

Compensation for Trump Tariffs: Protecting Baltic Companies through Bilateral Investment Treaties

On 2 April 2025, President Trump issued an executive order imposing new tariffs on countries identified as engaging in unfair trade practices. Such sudden shifts in trade policy—whether in the form of tariffs, regulatory changes, or tax increases—have the potential to significantly affect the profitability and long-term viability of foreign investments in the United States.

This legal update analyzes the provisions of the bilateral investment treaties (BITs) between the United States and the Baltic States—Estonia, Latvia, and Lithuania—to determine the legal recourse available to investors in the event of a breach of treaty obligations.

BITs Between the United States and the Baltic States

The United States has established a comprehensive network of BITs, offering foreign investors both substantive protections and procedural rights. Latvia, Lithuania, and Estonia have each entered into a BIT with the United States. The purpose of these treaties is to encourage and safeguard cross-border investment. These legal instruments generally empower investors to initiate direct legal action against the United States through international arbitration. Such legal action is permitted in instances where government actions result in harm to the investor's business operations or property situated within the United States jurisdiction.

What qualifies as an "Investment"?

According to the terms of the BITs in effect, the term "investment" is broadly defined to include a range of assets and interests held or controlled—either directly or indirectly—by nationals or companies of the Baltic States in the United States. For instance:

- Tangible and intangible property, including rights such as mortgages and liens;
- Shares, stock, or other interests in a company;

- Claims to money or performance under contract with economic value;
- Intellectual property rights;
- Licenses, permits, or other rights conferred by law or contract.

Potential grounds for arbitration

The BITs concluded between the United States and the Baltic States incorporate a set of common investor protections:

- **national treatment** – foreign investors must be treated no less favorably than domestic investors;
- **most-favored-nation treatment** – investors must receive treatment no less favorable than that given to investors from other countries;
- **protection against expropriation** – investments may not be nationalized or expropriated unless done for a public purpose, under due process, on a non-discriminatory basis, and with prompt, adequate compensation;
- **free transfer of funds** – investors may freely transfer capital, profits, and other related payments in and out of the host country;
- **fair and equitable treatment** – investors are entitled to due process and protection from arbitrary, discriminatory, or unreasonable regulatory changes;
- **full protection and security** – the United States must ensure reasonable physical and legal protection of the investment, consistent with international law.

To illustrate, in the event that one of the aforementioned treaty provisions has been violated, a Baltic investor may have the right to initiate a legal claim against the United States.

Dispute resolution mechanisms

As is the case with the majority of international investment agreements, the BITs necessitate an initial attempt to resolve



disputes through amicable negotiations. In the event that this is not possible, the claimant has the right to initiate international arbitration proceedings against the state which it is alleged breached the BIT. Baltic investors have the option of presenting their case before an international arbitration tribunal established under:

- the Convention for the International Centre for the Settlement of Investment Disputes (ICSID); or
- the Arbitration Rules of the United Nations Commission on International Trade Law (UNCITRAL); or
- to any other arbitration institution, or in accordance with any other arbitration rules, as may be mutually agreed between the parties to the dispute.

Could Baltic investors sue the United States?

Baltic investors may initiate arbitration against the United States under the relevant BITs, provided certain conditions are met:

- 1. Qualifying Investment:** The investor must own or control a protected investment in the U.S. that falls within the BIT's definition of "investment".
- 2. Investment vs. Trade:** While tariffs primarily impact trade, not all-encompassing investment, a claim could arise if a Baltic-owned U.S.-based company or asset suffers direct harm from the tariff measures.
- 3. Treaty Violation:** The investor would need to demonstrate that the U.S. action breached one or more of the treaty protections listed above.
- 4. Applicable Exceptions:** The U.S. might invoke general exception clauses, such as public policy or national security, as a defense. These could limit or exclude liability depending on the treaty language.

Conclusion

While not guaranteed, a claim under the BITs is legally conceivable if a Baltic investor can demonstrate **specific, demonstrable harm** to a protected investment as a direct result of the 2025 tariff measures. The likelihood of success is contingent upon demonstrating that the actions taken by the United States were discriminatory, arbitrary, or disproportionate, as opposed to being part of a legitimate, non-discriminatory trade policy. An uncompensated expropriation, whether the expropriation occurs directly or indirectly, where a business is destroyed by the effect of tariffs, would likely constitute a breach of the relevant BIT.

If after the dispute is notified not remedy is provided, the investor may initiate international arbitration proceedings. A positive result would be a successful award that can be enforced against the United States in some 160 countries, including the United States, where such international awards are to be recognized.

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