



# Knock-on Effects of Terrorist Designation of Mexican Cartels on Business Interests in Mexico

Tariffs are hardly the only threat on the U.S.-Mexico Horizon

The recent proposals made by President-elect Trump in late 2024 to impose hefty tariffs to Mexican goods imported into the United States has seized the attention of many multinational companies with operations related to Mexico. The level of disruption that this would entail for North American supply chains, as already foreseen by an overwhelming number of commentators and trade experts,<sup>1</sup> justifies the public anxiety. It also warrants the thorough scenario-based, material risk mitigation efforts that leading companies have launched.

But, there are other forms of U.S.-Mexico risk and disruption that are looming on the horizon that have, so far, received far less attention from the business community. The potential designation of Mexican drug cartels as foreign terrorist organizations (“FTOs”), which Trump promised to implement as soon as he is sworn in, stands out among them.<sup>2</sup>

## An Emerging Issue for the Business Community in Mexico

Designating Mexican cartels as FTOs will have political, national security and diplomatic implications. Analysts and the media have been increasingly focusing on these. But, it will also have substantive knock-on implication for businesses related to Mexico.

These designations will mean that any payments made by a company to cartel-affiliated organizations or individuals, and any logistical assistance provided to them, could be construed as material support of terrorist organizations. The universe of potential parties to be avoided will be very large — and unclear.

### A Widespread Problem

For the last 10 years, the American Chamber of Commerce in Mexico has conducted yearly surveys among its member companies on public safety. The results of the 2024 survey suggest that extortion from organized crime is a pervasive issue in Mexico.

- 12% reported that organized crime has taken partial control of the sales, distribution and/or pricing of their goods.
- 45% stated that they had received extortion demands for protection payments.
- With FTO designations in place, extortion payments, even if made under duress, could be considered “material support” to terrorist organizations.

Providing material support to an FTO can lead to severe consequences, including asset seizures, criminal charges and substantial fines.

## Defining Risk and Probability

### Companies Face Expansive Risks

The Kingpin Act, already in place, targets specific individuals and companies and is applicable in clearly defined, specific cases in Mexico.<sup>3</sup> In contrast, an FTO designation includes the criminal groups themselves into the Office of Foreign Assets Control (“OFAC”) list — and criminal groups are not legally constituted entities, which makes them difficult to identify or track, creating major challenges for private actors to ensure compliance.

Further, an FTO designation allows for broad enforcement of this provision. FTO designation allows for broad enforcement of this provision and does so on an extraterritorial basis. Other key considerations include:

- Severe criminal penalties would apply if a company is found to be engaging in business with companies associated with an FTO. This would also be the case if ransoms, extortion or protection fees were paid, with limited exceptions for acting under duress.
- FTO designation requires financial institutions to retain and report any funds controlled by a designated FTO, including those indirectly linked to the organization. This could complicate compliance for companies across several sectors, including those that process remittances or operate in jurisdictions that have strong cartel presence.

Among other consequences, an FTO designation significantly raises the risk profile for those operating in or near cartel-controlled territories, as even indirect associations with designated groups could trigger severe penalties, thus increasing the compliance burden.

### The Political Inevitability of the Designation

Trump’s pledge to declare cartels FTOs is not a one-off declaration. Rather, it’s part of an integrated worldview that he and several senior officials in his incoming administration share.

*“They have killed more Americans than every terrorist organization in the world and Trump is committed to calling them terrorist organizations and using the full might of the United States Special Operations to take them out.”*

— TOM HOMAN  
incoming Trump administration “Border Czar”

## If Legal Risks Were Not Enough, There’s Reputational Damage to Consider As Well.

Also significant are the reputational implications of an FTO designation. The notorious precedents of Chiquita Brands in Colombia and Lafarge in the Middle East underscore the reputational damage that comes as a consequence of facing a criminal procedure for providing “material support” to a terrorist organization targeting the national security of the United States.

Several Factors Point in That Direction:

**Unified Strategy:** The administration views border security, illegal immigration and drug trafficking as interconnected national security threats. This holistic approach makes the FTO designation a clear next step in their comprehensive strategy.

**Personnel Appointments:** The incoming administration’s key appointments signal a hardline stance on border issues and cartel activity:

- Senator Marco Rubio, Secretary of State nominee, has consistently advocated for tough policies on drug trafficking and has identified the link between cartels and hostile state actors.
- Representative Mike Waltz, the next National Security Advisor, introduced a bill in Congress seeking to authorize the use of military force to target Mexican cartels.
- Stephen Miller, incoming White House Deputy Chief of Staff for Policy, brings his experience in strict immigration enforcement, likely to support aggressive measures against cartels.
- Tom Homan, incoming “Border Czar”, has explicitly stated that Trump will designate cartels as terrorist organizations. In a recent Fox News interview, Homan declared, “The criminal cartels in Mexico are aware that President Trump will focus intensely on them,” and promised that the new administration will work to dismantle them.
- Mauricio Claver-Carone, incoming Presidential Envoy for Latin America at the State Department, has advocated since the early days of the first Trump presidency for an aggressive and extensive approach against regimes that collaborated with cartels or enabled the flow of drug and human trafficking.

**Lessons Learned from Previous Trump Efforts:** During his first term, Trump had already considered designating cartels as FTOs. Despite opposition from his Cabinet then, he continued to advocate for this policy. With a new government more aligned with his views, the likelihood of implementation has increased significantly.

**Legislative Support:** There seems to be little political resistance to approve specific, already-introduced bills to support the FTO designation. Senate Bill 698, the “Drug Cartel Terrorist Designation Act” would require the Department of State to designate four specified Mexican drug cartels as FTOs, while providing a framework for the administration to act upon.

**International Pressure:** Rubio’s view of a new “Cold War-like era” and the need to focus on core national interests may lead to increased pressure on Mexico to combat cartels, with the FTO designation serving as a powerful tool to exert political and diplomatic pressure.

## Playbook

There’s no question that appropriate preparedness and risk mitigation flows through compliance. But, unless the risk for business is rightly recognized as critical for continued operations, a narrow technical view of “mere” compliance is likely to set in — making it difficult for a company to fully address it.

### What To Do: Proactive Compliance Actions That Businesses Should Take

For businesses with operations related to Mexico, the potential FTO designations underscore the urgent need for heightened due diligence when engaging with third parties.

Recommended actions include conducting thorough background checks on potential partners, suppliers, employees and clients to ensure no direct or indirect connections to criminal organizations. Risk assessments of third parties should include close monitoring of changes in ownership, financial health and legal standing. Enhanced due diligence also requires regular updates to internal databases, cross-referencing with OFAC and other international sanctions lists, and utilizing advanced screening tools for continuous monitoring. This diligence extends to maintaining detailed financial records and properly documenting all payments made in complex environments.

## Zooming in on “Derecho de Piso”

“Derecho de Piso” refers to extortion payments demanded by criminal organizations from businesses and individuals in exchange for “permission” to operate in territories under cartel control.

Recording “Derecho de Piso” payments in a company’s books presents significant legal and ethical challenges. Payments to cartels cannot be documented as legitimate expenses, as doing so would implicate the company in facilitating criminal activity, exposing it to U.S. sanctions and criminal liability. Instead, businesses must ensure robust internal controls and compliance systems to prevent unauthorized payments. If a company discovers such payments, it should immediately assess how to self-disclose the issue to U.S. authorities under the Corporate Enforcement Policy (“CEP”), which may mitigate penalties if done in good faith.

Legal counsel should be sought to address reporting and compliance obligations while ensuring cooperation with relevant authorities to remediate any misconduct. Accurate and well-supported recordkeeping ensures transparency, mitigates potential legal repercussions and aligns with compliance standards.

To reduce the financial, legal and reputational risks of inadvertently engaging with entities connected to organized crime, companies must establish clear internal guidelines and protocols for vetting third parties. This includes documenting every step of the due diligence process, fostering robust “books and records” practices and ensuring that employees are adequately trained to recognize and address red flags associated with criminal activities. Comprehensive recordkeeping, including detailed transaction records and up-to-date vendor files, facilitates compliance with regulatory frameworks while strengthening the organization’s ability to respond effectively to audits or investigations.

Importantly, documenting the enhancement of compliance and recordkeeping processes and the effective preparation of technical, reactive-only communications materials strategically explaining the steps taken could be just as critical as the actions themselves. If acute risk were to materialize, strategic stakeholder engagement and management will be one of the key mitigation levers to activate.

## What Not To Do From a Public Affairs Perspective

### Industry Advocacy

It is clear that the potential designation of Mexican drug cartels as FTOs would impose incremental costs and risks to companies operating in Mexico. But, this does not mean that opposing such a politically charged measure against groups that have caused irreparable harm to the social fabric of North America is a wise thing to do.

Rather than trying to lobby away the risk, companies should engage through trade associations with legislators and decision-makers in Washington D.C., at the appropriate time to ensure that the foreseen compliance and accountability mechanisms are actually implementable — and steer clear of costlier and risk-fraught alternatives. For example, making companies liable under law to prove that their business associates and providers are not related to drug cartels as an abstract concept could prove impossible to comply with. A policy that places an unbearably high burden on legitimate business could be counterproductive, as unscrupulous or unlawful players would be the likely beneficiaries.

### Reactive Stakeholder Communications

Proactively communicating to external stakeholders a suite of new processes being adopted to mitigate risk could spark more questions than it would answer. But the technical nature of those processes, which will likely require vetting from counsel, does require the timely development of communications materials in the form of a reactive-only narrative matrix and Q&A documents. Being caught flat-footed could prove to be a costly mistake.

The bottom line is that companies must assume that their operations in Mexico could be much more heavily scrutinized by U.S. law enforcement agencies at any point in time. In this context, ensuring that they are equipped to prove with appropriate technical detail and nuance that they have been diligent with their legal obligations can mean the difference between being able to swiftly address an issue or seeing it become a public international scandal.

## How We Can Help

Our cross-border multidisciplinary Risk & Investigations and Strategic Communications practices are uniquely equipped to advise on adopting market-leading measures that mitigate material risk, from developing the appropriate protocols to effectively implementing them to foster company-wide compliance. This includes establishing the appropriate internal and external communications infrastructure to minimize the risk of “out-of-context” messaging, as well as developing rapid-response capabilities to minimize the risk of escalation.

<sup>1</sup> Juan Ochoa, “[Global ripple effects: Expert insights on Trump’s tariff plans](#)” Michigan News (October 31, 2024).

<sup>2</sup> Alexandra Ulmer, “[Trump threatens to designate Mexican cartels as terrorists](#)” Reuters (December 22, 2024).

<sup>3</sup> “[Fact Sheet: Overview of the Foreign Narcotics Kingpin Designation Act](#)” The White House (April 15, 2009).

### JOSÉ CORTINA

Senior Managing Director  
+52 55 2699 62 24  
jose.cortina@fticonsulting.com

### PABLO ZÁRATE

Senior Managing Director  
+52-55 4107 9795  
pablo.zarate@fticonsulting.com

### DAMIAN MARTINEZ TAGUENA

Managing Director  
+52 55 5540 7023  
damian.martinez@fticonsulting.com

### JEREMIAH SCHWARZ, J.D., PH.D.

Managing Director  
+1 786 577 8989  
jeremiah.schwarz@fticonsulting.com

### LEOPOLDO GÓMEZ

Senior Advisor  
leopoldo.gomez@fticonsulting.com

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