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TAX INTELLIGENCE

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ABSTRACT

At the start of 2023, tax policymakers are increasingly contemplating how tax law and policy could bolster U.S. foreign policy goals. The most recent proposals seek to leverage information gathered from tax reporting—what this Essay calls "tax intelligence." However, front and center in considering how tax intelligence can be used to make foreign policy is a challenge: how that information can make its way through the grinder of our foreign commerce bureaucracy in furtherance of productive outcomes. To address this challenge and amplify the promise of these proposals, this Essay offers four contributions. First, it demonstrates that these proposals make an essential move in tax that is consistent with and reinforcing of a trend in other areas of U.S. geoeconomic strategy: they urge intensified reliance on firms as subjects, inputs, targets, and collaborators in foreign policymaking. Second, it argues that commentators are underselling the intelligence value of reporting. Third, this Essay contends that a better administrative infrastructure is sorely needed for tax as well as for other foreign economic instruments to make these reporting efforts successful. Fourth, this Essay concludes that bringing tax into the toolkit could have an unexpected and ironic normalizing effect on geoeconomic policies in our regulatory system. Given that tax law is itself often considered exceptional, bringing it into the collection of emergency foreign commercial tools is likely to make these tools appear less extraordinary—for better and for worse.

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† Professor of Law, Georgetown University Law Center. Thanks to Drew Dawson, Ashley Deeks, Andrew Hayashi, Rebecca Ingber, Nicolas Lamp, Sergio Puig, and Pierre-Hugues Verdier for their comments and inspirations on prior drafts. Thanks also to the terrific editorial team, especially John Addy, of the *Duke Law Journal*.

INTRODUCTION

In recent years, the United States has increasingly relied on unilateral economic tools rather than military pressure to achieve foreign policy outcomes.[1] This geoeconomic toolkit is diverse.[2] It includes financial sanctions, export controls, and investment review mechanisms among others.[3] Despite these already many instruments, policymakers have still called for more.[4] Rarely, however, do they speak of the power of the tax law system to achieve these goals—until recently.[5]

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1. *See generally* Elizabeth Rosenberg, Peter Harrell, Paula J. Dobriansky & Adam Szubin, *America's Use of Coercive Economic Statecraft*, CTR. FOR A NEW AM. SEC. (Dec. 17, 2020), https://www.cnas.org/publications/reports/americas-use-of-coercive-economic-statecraft [https://perma.cc/8QH8-37JM] (reporting on these tools and others).

2. I use the term "geoeconomics" to describe the use of economic instruments for geopolitical priorities. The term has recently experienced a renaissance, albeit with a negative connotation. For a useful overview of the concept in scholarship and in practice, see Anthea Roberts, Henrique Choer Moraes & Victor Ferguson, *Geoeconomics: The Variable Relationship Between Economics and Security*, LAWFAREBLOG (Nov. 27, 2018), https://www.lawfareblog.com/geoeconomics-variable-relationship-between-economics-and-security [https://perma.cc/XK6T-D74A].

3. *See generally Sanctions Programs and Country Information*, U.S. DEP'T OF THE TREASURY, https://home.treasury.gov/policy-issues/financial-sanctions/sanctions-programs-and-country-information [https://perma.cc/JVQ2-BVVU]; IAN F. FERGUSSON & PAUL K. KERR, CONG. RSCH. SERV., R41916, THE U.S. EXPORT CONTROL SYSTEM AND THE EXPORT CONTROL REFORM INITIATIVE (2020); *The Committee on Foreign Investment in the United States (CFIUS)*, U.S. DEP'T OF THE TREASURY, https://home.treasury.gov/policy-issues/international/the-committee-on-foreigninvestment-in-the-united-states-cfius [https://perma.cc/Z3J5-G89R] [hereinafter U.S. DEP'T OF THE TREASURY, *CFIUS*].

4. *See, e.g.*, David Lawder, *USTR says new trade tools needed to fight China state-led trade*, REUTERS (Feb. 17, 2022), https://www.reuters.com/business/ustr-says-new-trade-tools-needed-fight-china-state-led-trade-2022-02-16 [https://perma.cc/7KFG-NRWE]; TESTIMONY OF U.S. TRADE REPRESENTATIVE AMBASSADOR KATHERINE TAI, SEN. FIN. CMTE. (Mar. 31, 2022) ("[D]espite our enforcement efforts, many of our existing trade tools were crafted decades ago. In some cases, they do not adequately address the challenges posed by today's economy. We are reviewing our existing trade tools and will work with Congress to develop new tools as needed."); *Tai calls for new tools, joint action in tackling overcapacity*, INSIDE U.S. TRADE (Nov. 2, 2021), https://insidetrade.com/daily-news/tai-calls-new-tools-joint-action-tackling-overcapacity [https://perma.cc/LR66-GGVS]; David Lawder, *U.S. trade chief: new legal tools needed to combat future China threats*, REUTERS (May 13, 2021), https://www.reuters.com/world/us/us-trade-chief-tai-says-time-is-essence-china-trade-review-2021-05-13/ [https://perma.cc/XA9J-JJLH].

5. Two exceptions, among a handful of others this short Essay cannot comprehensively survey, are those tax laws instituted several years ago in support of outbound investment in developing countries and laws that seek to penalize engagement with terrorist activity. For an overview of the former, see generally Karen Brown, *Missing Africa: Should U.S. International Tax Rules Accommodate Investment in Developing Countries?*, 23 U. PA. J. INT'L ECON. L. 45 (2002); on the latter, see Scott Greenberg, *Sometimes, Tax Policy is Also Foreign Policy*, TAX FOUND. BLOG (Sept. 24, 2015), https://taxfoundation.org/sometimes-tax-policy-also-foreign-policy [https://perma.cc/4JQP-CH8V]. I focus here on unilateral efforts by the U.S. government, which are apart from important efforts to develop a global minimum tax through an international

Responding to these calls, both Congress and academic commentators have advanced new possibilities in 2022 and 2023 for tax measures to support foreign policy goals. With respect to positive tax inducements, Congress has delegated new authority to the Internal Revenue Service (IRS) to provide credits that would incentivize manufacturers to leave China and carry out their production activities in allied trading partners.[6] For example, the IRS and the Treasury Department are now seeking to implement the Inflation Reduction Act that provides credits to producers that operate on the territory of U.S. allies.[7] These moves have pitted tax against international trade rules but ultimately seek to shore up the clean vehicle supply chains within North America—referred to as "friend-shoring"—central to the Biden Administration's foreign and green policy goals.[8]

On the punitive tax sanctions side, commentators have proposed that the Biden Administration ought to impose border taxes on carbon-intensive steel imports.[9] Timothy Meyer and Todd Tucker argue that using a national security-premised border tax based on carbon outputs could likewise help to achieve climate security imperatives.[10]

When it comes to income taxes, scholars and Biden Administration officials have suggested that the income tax system presents an overlooked and underutilized opportunity for achieving foreign policy and national security aims more efficiently.[11] Ashley

agreement. *See, e.g.*, Kimberly Clausing, *The Global Minimum Tax Lives On: America Has Abandoned It for Now but Will Likely Come Around*, FOREIGN AFFS. (Aug. 17, 2022), https://www.foreignaffairs.com/united-states/global-minimum-tax-lives [https://perma.cc/96PP-YSNJ].

6. Inflation Reduction Act, 136 Stat. 1818, 1956 (2022) (providing auto producers with a tax credit where they rely on critical minerals extracted or processed in the United States or "in any country with which the United States has a free trade agreement in effect").

7. Doug Palmer, *Biden Admin Bows Slightly to European Pressure in Trade Clash*, POLITICO (Dec. 29, 2022), https://www.politico.com/news/2022/12/29/u-s-treasury-signals-some-flexibility-on-ev-tax-credit-00075783 [https://perma.cc/UK6K-8G7V].

8. *See* Edward Alden, *Biden's 'America First' Economic Policy Threatens Rift With Europe*, FOREIGN POL'Y (Dec. 5, 2022), https://foreignpolicy.com/2022/12/05/biden-ira-chips-act-america-first-europe-eu-cars-ev-economic-policy/ [https://perma.cc/E8J9-DL4Q] (discussing friend-shoring and green policy goals).

9. *See, e.g.*, Jennifer Hillman, *Changing Climate for Carbon Taxes: Who's Afraid of the WTO?*, CLIMATE & ENERGY POL. PAPER SERIES (July 2013), https://scholarship.law.georgetown.edu/cgi/viewcontent.cgi?article=3048&context=facpub [https://perma.cc/93X8-REDE].

10. Margaret Spiegelman, *Analysts: Section 232 could provide a path to greener steel*, INSIDE U.S. TRADE (Dec. 27, 2022), https://insidetrade.com/daily-news/analysts-section-232-could-provide-path-greener-steel [https://perma.cc/N473-ZTZL].

11. *See generally, e.g.*, Ashley Deeks & Andrew Hayashi, *Tax Law as Foreign Policy*, 170 U. PENN. L. REV. 275 (2022).

Deeks and Andrew Hayashi posit that adding new types of penalties to the income tax code would enable the U.S. government to reach more foreign targets, create different points of leverage, and be more flexible while also subject to less foreign scrutiny than with its use of the other tools adopted by the last two administrations.[12]

This Essay focuses on a subsidiary idea to these recent proposals: increased tax reporting by private actors, or, what I call, tax intelligence. Each of these proposals seeks not only to capitalize on revenue and to alter behavior by corporate and state actors but also to exploit the wealth of *information* these requirements could provide.[13] It is this idea that holds especially significant potential for successfully contributing to foreign policy, if done well.

Long valued in our domestic tax system,[14] reporting on commercial and regulatory conduct, business connections, and transaction details is prized now also in foreign commercial policy in areas outside of tax. While this aspect of the recent proposals may be its most promising, it is also its most demanding—demanding for business and demanding for bureaucrats. Moreover, collecting vast swathes of foreign-related material also creates a challenge: how to *use* that information in the development of future policies.

Managing intelligence is not a new dilemma,[15] but this moment stands out for two notable features: first, the recent reliance on private firm reporting as a principal information source for foreign policy lawmakers, and, second, the multiple new reporting streams that the U.S. government is building for it to collect private sector information. From the outside, the way corporate-collected intelligence moves through the grinder of our administrative state remains a mystery. Not only do we have very little knowledge of how reported information is handled, but we have even less information about how it serves as an *input* in policymaking—and that is the case even before we add

12. *Id.* at 319–26.

13. *See infra* Part II.

14. *See generally, e.g.*, Israel Klein, *Contemptuous Tax Reporting*, 2019 WIS. L. REV. 1161 (raising concern about managers abusing tax self-reporting); Jacob L. Todres, *Torts, Tax Reporting, and Preemption: Is There Tort Liability for Incorrect Information Reports?*, 28 J. CORP. L. 259 (2002) (examining whether tort liability can apply to issuers of incorrect tax reporting information); Gil B. Manzon Jr. & George A. Plesko, *The Relation between Financial and Tax Reporting Measures of Income*, 55 TAX L. REV. 175 (2001) (exploring the differences between various measures of reported income).

15. *See generally* R.M. SHELDON, ESPIONAGE IN THE ANCIENT WORLD: AN ANNOTATED BIBLIOGRAPHY OF BOOKS AND ARTICLES IN WESTERN LANGUAGES (2008) (collecting sources on how intelligence has been dealt with in various societies throughout history).

enhanced income tax reporting to the mix. These moves will likely lead to the production of actionable intelligence upon which government actors can rely to inform foreign policy decisions.

Examining how information makes its way through our foreign commerce bureaucracy has both legal and administrative components. The geoeconomics toolkit is expansive and the administrative state required to manage it complex. Yet, we lack a statutory and regulatory infrastructure to process the reports that those agencies receive. Because most foreign policy choices are not subject to administrative, judicial, or public review, the pathways are necessarily non-transparent and, therefore, difficult to evaluate.[16] The proper cultivation of that information demands a further inquiry into the capacity of federal agencies to do that important work.

This Essay makes four contributions, in brief. First, I argue that recent proposals for using tax as foreign policy make an essential move not often recognized in foreign relations scholarship, even if fundamental to our tax system and on the rise in other recent foreign economic programs: they spotlight intensified reliance on private sector actors as subjects, inputs, targets, and collaborators in foreign policymaking. These tax proposals are consistent with and representative of this broader understudied shift. Firms are now very much at the center of U.S. agencies' foreign commercial efforts.

Second, among the several contributions that these proposals may make to foreign policy is that of increased reporting by commercial actors about their activities abroad, and this contribution is undervalued.[17] Information regarding supply chain structure, contractual relationships, and foreign institutional structures inform how foreign-facing agencies make programmatic, normative, and strategic decisions. Rather than simply collect revenue and incentivize company choices, additional tax requirements are likely to yield intelligence that enhances the work of clandestine operations. There is potential for much more than what the Tax Code demands at present,

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16. *See generally* Ashley Deeks, *Secret Reason-Giving*, 129 YALE L.J. 612 (2020) (discussing the administrative law challenges in national security); Elena Chachko, *Due Process is in the Details: U.S. Targeted Sanctions and International Human Rights Law*, 113 AM. J. INT'L L. UNBOUND 157 (2019) (reviewing the procedural protections, or lack thereof, in the Treasury Department's sanctions practice).

17. In their 2022 article, Ashley Deeks and Andrew Hayashi view tax rules primarily as a means to effect behavioral change through tax enforcement, but they recognize also the value of "collect[ing] information on the results without triggering adverse consequences." Deeks & Hayashi, *supra* note 11, at 328.

contingent on how burdensome or interventionist policymakers wish to make such rules.

Third, I argue that the lack of an administrative substructure to facilitate the transition from reporting to action is a major oversight that is critical to the success of tax intelligence, and for several other foreign policy reporting initiatives now underway. Despite all the demands for "more tools" to address global economic problems by both the executive and legislative branches, policymakers do not at the same time emphasize the importance of building a regulatory framework to safeguard rule of law values, organize collaboration across agencies, operationalize review procedures, calibrate transparency demands, or translate the information gleaned from these tools into thoughtful foreign policy. I begin that heavy lifting by highlighting the tradeoffs and critical choices that ought to be made as part of this institutional design exercise.

Finally, and maintaining my focus on the administrative state, I contend that bringing in tax would have an unexpected normalizing effect on the perception of the exceptional tools, such as financial sanctions and export controls, in our geoeconomic regulatory system. Implementing ideas such as the income tax sanction might well enable these special approaches to foreign policy problems to become more accepted tools of cross-border engagement, especially as they share strategies and coordinate around the information they receive. It is ironic that tax, so often seen as the exceptional field, would normalize an otherwise exceptional toolkit, but doing so is likely to contribute to that result—for better and for worse.

I. THE TURN TOWARD FIRM-CENTRIC FOREIGN POLICY

At the core of the most recent and innovative tax-as-foreign-policy ideas is an emphasis on the role of private sector actors, and particularly corporations and organizations. Firms have taken center stage in much of U.S. foreign commerce policymaking, as agencies increasingly turn their attention to the work of these companies in the global marketplace in novel ways.[18] This is not an aberration; rather,

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18. This trend is not limited to the United States. The European Union and other allies of the United States have recently considered or implemented similar initiatives. For a discussion regarding these and other efforts, see generally Victor A. Ferguson, *Economic Lawfare: The Logic and Dynamics of Using Law to Exercise Economic Power*, 24 INT'L STUD. REV. 3 (2022); Abraham Newman & Henry Farrell, *Weaponized Interdependence: How Global Economic Networks Shape State Coercion*, 44 INT'L SEC. 42 (2019).

the emphasis on firms in recent tools is an important shift in international economic law.

Appreciating the significance of this firm-directed turn requires a preliminary understanding of the governing paradigm before now. The foundation of our foreign commercial system, of which tax is a part, rests on state-made rules.[19] It is a public law system in which other public actors are the primary interlocutors. States have committed to shared rules in which they promise to reduce barriers to cross-border commerce, to maintain certain domestic checks and balances, to turn to collective action, and, where they differ with respect to certain measures, to settling disputes between one another through international arbitration.[20] In short, the United States and its foreign partners constructed a system that committed governments to particular mandates and then relied on those governments to impose regulatory changes on their companies.[21] This regime involves a transnational two-step: states agree to rules and states then ensure that their domestic law is consistent with those rules. While private actors may seek to influence rulemaking,[22] states retain control of the rules at both the international and the domestic level and manage those bargains carefully.

In practice, the international economic law regime has grown far more diverse than the prior description would suggest. In the last five years, states have begun to shift more of their attention, first, from rules to tools and, second, from reciprocal state arrangements to direct action—but not toward one another. Rather, they are acting against and toward corporations through export controls, limitations on transactions, import bans, financial sanctions, higher border taxes and much more across the field. This shift is in part motivated by disillusionment with traditional public international law organizations, such as the World Trade Organization, and it contributes to a lesser reliance on those multilateral institutions.[23]

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19. *See* Steve Charnovitz, *What is International Economic Law?*, 14 J. INT'L ECON. L. 3, 3–7 (2011).

20. *Id.*

21. *See, e.g.*, JOOST H.B. PAUWELYN, ANDREW T. GUZMAN & JENNIFER A. HILLMAN, INTERNATIONAL TRADE LAW 84, 103 (Aspen Casebook Series 2016) (noting that WTO agreements are like contracts binding countries to certain trade policies and that specific commitments often deal directly with market access of particular goods and services providers).

22. *See* Kathleen Claussen, *Trade Policing*, 65 HARV. INT'L L.J. (forthcoming 2024) (manuscript at 15) (on file with author).

23. *Id.* (manuscript at 8).

Throughout international economic law, states are turning to the private sector—not necessarily because of something those private actors did, although that is sometimes the case, but also as a means of influencing state behavior, among other goals. Firms have a myriad of parts to play in this collaboration. They are targets for compliance, partners in market-related movements, agents in supply chain re-calibrations, intermediaries to get states and other major foreign actors to make like choices, and, more recently as I take up in Part II, sources of information.

One sees evidence of this turn in the new United States-Mexico-Canada Trade Agreement (USMCA).[24] The Agreement alters the premise of its predecessor agreement, the North American Free Trade Agreement (NAFTA), by skipping diplomacy and going straight to corporate governance and accountability. It provides a way for the three governments to enforce the agreement not only against one another but also against companies operating in the territory of another party.[25] The mechanism to which I refer permits the United States to impose penalties against an individual worksite in Mexico—rather than against the Mexican government as would have been the case under NAFTA—where the United States believes that workers at that plant are being harmed and unable to bargain collectively.[26] The United States may stop shipments of goods from that worksite at the U.S.-Mexico border and refuse them entry until this labor matter is resolved. And then the U.S. government may work together with the Mexican company to verify the realization of international labor rights at the worksite. This shift to direct corporate engagement and enforcement rather than holding governments accountable for the administration of their domestic law has been widely heralded by commentators and civil society for its progressiveness.[27]

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24. Agreement Between the United States of America, the United Mexican States, and Canada, Nov. 30, 2018, OFF. OF THE U.S. TRADE REPRESENTATIVE, https://ustr.gov/trade-agreements/free-trade-agreements/united-states-mexico-canada-agreement/agreement-between [https://perma.cc/5XG7-3C3P] [hereinafter USMCA].

25. USMCA, Chp. 31, Annexes 31-A, 31-B. This is a fundamental change in what I elsewhere call "trade policing." Claussen, *supra* note 22 (manuscript at 2). Under the USMCA Rapid Response Mechanism, as in other new tools, governments are able to reach companies directly and to enforce foreign law against them. *Id.*

26. The tool works in both directions: Mexico could bring the same action against companies in the United States. *See* USMCA, Chp. 31, Facility-Specific Rapid Response Mechanism Annex (describing it as a tool between the United States and Mexico).

27. *See, e.g.*, Press Release, Jimmy Panetta, Congressman Panetta Releases Statement on the Deployment of USMCA Enforcement Measure (May 12, 2021), https://panetta.house.gov/

Another example may be found in the work of the Committee on Foreign Investment in the United States (CFIUS). CFIUS is the clearinghouse for transactions involving foreign entities that have an impact on U.S. national security.[28] This statutory mechanism allows the government, led by the Treasury Department, to stop such a transaction before the investment is made. Although the CFIUS investment review mechanism is largely a voluntary process, Congress and the agencies involved in CFIUS have introduced mandatory filing requirements for companies involved in takeovers or mergers with foreign actors.[29] For instance, parties to a covered transaction are required to file a declaration if the transaction involves a U.S. business that produces, designs, tests, manufactures, fabricates or develops one or more "critical technologies" that are either used by the U.S. business or designed for us in one of 27 industries set out in the regulation.[30] The declaration then triggers a review by the agencies into relevant equities and security risks.[31] Designed to create visibility for the government enabling it to protect U.S. innovation, CFIUS obligates foreign investors and U.S. companies contemplating a transaction or a joint venture arrangement that involves a foreign party to evaluate the applicability of CFIUS review as part of their due diligence exercise.[32]

These examples are just two among many institutional designs now under consideration or in implementation across U.S. commercial policymaking that work with companies, rather than governments, and

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media/press-releases/congressman-panetta-releases-statement-deployment-usmca-enforcement-measure [https://perma.cc/QNN6-38HJ] (celebrating the use of the RRM); Ranking Member's News, *Wyden Statement on USTR's Action to Block Illegal Timber Imports from Peru*, SENATE COMM. ON FIN. (July 26, 2019), https://www.finance.senate.gov/ranking-members-news/wyden-statement-on-ustrs-action-to-block-illegal-timber-imports-from-peru [https://perma.cc/HY8P-WYKH] (praising the USTR's use of the tool).

28. *See* CATHLEEN D. CIMINO-ISAACS, CONG. RSCH. SERV., RL33388, THE COMMITTEE ON FOREIGN INVESTMENT IN THE UNITED STATES (2018).

29. *See* Foreign Investment and National Security Act of 2007 (FINSA), Pub. L. No. 110-49 § 2(b)(2)(A), 121 Stat. 246, 247 (July 26, 2007). Law firms advise clients extensively on these requirements. *See, e.g.*, Christine Daya, Nicholas Klein, Sarah E. Kahn, Karla Cure & Matthew Larson, *New CFIUS Regulations Change Mandatory Filing Requirements and Increase the Importance of US Export Controls*, DLA PIPER (Sept. 30, 2020), https://www.dlapiper.com/en/us/insights/publications/2020/09/new-cfius-regulations-change-mandatory-filing-requirements/ [https://perma.cc/EJ4V-APPK].

30. FINSA § 2; 31 C.F.R. § 800 app. B.

31. *See* U.S. DEP'T OF THE TREASURY, *CFIUS*, *supra* note 3.

32. *See, e.g.*, *CFIUS Overview*, COOLEY LLP, https://www.cooley.com/services/practice/export-controls-economic-sanctions/cfius-overview [https://perma.cc/5YUY-LTK2] (advising clients to consult counsel for this purpose).

similar programs can be found in other countries.[33] Governments in Europe and the European Union have explored new corporate due diligence schemes that would put additional demands on cross-border companies, particularly where other governments will not police these troublesome activities.[34] Other G20 countries are considering expanding the USMCA labor model to other trade agreements.[35]

Collectively, these firm-centered designs signal a sea change in international economic law. Governments are turning progressively more toward companies to effectuate better their foreign policy goals.[36] Constructing tax sanctions and credits in the ways presently under discussion is consistent with and reinforcing of the new paradigm.

II. The Information Game

Among the several motivations surrounding this turn toward firms is the need for and interest in information. This Part first outlines how reporting is an important component of the work of our cross-border commercial bureaucracy within and beyond tax. Outside of tax, agencies are actively demanding companies share the details about all their contract partners, the origins of their raw materials, and the terms of certain corporate transactions. That information is not just information for information's sake, but also for government actors to consider how to shape economic resilience policy, among other public goals.[37]

33. For one study canvassing CFIUS-like tools, see UNCTAD, NATIONAL SECURITY-RELATED SCREENING MECHANISMS FOR FOREIGN INVESTMENT (2019). Note also that in the cybersecurity space, private sector security firms and corporations more generally are increasingly relied upon for information and information-sharing with the U.S. government. Those reporting streams are typically more informal, but some are also contractual and mandatory.

34. *See, e.g.*, Richard Vanderford, *EU Looks to Follow Tough U.S. Action on Forced Labor*, WALL ST. J. (Oct. 31, 2022), https://www.wsj.com/articles/eu-looks-to-follow-tough-u-s-action-on-forced-labor-11667208602 [https://perma.cc/8BY6-TFEC]; *The New German Supply Chain Due Diligence Act (LkSG) – What Needs to Be Done*, RÖDL & PARTNER (Jan. 2, 2023) https://www.roedl.com/insights/supply-chain-act-due-diligence-obligations [https://perma.cc/GF3N-DLY9] (explaining the recent German law intended to enhance corporate social responsibility).

35. Interview with G20 Government Official (July 15, 2022).

36. There are several reasons for this shift, including limitations on state-to-state negotiations and on dispute settlement to achieve politically important goals, and likewise numerous effects of it that space does not permit me to rehearse here.

37. *See, e.g.*, Massimiliano Cali, Devaki Ghose, Michele Ruta & Angella Faith Montfaucon, *Can Trade Policy Reforms Improve Resilience to Economic Shocks*, WORLD BANK BLOG (Jan. 19, 2023), https://blogs.worldbank.org/developmenttalk/can-trade-policy-reforms-improve-resilience-economic-shocks [https://perma.cc/5ZFT-Z5C3]; Ambassador Sarah Bianchi, *Building Resilient and Secure Supply Chains Through Trade*, OFF. OF THE U.S. TRADE REPRESENTATIVE

Current law on tax reporting is designed to influence company operations but it also serves as a valuable input in rulemaking and future tool development—as intelligence.[38] Some parts of our tax regime already require some type of foreign policy reporting. For example, Section 999 requires any person that has "operations in, or related to"[39] a country or with its companies or nationals, to report their operations to the IRS if that country requires participation in an unsanctioned boycott to do business there.[40] Increased reliance on tax intelligence could prove useful in foreign policy decisionmaking across the foreign commerce bureaucracy if harnessed for this purpose. This move flips the current proposals on their head—they are not just "tax law *as* foreign policy" but also "tax law *for* foreign policy."

Second, this Part addresses the gap in the present playbook on reporting. The U.S. government increasingly relies on reporting, and adding more tax reporting would supply still more information. But turning that intelligence into action remains underdiscussed. There is almost no contemplation about whether and how agencies might share and mutually benefit from a centralized information system. I argue that the time is ripe for that policy exploration.

A. Reporting and Processing

Reporting is a principal part of the firm-centric paradigm shift.[41] It also creates significant burdens on both the private side and the public

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BLOG (Apr. 2022), https://ustr.gov/about-us/policy-offices/press-office/blogs-and-op-eds/2022/april/building-resilient-and-secure-supply-chains-through-trade [https://perma.cc/9YSU-X753].

38. Although the term "intelligence" is typically reserved for information collected through covert means regarding national adversaries, I use it here in its more colloquial expansion.

39. 26 U.S.C. § 999(a)(1).

40. The Treasury Department publishes each quarter a list of countries that require cooperation with an unsanctioned boycott. *See, e.g.*, List of Countries Requiring Cooperation with an International Boycott, 87 Fed. Reg. 145 (Jan. 3, 2022). Deeks and Hayashi note that Section 999 provides a way for Treasury to monitor activities in target jurisdictions and serves as a complement to qualitative information gathering efforts by intelligence professionals and other government officials. Deeks & Hayashi, *supra* note 11, at 307–09.

41. To be sure, financial institutions have long required companies to make certain disclosures in their corporate filings. It is also a longstanding topic in corporate governance generally. *See generally* Stuart H. Deming, *FCPA Prosecutions: The Critical Role of the Accounting and Recordkeeping Provisions*, ABA BLT BLOG (Aug. 20, 2010), https://www.americanbar.org/groups/business_law/publications/blt/2010/08/06_deming/ [https://perma.cc/3HMT-HTJQ] (discussing prosecutors' increasing use of the FCPA's accounting and recordkeeping provisions); Troy Paredes, *After The Sarbanes-Oxley Act: The Future of the Mandatory Disclosure System* (Wash. U. St. Louis Sch. of L. Faculty Working Paper Series, Paper No. 03-10-04), http://ssrn.com/abstract=464381 [http://ssrn.com/abstract=464381] (reviewing the Sarbanes-Oxley Act's

side. On the private side, the onus of gathering and presenting to the government detailed activity and supply chain information takes a toll on the bottom line. Companies must peer into their operations and business partner communities to report as required by law. Businesses are likely to be opposed to new requirements, especially as those sets of requirements are growing in multiple directions. For small- and medium-sized businesses or for individuals, that burden may be overwhelming. On the public side, more staff are needed to manage and review that information. Once reviewed, operationalizing what has been received may be cumbersome or even legally restricted because it contains personally identifiable information or for other reasons.

These challenges are not unique to tax reporting.[42] As noted above, intelligence-gathering through informational reporting is a primary feature of several foreign commercial initiatives and not always as just a byproduct. In addition to CFIUS and USMCA mentioned above, extensive reporting is required in foreign procurement law to participate in preference programs of the U.S. government,[43] as well as in customs law, where reporting on supply chains is mandated as a condition for entry.[44] The Buy America program now demands that companies provide detailed information about all the inputs in their supply chains to be eligible for federal government purchasing.[45] The recently enacted Uyghur Forced Labor Prevention Act obligates companies doing business with inputs from

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system of mandatory disclosures). I am referring throughout this Part instead to information that is shared with agencies acting not in an oversight capacity.

42. For a detailed study of mandatory disclosure and why it rarely works to achieve regulatory goals, see generally OMRI BEN-SHAHAR & CARL E. SCHNEIDER, MORE THAN YOU WANTED TO KNOW (Princeton Univ. Press, 2014) ("'Mandated disclosure' may be the most common and least successful regulatory technique in American law.").

43. *See Biden-Harris Administration Issues Proposed Buy American Rule, Advancing the President's Commitment to Ensuring the Future of America is Made in America by All of America's Workers*, WHITE HOUSE (July 28, 2021), https://www.whitehouse.gov/briefing-room/statements-releases/2021/07/28/fact-sheet-biden-harris-administration-issues-proposed-buy-american-rule-advancing-the-presidents-commitment-to-ensuring-the-future-of-america-is-made-in-america-by-all-of-americas/ [https://perma.cc/9848-DZDY] (describing new reporting requirements featured in a notice of proposed rulemaking).

44. Generally, disclosures are central to customs practice. *See generally* Shara Aranoff, Alexander Chinoy & Nicolle Wainer, GLOBAL POL'Y WATCH (July 5, 2022), https://www.globalpolicywatch.com/2022/07/voluntary-disclosures-to-cbp-what-importers-need-to-know-about-the-changing-landscape/ [https://perma.cc/R6E8-CQFG] (describing the importance of accurate disclosures to U.S. Customs and Border Protection).

45. *See* WHITE HOUSE, *supra* note 43; Office of Management and Budget (@OMBPress), TWITTER (July 29, 2022, 10:16 AM), https://twitter.com/OMBPress/status/1553021721757745154 [https://perma.cc/6V9G-U2JL] (discussing the progress made on the Made in America agenda).

China to submit information about their collaborators and partners.[46] These tools mandate the production of detailed information if businesses want to be part of a foreign commercial program or be able to import their goods into the United States. Others include export controls (where information must be provided to get a license to export) and discriminatory tariffs (where companies seek reduced tariff treatment by providing extensive information about their work and product).[47] Across several agencies, the foreign commerce bureaucracy is now in the business of collecting cross-border private sector intelligence.[48] Tax intelligence would extend the U.S. government's reach even farther to those companies required to file tax returns, regardless of their capitalization of individual federal procurement programs, their scrutiny for specialized investment transactions, or their operations in places touched by trade law innovations.

A central question that remains unanswered is: what happens next to that information? Reports come in but there is often no clear plan as to what follows. Who reviews the reported information or has access to it? How quickly? For what purpose? Where is it stored?

It is not difficult to guess how some agencies might wish to use the extensive data provided by the private sector. The data may be useful internally to answer a question or to guide expertise within the agency that is soliciting the information. Alternatively, information may apply to broader government planning. For example, some reporting might be useful for the development of industrial policy designed to enhance supply chain resilience or re-shoring. In other instances, reporting may provide transparency on critical infrastructure vulnerabilities and insights into adversary exploitation of that infrastructure. Reported information could be used to inform not just economic but also military decisionmaking. It could likewise lead to enforcement actions against third parties known to be violating U.S. criminal law. These are some

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46. Under the Uyghur Forced Labor Prevention Act, companies importing goods must provide extensive information for review to avoid seizure of their goods at the border. *See Importer Guidance*, U.S. CUSTOMS & BORDER PROTECTION, https://www.cbp.gov/trade/forced-labor/UFLPA [https://perma.cc/PXK5-FY74].

47. *See generally* KAREN M. SUTTER & CHRISTOPHER A. CASEY, CONG. RSCH. SERV., IF11627, U.S. EXPORT CONTROLS AND CHINA (2022) (providing background on U.S. export controls and the export licensing process with respect to trade with China); Section 232 Steel and Aluminum Tariff Exclusions Process, 85 Fed. Reg. 81060 (Dec. 14, 2020) (discussing and adjusting the process by which companies may apply for exclusions from steel and aluminum tariffs).

48. Claussen, *supra* note 22 (manuscript at 23–33).

of the many possible outcomes for the analysis of private sector reporting with impacts on economic, social, defense, and criminal law enforcement priorities. As noted above, information collection and processing are not new concepts and key agencies already do this work as a matter of course.[49] In the foreign commercial policymaking area, however, internal regulatory cooperation and policy planning have become far more complicated than they used to be in a very short period, and the intelligence remains largely siloed.

B. Our Geoeconomic Regulatory State

More agencies today are engaged in foreign commercial lawmaking than ever before. The Treasury Department, the Commerce Department, the State Department, the Office of the U.S. Trade Representative, and the Department of Homeland Security are only some of the actors doing this work.[50] The IRS has a small role under the current legal framework in which it operates. Next-generation reporting as a consequence of the imposition of new tax initiatives could feed into this shared cross-agency activity, although doing so may be difficult given that the primary mission of the IRS appears to be so far removed from traditional foreign policy goals. As it turns out, the foreign commerce bureaucracy is not well organized, or even bounded, and it is unwieldy.

Despite the many actors involved, we lack a dedicated intelligence plan among the economic agencies for the purpose of processing private sector information reported to each of them under bespoke statutory regimes. Political scientists and international relations scholars have long considered how to handle traditional intelligence within the foreign policy apparatus.[51] More work is needed to examine how lessons learned in those contexts might carry over to this evolving space.

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49. *See, e.g.*, *supra* notes 43–44 and accompanying text.

50. One observer has concluded that trade bureaucrats can be found in "almost every department." James A. Peyser, *Executive Organization and International Trade*, 2 INT'L TAX & BUS. L. 138, 139 (1984).

51. *See generally, e.g.*, STEPHEN MARRIN, INTELLIGENCE ANALYSIS AND DECISION-MAKING: METHODOLOGICAL CHALLENGES (2008); Robert Jervis, *Why Intelligence and Policymakers Clash*, 125 POL. SCI. Q. 185 (2010) (describing how and why rifts appear between policymakers and the traditional intelligence community); *see also* Michael Herman, *Diplomacy and Intelligence*, 9 DIPLOMACY & STATECRAFT 1 (1998) (outlining the similarities, differences, and potential conflicts between the fields of diplomacy and intelligence); ABBY STODDARD, HUMANITARIAN ALERT: NGO INFORMATION AND ITS IMPACT ON US FOREIGN POLICY ch. 2 (2006) (describing the role of NGOs in collecting information for use by policymakers).

Some evidence suggests that agencies have sought to adapt, attempting to more readily develop and act upon self-cultivated intelligence. A few agencies have recognized the logistical shortcomings they face. As new tasks fell to U.S. Customs and Border Protection, the agency requested—and was granted—300 new staff lines and millions of dollars to process and evaluate the information provided by importers.[52] But there is little coordination from the top or bottom. Policymakers have dialed up the reporting and intelligence gathering without likewise scaling up the bureaucratic coordination or the support system to accommodate it.

It need not be this way. A reasonably straightforward menu presents itself: building a sufficient regulatory framework could include the creation of a centralized agency to receive and process such intelligence or the delegation of that authority to an existing agency such as the Central Intelligence Agency. It could be assigned to a new inter-agency group somewhat like CFIUS whereby each agency would maintain and handle its own intelligence, but certain key areas would be better administered. The National Security Council, based within the Executive Office of the President, could serve as the clearinghouse, though it would likely face capacity constraints in doing so.[53] These prospective plans may require installing a watchdog of some variety to ensure due process protections are upheld and that privacy and data protections assured. Coordinating across the reporting system also requires some means by which to examine whether agencies are collecting the right information to create coherent policy outcomes. Each of these options has benefits and drawbacks. To determine what structure makes sense, and how much centralization would be useful, policymakers and commentators ought to map out the present and planned streams of information. At the crux of this widespread effort are clearer divisions of authority and communication.

Fundamental to resolving issues about administrative management is asking what kind of foreign economic policy regime would serve U.S. interests. What should our geoeconomic regulatory system look like? Is it different from the rest of the regulatory system? Intelligence gleaned through reporting could serve as inputs to broader macro policies organized by the administration and it could likewise

52. U.S. DEP'T OF HOMELAND SEC., BUDGET REQUEST FY 2023 34–35.

53. *See* JOHN W. ROLLINS, CONG. RSCH. SERV., R44828, THE NATIONAL SECURITY COUNCIL: BACKGROUND AND ISSUES FOR CONGRESS 8 (2022) (noting that in the National Defense Authorization Act for Fiscal Year 2017, Congress limited the NSC staff to 200 persons).

provide inputs to micro-level, civil-servant engagement—or still something in between. Answering these questions is essential to designing a set of institutions that achieves the aims set out for it and the competing claims for its time. The first step is to inventory them, as I have begun here.

III. TAX NORMALIZATION(S)

I have argued that relying more on tax rules to achieve foreign policy aims holds considerable promise for the intelligence it would provide—so long as that intelligence is thoughtfully managed and its processing well organized. To bring tax into the geoeconomic regulatory fold is not just about institutional design, however; it also means making income tax provisions more mainstream in foreign economic initiatives. Part of that effort will be facilitated by the resemblance of this approach to the broader firm-centric turn among foreign economic programs described in Part I.

When viewed through this lens, these recent proposals may support a rare anti-tax-exceptionalism argument. The pitch is that tax law can be used like other areas of economic law—it fits in. That message stands in contrast with the vast literature that sees tax as exceptional in other circumstances.[54] Surprisingly, the inverse is also true. Adding tax would also make our foreign commercial policy instruments look more normal. This outcome ought not be underestimated at a time when geoeconomic policies are under scrutiny. This Part unpacks how this is so with reference to the intellectual histories that have informed the major foreign commercial instruments of today.

The other geoeconomic tools on which the U.S. government relies are anything but ordinary. Despite that commentators and policymakers use a household metaphor ("tool" and "toolkit") to seek to convey their routine nature and seemingly everyday work, these policy measures are themselves exceptional among foreign-facing policies.[55] Most of the laws that govern transnational economic activity

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54. *See, e.g.*, Paul L. Caron, *Tax Myopia, or Mamas Don't Let Your Babies Grow Up to Be Tax Lawyers*, 13 VA. TAX REV. 517, 531 (1994) (collecting sources on tax exceptionalism). The trend continues despite some pushback. *See, e.g.*, James M. Puckett, *Structural Tax Exceptionalism*, 49 GA. L. REV. 1067, 1090–1108 (2015) (outlining how tax differs from other agency administrative activities).

55. *See* Kathleen Claussen, *Trade's Security Exceptionalism*, 72 STAN. L. REV. 1097, 1115–25 (2020).

require the president to lessen regulatory barriers to commerce.[56] Since the middle part of the twentieth century, these liberalizing laws have dominated the legal discourse both at the international and national levels.[57] By contrast, the recently deployed geoeconomic measures are exceptional. They are available to domestic actors only as exceptions to primary mandates and authorizations, and they often operate against internationally agreed rules or in direct breach of them.[58]

Tax, on the other hand, and especially the income tax on which I will focus here, is a mainstream regulatory system, especially when seen through the lens of foreign relations scholarship. The collection of the income tax is well-established in law and practice, non-controversial as a domestic or international matter, and certainly more benign than, for example, national security tariffs, which are hotly contested.[59]

It was not always this way. The history of the income tax, an innovation of the twentieth century, provides lessons in this regard, and a degree of irony. The income tax is now responsible for 57 percent of federal government income.[60] Before the institution of the income tax in 1913, border taxes in the form of the tariff, not personal taxes, were

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56. *See, e.g.*, Reciprocal Trade Agreements Act of 1934, 19 U.S.C. §§ 1351–54 (authorizing the President to act "whenever he finds as a fact that any existing duties or other import restrictions of the United States . . . are unduly burdening and restricting the foreign trade of the United States"); Trade Act of 1974, 19 U.S.C. §§ 2111–12 (authorizing the same); Trade Agreements Act of 1979, Pub. L. No. 96-39, 93 Stat. 144 (1979) (enacted to approve the trade agreements negotiated under the Trade Act of 1974); Trade and Tariff Act of 1984, Pub. L. No. 98-573, 98 Stat. 2948 (1984) (attempting, in relevant part, "to improve the ability of the President . . . to identify and to analyze barriers to (and restrictions on) United States trade and investment, and . . . to achieve the elimination of such barriers and restrictions"); Omnibus Trade and Competitiveness Act of 1988 § 1102, 19 U.S.C. § 2902 (authorizing the same as the 1934 and 1974 Acts).

57. The statutes described in the preceding note reflected what was agreed at the international level in the General Agreement on Tariffs and Trade. *See* General Agreement on Tariffs and Trade, Oct. 30, 1947, 61 Stat. A-3, 55 U.N.T.S. 188.

58. The United States invoked the national security exception of the General Agreement on Tariffs and Trade in defense of its recent actions under a national security exception in U.S. trade law. Report of the Panel, *United States – Certain Measures on Steel and Aluminum*, ¶¶ 7.102–7.105, WTO Doc. WT/DS544/R (Dec. 9, 2022).

59. *See, e.g.*, Isabelle Hoagland, *Lighthizer Clarifies Section 232 "Program" to Probing Senators*, INSIDE U.S. TRADE (July 26, 2018, 4:37 PM), https://insidetrade.com/daily-news/lighthizer-clarifies-section-232-'program'-probing-senators [https://perma.cc/J2G3-SCZK] (quoting a U.S. senator telling U.S. Trade Representative Lighthizer that national security tariffs against Canada were "unjustifiable" and stating that the senator did not "think [the Administration had] a good legal basis for what [the Administration is] doing").

60. *Briefing Book*, TAX POL'Y CTR., https://www.taxpolicycenter.org/briefing-book/what-aresources-revenue-federal-government [https://perma.cc/TCZ7-7MHK].

a primary source of revenue for the nation.[61] The shift to the income tax freed the tariff. That is, introducing the income tax allowed the government, first, to reduce tariffs on many products in the service of a more liberal, open-market approach to the global economy. Second, by ending our reliance on the tariff as a primary revenue stream, the tariff could then become a carrot and a stick, rather than a regularized ticket for entry. The development of the income tax made tariffs leverage in our foreign affairs, giving the government more flexibility to increase or decrease them strategically. Without needing them for our economic security, policymakers could manipulate them for other purposes. And policymakers did. While liberalizing and lifting many tariffs for both economic and political reasons, Congress preserved the right of the president to raise tariffs when national security and other foreign economic aims so required. And so, the story comes full circle, bringing us back to taxes and their capacity for serving the U.S. public interest abroad, not just as a condition of entry or at the physical border but rather with an eye to the massive cross-border investments that dominate the global economy.[62]

The reality is that tools like financial sanctions and export controls are blunt instruments with limitations, risks, and textured pedigrees. As the toolkit has expanded, and the threats perceived to have grown, policymakers have started to experiment more. Ideas that ten years ago were considered radical are today implemented with cautious approval, as policymakers from both major political parties have embraced them for their own ends.[63] Although they are not fully welcomed, the more these tools are used, the more they have come to be accepted tools. Bringing tax into the mix would likely accelerate that trend.

Intelligence from tax programs, especially the income tax, has additional attractive traits as compared to other geoeconomic tools in the toolkit precisely because it is so ordinary, subtle, and quotidian. For

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61. *See* DOUGLAS A. IRWIN, CLASHING OVER COMMERCE: A HISTORY OF U.S. TRADE POLICY 413 (2017); Bennett D. Baack & Edward John Ray, *The Political Economy of Tariff Policy: A Case Study of the United States*, 20 EXPLORATIONS IN ECON. HIST. 73, 75 (1983).

62. *See, e.g.*, Claussen, *supra* note 55, at 1115–25 (explaining how certain geoeconomic tariff tools have been used).

63. *See, e.g.*, James Mendenhall, Michael E. Borden, Justin R. Becker, Carys Golesworthy & Grigore Alexandru, *Senators Introduce Compromise Proposal Regarding Review of Outbound Investment*, SIDLEY AUSTIN (June 23, 2022), https://www.sidley.com/en/insights/publications/2022/06/senators-introduce-compromise-proposal-regarding-review-of-outbound-investment [https://perma.cc/S25W-LZJ6] (noting that Senators Casey and Cornyn, a Democrat and a Republican, are working together on an outbound review mechanism expansion of CFIUS).

one, increasing the effective tax rate on income earned in service of foreign policy purposes could be at least somewhat nondiscriminatory with respect to the border, requiring reporting regardless of nationality or location and enforcing broadly or collectively norms against private actors.[64] By comparison, several other tools in the toolkit are border-focused, which exacerbates their reception as exceptional national security measures likely to provoke U.S. allies. Their application turns on a foreign/domestic distinction made plain when a good reaches U.S. shores, like in the case of export controls where a good is stopped from leaving U.S. territory, or in the case of national security tariffs where a product faces a tax prior to entry. Relying more heavily on the income tax in particular—taking a primarily domestically focused tool and training it toward more foreign objectives—creates fewer legitimacy challenges compared to those tools with stronger border valence. Foreign policy becomes entrenched across the bureaucracy, blurring the lines between domestic and international.

Further, many of the other geoeconomic instruments already in use have come under criticism including for the ideologies that are said to motivate them and the reporting they demand.[65] One clever outcome of the income tax sanction idea is that by turning to tax, policymakers may be able to break free from the standard liberalization debates surrounding existing tools and instead advance foreign economic aims without running into what seem intractable difficulties between protectionists and free trade advocates.

In sum, expanding tax measures and deploying them in this way would likely help expedite the normalization of our exceptional geoeconomic instruments and their reporting requirements, a process slowly and subtly underway. By comparison to the other tools in the toolkit, tax seems quite an ordinary one. The income tax is not

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64. This is a fine line, and lawmakers ought to be cognizant of legal and reputational costs. For example, WTO law deals directly with tax regimes. *See* Michael Daly, *The WTO and Direct Taxation*, WTO Discussion Paper No. 9 (June 2005), at 9 (describing the rising caseload at the WTO concerning tax, including U.S. income tax rules). Despite these limitations, or in light of them, tax intelligence may be more palatable to governments than some of the alternatives. Policymakers may wish to explore whether they might write or segregate the reporting requirements in a way that minimizes concerns about breaching one of the WTO Agreements. The crafting of these requirements will be crucial to not run afoul of those rules as discussed above.

65. *See, e.g.*, Scott Lincicome & Inu Manak, *Protectionism or National Security? The Use and Abuse of Section 232*, CATO INST. (Mar. 9, 2021), https://www.cato.org/policy-analysis/protectionism-or-national-security-use-abuse-section-232 [https://perma.cc/5Z6N-M7VG] (arguing that the national security tariffs could be in place to achieve protectionist aims).

"exceptional"; rather, it is about as regular as regulatory tools get. It is precisely tax's regularity that makes it a great candidate for mainstreaming geoeconomic instruments in the regulatory orchestra. This application of tax, exceptional within its own sandbox, has a normalizing effect in another play-space. With tax and the IRS in the mix, this sort of transnational economic coercion becomes just one more thing the administrative state does. It fits into a broader regulatory scheme—rather than a punitive diplomatic one—where extraterritorial application is not uncommon and where transnational cooperation enhanced.

There are undoubtedly tradeoffs in normalization, and international law complications as noted above would be one.[66] Other actors in foreign policymaking may be marginalized as a result, and our trading partners disillusioned. There is little most other governments can do at the same scale and impact; their more limited toolkit may prompt them to urge the United States to follow a different path.[67] If disorganized, these efforts could be implemented in ways that threaten due process or privacy rights or that encroach on rule of law values.[68] Competition over limited appropriations in agencies could create additional disharmony, among other negative consequences.[69] Normalizing the geoeconomic toolkit is a knotty business and may not serve U.S. interests overall. That calculus ought to be at the forefront of policymakers' thinking as the foreign commerce bureaucracy continues to march down this path.

CONCLUSION

While any of the present tax law schemes and proposals could, and likely would to some degree, influence behavior in meaningful foreign policy ways like those other tools, their real bite is in the reporting they require. Agencies across the administrative state are collecting information through the private sector in the foreign policy context,

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66. *See* Deeks & Hayashi, *supra* note 11, at 339 (describing complications that increased use of tax law in foreign policy would face in international law).

67. Similar problems arise, however, in other areas of the geoeconomic toolkit. *See, e.g.*, Kristen Eichensehr & Cathy Hwang, *National Security Creep*, 123 COLUM. L. REV. (forthcoming 2023) (manuscript at 55) (noting that the proliferation of CFIUS-like processes by other economies could hurt U.S. investors).

68. *See* Claussen, *Trade Policing*, *supra* note 22 (manuscript at 38).

69. Congress also is familiar with battles over which committee maintains oversight and how those committees direct monies toward these efforts. *See* Rebecca Ingber, *Congressional Administration of Foreign Policy*, 106 VA. L. REV. 395, 415–19, 425–32 (2020).

and expressly adding the IRS would likely be useful for the intended aims of the executive branch overall. The inclusion of tax intelligence in this regulatory scheme could have a favorable institutional and managerial effect precisely for the traditional tax law values of equity, administrability, and efficiency.[70] With increased scrutiny, cross-cutting management, and attention to the mechanics of the tax intelligence reporting apparatus and its sibling reporting programs, such a system could be a powerful force toward transforming the ability of the foreign commerce bureaucracy to be responsive to and prepared for the challenges of tomorrow.

70. Reuven S. Avi-Yonah, *The Three Goals of Taxation*, 60 TAX L. REV. 1, 1 (2006).