prohibited, a Party from adopting or maintaining:

(a) an export or import price requirement, except as permitted in enforcement of antidumping and countervailing duty orders or price undertakings;

(b) import licensing conditioned on the fulfilment of a performance requirement; or

(c) a voluntary export restraint inconsistent with Article VI of the GATT 1994, as implemented under Article 18 of the SCM Agreement and Article 8.1 of the AD Agreement.

3. If a Party adopts or maintains a prohibition or restriction on the importation from or exportation to a non-Party of a good, nothing in this Agreement shall be construed to prevent that Party from:

(a) limiting or prohibiting the importation of the good of that non-Party from the territory of another Party; or

(b) requiring, as a condition for exporting the good of the Party to the territory of another Party, that the good not be re-exported to the non-Party, directly or indirectly, without being consumed in the territory of the other Party.

4. If a Party adopts or maintains a prohibition or restriction on the importation of a good from a non-Party, the Parties, on the request of a Party, shall consult with a view to avoiding

undue interference with or distortion of pricing, marketing, or distribution arrangements in another Party.

5. No Party shall as a condition for engaging in importation generally, or for the importation of a particular good, require a person of another Party to establish or maintain a contractual or other relationship with a distributor in its territory.

6. For greater certainty, paragraph 5 does not prevent a Party from requiring that a person referred to in that paragraph designate a point of contact for the purpose of facilitating communications between its regulatory authorities and that person.

7. Paragraphs 1 through 6 do not apply to the measures set out in Annex 2-A (Exceptions to Article 2.3 (National Treatment) and Article 2.11 (Import and Export Restrictions)).

8. For greater certainty, paragraph 1 applies to the importation of any good implementing or incorporating cryptography, if the good is not designed or modified specifically for government use and is sold or otherwise made available to the public.

9. For greater certainty, no Party shall adopt or maintain a prohibition or restriction on the importation of originating used vehicles from the territory of another Party. This Article does not prevent a Party from applying motor vehicle safety or emissions measures, or vehicle registration requirements, of general application to originating used vehicles in a manner consistent with this Agreement.

Article 2.12: Remanufactured Goods

1. For greater certainty, Article 2.11.1 (Import and Export Restrictions) applies to prohibitions and restrictions on a remanufactured good.

2. Subject to its obligations under this Agreement and the WTO Agreement, a Party may require that a remanufactured good:

(a) be identified as such, including through labelling, for distribution or sale in its territory, and

(b) meet all applicable technical requirements that apply to an equivalent good in new condition.

3. If a Party adopts or maintains a prohibition or a restriction on a used good, it shall not apply the measure to a remanufactured good.

Article 2.13: Transparency in Import Licensing Procedures

1. Subject to paragraph 2, each Party shall notify the other Parties of its existing import licensing procedures, if any, as soon as practicable, after this Agreement enters into force. The notification shall:

(a) include the information specified in Article 5.2 of the Import Licensing Agreement and in the annual questionnaire on import licensing procedures described in Article 7.3 of the Import Licensing Agreement; and

(b) be without prejudice as to whether the import licensing procedures are consistent with this Agreement.

2. A Party shall be deemed to be in compliance with the obligations in paragraph 1 with respect to an import licensing procedure if:

(a) it has notified that procedure to the Committee on Import Licensing established under Article 4 of the Import Licensing Agreement together with the information specified in Article 5.2 of that agreement; and

(b) it has provided the information requested in the questionnaire on import licensing procedures under Article 7.3 of the Import Licensing Agreement in its most recent submission to the Committee on Import Licensing before the entry into force of this Agreement.

3. A Party shall publish on an official government website any new or modified import licensing procedure, including any information that it is required to be published under Article 1.4(a) of the Import Licensing Agreement. To the extent possible, the Party shall do so at least 20 days before the new procedure or modification takes effect.

4. Each Party shall respond within 60 days to a reasonable inquiry from another Party concerning its licensing rules and its procedures for the submission of an application for an import license, including the eligibility of persons, firms, and institutions to make an application, any administrative body to be approached, and the list of products subject to the licensing requirement.

5. If a Party denies an import license application with respect to a good of another Party, it shall, on request of the applicant and within a reasonable period after receiving the request, provide the applicant with a written explanation of the reason for the denial.

6. No Party shall apply an import licensing procedure to a good of another Party unless the Party has complied with the requirements of paragraphs 1 or 2, and 3, with respect to that procedure.

Article 2.14: Transparency in Export Licensing Procedures

1. Within 30 days after the date of entry into force of this Agreement, each Party shall notify the other Parties in writing of the publications in which its export licensing procedures, if any, are set out, including addresses of relevant government websites on which the procedures are published. Thereafter, each Party shall publish any new export licensing procedure, or any modification of an export licensing procedure, it adopts as soon as practicable but no later than 30 days after the new procedure or modification takes effect.

2. Each Party shall ensure that it includes in the publications it has notified under paragraph 1:

(a) the texts of its export licensing procedures, including any modifications it makes to those procedures;

(b) the goods subject to each licensing procedure;

(c) for each licensing procedure, a description of:

(i) the process for applying for a license, and

(ii) any criteria an applicant must meet to be eligible to apply for a license, such as possessing an activity license, establishing or maintaining an investment, or operating through a particular form of establishment in a Party's territory;

(d) a contact point from which interested persons can obtain further information on the conditions for obtaining an export license;

(e) any administrative body to which an application or other relevant documentation is to be submitted;

(f) a description of or a citation to a publication reproducing in full any measure that the export licensing procedure implements;

(g) the period during which each export licensing procedure will be in effect, unless the procedure will remain in effect until withdrawn or revised in a new publication;

(h) if the Party intends to use a licensing procedure to administer an export quota, the overall quantity and, if practicable, the value of the quota, and the opening and closing dates of the quota; and

(i) any exemptions from or exceptions to the requirement to obtain an export license that are available to the public, how to request or use these exemptions or exceptions, and the criteria for the exemptions or exceptions.

3. Each Party shall provide another Party, upon the other Party's request and to the extent practicable, the following information regarding a particular export licensing procedure that it adopts or maintains, except when doing so would reveal business proprietary or other confidential information of a particular person:

(a) the aggregate number of licenses the Party has granted over a recent period specified in the other Party's request; and

(b) measures, if any, that the Party has adopted in conjunction with the licensing procedure to restrict domestic production or consumption or to stabilize production, supply, or prices for the relevant good.

4. This Article does not require a Party to grant an export license, or prevent a Party from implementing its obligations or commitments under United Nations Security Council Resolutions, as well as multilateral non-proliferation regimes, including: the *Wassenaar Arrangement on Export Controls for Conventional Arms and Dual-Use Goods and Technologies*; Nuclear Suppliers Group; the Australia Group; *Convention on the Prohibition of the Development, Production, Stockpiling and Use of Chemical Weapons and on Their Destruction*, done at Geneva, September 3, 1992, and signed at Paris, January 13, 1993; *Convention on the Prohibition of the Development, Production and Stockpiling of Bacteriological (Biological) and Toxin Weapons and on Their Destruction*, done at Washington, London, and Moscow, April 10, 1972; *Treaty on the Non-Proliferation of Nuclear Weapons* done at Washington, London, and Moscow, July 1, 1968; and the Missile Technology Control Regime.

5. For the purposes of this Article, **export licensing procedure** means a requirement that a Party adopts or maintains under which an exporter must, as a condition for exporting a good from the Party's territory, submit an application or other documentation to an administrative body or bodies, but does not include customs documentation required in the normal course of trade or any requirement that must be fulfilled prior to introduction of the good into commerce within the Party's territory.

Article 2.15: Export Duties, Taxes, or Other Charges

No Party shall adopt or maintain any duty, tax, or other charge on the export of any good to the territory of another Party, unless the duty, tax, or charge is also applied to the good if destined for domestic consumption.

Article 2.16: Administrative Fees and Formalities

1. Each Party shall ensure, in accordance with Article VIII:1 of the GATT 1994 and its interpretative notes, that all fees and charges of whatever character (other than customs duties, charges equivalent to an internal tax or other internal charges applied in a manner consistent with Article III:2 of the GATT 1994, and antidumping or countervailing duties) imposed on or in connection with importation or exportation are limited in amount to the approximate cost of services rendered and do not represent an indirect protection to a domestic good or a taxation of an import or export for fiscal purposes.

2. No Party shall require a consular transaction, including a related fee or charge, in connection with the importation of a good of another Party.[2]

3. No Party shall adopt or maintain a customs user fee on an originating good.[3]

Article 2.17: Committee on Trade in Goods

1. The Parties hereby establish a Committee on Trade in Goods (Goods Committee), comprising representatives of each Party.

2. The Goods Committee shall meet on the request of a Party or the Commission to consider any matter arising under this Chapter.

3. The Goods Committee shall meet at a venue and time as the Parties decide or by electronic means. In-person meetings will be held alternately in the territory of each Party.

4. The Goods Committee's functions shall include:

   (a) monitoring the implementation and administration of this Chapter;

   (b) promoting trade in goods between the Parties;

   (c) providing a forum for the Parties to consult and endeavor to resolve issues relating to this Chapter, including, as appropriate, in coordination or jointly with

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[2] For Mexico, this paragraph does not apply to the procedures for the duty-free entry of personal and household effects of natural persons relocating to Mexico.

[3] The merchandise processing fee (MPF) is the only customs user fee of the United States to which this paragraph applies. The *derecho de trámite aduanero* is the only customs user fee of Mexico to which this paragraph applies.

other Committees, working groups, or other subsidiary bodies established under this Agreement;

(d) promptly seeking to address tariff and non-tariff barriers to trade in goods between the Parties and, if appropriate, referring the matter to the Commission for its consideration;

(e) coordinating the exchange of information on trade in goods between the Parties;

(f) discussing and endeavoring to resolve any difference that may arise between the Parties on matters related to the Harmonized System, including ensuring that each Party's obligations under this Agreement are not altered by its implementation of future amendments to the Harmonized System into its national nomenclature;

(g) referring to another committee established under this Agreement those issues that may be relevant to that committee, as appropriate; and

(h) undertaking additional work that the Commission may assign, or another committee may refer, to it.

ANNEX 2-A

EXCEPTIONS TO ARTICLE 2.3 (NATIONAL TREATMENT) AND ARTICLE 2.11 (IMPORT AND EXPORT RESTRICTIONS)

Article 2.A.1: Application of Article 2.3 (National Treatment) and Article 2.11 (Import and Export Restrictions)

1. Article 2.3 (National Treatment) and Article 2.11 (Import and Export Restrictions) do not apply to the continuation, renewal, or amendment made to any law, statute, decree, or administrative regulation giving rise to a measure set out in the articles of this Annex to the extent that the continuation, renewal, or amendment does not decrease the conformity of the measure listed with Article 2.3 (National Treatment) and Article 2.11 (Import and Export Restrictions).

2. Article 2.3 (National Treatment) and Article 2.11 (Import and Export Restrictions) shall not apply to the import and export of rough diamonds (HS codes 7102.10, 7102.21, and 7102.31), pursuant to the Kimberley Process Certification Scheme and any subsequent amendments to that scheme.

Article 2.A.2: Measures of Canada

1. Article 2.3 (National Treatment) and Article 2.11 (Import and Export Restrictions) do not apply to:

(a) the export of logs of all species;

(b) the export of unprocessed fish pursuant to the following provincial laws and their related regulations:

(i) *New Brunswick Seafood Processing Act, SNB 2006, c S-5.3*, and *Fisheries and Aquaculture Development Act, SNB 2009, c F-15.001*;

(ii) *Newfoundland and Labrador Fish Inspection Act, RSNL 1990, c F-12*;

(iii) *Nova Scotia Fisheries and Coastal Resources Act, Chapter 25 of the Acts of 1996*;

(iv) *Prince Edward Island Fisheries Act, R.S.P.E.I. 1988, Cap. F-13.01, and Fish Inspection Act, R.S.P.E.I. 1988, Cap. F-1*; and

(v) *Quebec Marine Products Processing Act, CQLR c T-11.01.*

For greater certainty, notwithstanding Article 2.A.1:1 of this Annex, Article 2.3 (National Treatment) and 2.11 (Import and Export Restrictions) shall not apply to any requirements for the export of unprocessed fish authorized under the above laws and their related regulations that are not being applied upon the entry into force of this Agreement, or that are in force upon the entry into force of this Agreement but suspended after that date, and subsequently applied;

(c) the importation of goods of the prohibited provisions of tariff items 9897.00.00, 9898.00.00, and 9899.00.00 referred to in the Schedule of the *Customs Tariff,* except as otherwise provided;

(d) the use of ships in the coasting trade of Canada; and

(e) Canadian excise duties on the absolute volume of ethyl alcohol, as listed under tariff item 2207.10.90 in Canada's Schedule of Concessions annexed to GATT 1994 (Schedule V), used in manufacturing under the provisions of the *Excise Act, 2001*, Statutes of Canada 2002, c. 22, as amended.

2. Article 2.3 (National Treatment) and Article 2.11 (Import and Export Restrictions) do not apply to quantitative import restrictions on originating goods from the United States classified in tariff headings 89.01, 89.04, and 89.05, and tariff items 8902.00.10 and 8903.99.90 (of an overall length exceeding 9.2 m only) for as long as the measures adopted under the *Merchant Marine Act of 1920* and *Passenger Vessel Services Act* and 46 U.S.C. §§ 12102, 12113, and 12116, apply with quantitative effect to comparable originating goods from Canada sold or offered for sale into the U.S. market.

Article 2.A.3: Measures of Mexico

1. Paragraphs 1 through 4 of Article 2.11 (Import and Export Restrictions) do not apply to:

(a) export measures pursuant to Article 48 of the Hydrocarbons Law (*Ley de Hidrocarburos*) published in Mexico's Official Gazette (*Diario Oficial de la Federación*) on August 11, 2014, for the tariff items under the "Agreement that amends and establishes the classification and codification of Hydrocarbons and Petroleum Products subject to import and export permits by the Ministry of Energy" (*Acuerdo que modifica al diverso por el que se establece la clasificación y codificación de Hidrocarburos y Petrolíferos cuya importación y exportación está sujeta a Permiso Previo por parte de la Secretaría de Energía*) published in the Mexico's Official Gazette (*Diario Oficial de la Federación*) on December 4, 2017, subject to Mexico's rights and obligations under the WTO Agreement, including with regard to transparency and non-discriminatory treatment; and

(b) prohibitions or restrictions on the importation into Mexico of used tyres, used apparel, non-originating used vehicles, and used chassis equipped with vehicle motors set forth in paragraphs 1(I) and 5 of Annex 2.2.1 of the Resolution through which the Ministry of the Economy establishes Rules and General Criteria on International Trade (*Acuerdo por el que la Secretaría de Economía emite reglas y criterios de carácter general en materia de Comercio Exterior*) published in Mexico's Official Gazette (*Diario Oficial de la Federación*) on December 31, 2012.

Article 2.A.4: Measures of the United States

Article 2.3 (National Treatment) and Article 2.11 (Import and Export Restrictions) do not apply to:

(a) controls on the export of logs of all species; and

(b) (i) measures under existing provisions of the *Merchant Marine Act of 1920* and *Passenger Vessel Services Act* and 46 U.S.C. §§ 12102, 12113, and 12116, to the extent that such measures were mandatory legislation at the time of the accession of the United States to the General Agreement on Tariffs and Trade 1947 (GATT 1947) and have not been amended so as to decrease their conformity with Part II of the GATT 1947;

(ii) the continuation or prompt renewal of a non-conforming provision of any statute referred to in clause (i); and

(iii) the amendment to a non-conforming provision of any statute referred to in clause (i) to the extent that the amendment does not decrease the conformity of the provision with Articles 2.3 (National Treatment) and 2.11 (Import and Export Restrictions).