

The value of US Courts to foreigners

It is fascinating to realize how far the world has gone since the XIX century, and particularly during our last three decades. Life expectancy at the time of Jefferson, Madison and Washington was not that different to the one available at the time of Emperor Augustus and Saint Peter in Rome eighteen centuries before. Industrialization, globalization, entrepreneurship, competition, development of means of transportation and communications, along with *institutions* that promoted and guarded these changes, enabled massive improvements in standards of living across the world since the 1800's. The United Kingdom started and led this process until WWI; the United States served that central leading role for the following 100 years. If we are to keep this global growth path, its basic elements need to remain in place.

In 2017 world GDP amounted to US\$ 80.6 trillion, with world merchandise and services exports adding up to US\$ 17.1 and US\$ 5.2 trillion, respectively, or 28% of world GDP. As these figures suggest, foreign competition has already reached a relevant presence and even gone deeper in present economies on a multilevel basis. US economic weight keeps being significant: it represents 24% of world GDP, 10% of world exports and 13% of world imports. But in this increasingly interrelated world with goods, services and people crossing borders, free trade is not enough.

That is where *institutions and policies* matter. For instance, one thing is to have competitive policies, another one is being able to enforce them at a minimum cost. Here comes into place the fundamental importance of US policies and its Courts whose influence clearly goes beyond its borders, for better or worse. As a matter of fact, important legal cases that should have been settled within our countries and courts were not able to do so because of our own judicial systems weaknesses and lack of impartiality or proneness to being influenced that US Courts and authorities were otherwise able to supply.

Some securities, antitrust and corruption cases originated in Chile but finally settled in the US - because its securities, goods and services markets were somehow implicated - exemplify the above:

On February 19th, 2009 the US Department of Justice informed that a US\$ 109 million fine had been imposed on a Chilean firm LAN Cargo and its ABSA affiliate for ***“participating in a combination and conspiracy to suppress and eliminate competition by fixing the cargo rates charged to customers for international air shipments, including to and from the United States, from in or about February 2003 until at least February 14th, 2006, in violation of the Sherman Antitrust Act, 15 USC § 1.”*** To this day, it was the largest fine ever imposed on a Chilean company; however, there was no intervention from domestic competition authorities or directly hurt exporters in Chilean Courts.

On October 22nd, 2015 the Securities and Exchange Commission informed it had reached a US\$ 13.2 million settlement with a former CFR Pharmaceuticals SA Board Member engaged in insider trading on nonpublic information learned while serving on its boardroom. The company traded in Chile and the US, via SDS. To this day, there has been no sentencing from a Chilean court.

On July 25th, 2016 the US Department of Justice announced that Chilean based LATAM Airlines ***“has agreed to pay a \$12.75 million criminal penalty in connection with a scheme to pay bribes to Argentine union officials via a false consulting contract with a third-party intermediary in violation***

of the accounting provisions of the Foreign Corrupt Practices Act (FCPA)". To this day, no proceeding in domestic Courts has been successful and the company continues stressing "accounting" mistakes.

On January 13th, 2017 the US Department of Justice declared that Chilean chemicals and mining company SQM had ***"agreed to pay a criminal penalty of more than US\$ 15 million in connection with payments to politically connected individuals in Chile in violation of the Foreign Corrupt Practices Act (FCPA) "***. A formal case is now being argued in Chilean courts; the company continues referring to "accounting" mistakes.

Finally, on August 14th, 2018 the US Department of Justice updated upcoming Court dates in the FIFA Prosecution United States v. Napout, et al. and Related Cases where the former president of Chilean Football Association (ANFP) appears having pleaded guilty on November 23rd, 2015 and waiting for sentencing by December 10, 2018. To this day, no sentencing has been reached in Chile.

The above examples were recent securities, corruption and antitrust probes that the US sanctioned before any intervention from our local authorities or, incredibly, none at all. Why did the US intervene? Because its direct interests were compromised and its Rule of Law had to be respected unless its whole central role in world development got imperiled, to its own detriment and presumably that of the rest of nations. Capital markets and flows of services and goods get harmed when companies and people from other countries – such as ours – infringe US widely accepted conditions in any of these markets while benefitting from their access. A quid pro quo arrangement that has been broken but which requires to be dutifully observed to keep it viable.

As Chilean citizens, we were lucky US authorities and Courts were ready to act where we had failed. Even if the US had primarily acted to protect its own system and institutions, in so doing it protected ourselves. Of course, the US risks overplaying its hand: that is where its citizens and institutions must prevail to keep its 1776 Declaration of Independence goals valid today, defending unalienable rights such as life, liberty and the pursuit of happiness. As long as there is no possibility other nations, such as China or even the European Union, that could take this extremely important US role in the near term, the outside world has to keep pressing her to stay the course.

The amazing world growth path for the last 200 years has to continue. US Courts, under efficient laws and respected institutions, have to keep working on a duty that transcends their local impact so as to better protect their global economic and institutional projection.

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