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President Trump Invokes Tariff and Trade Authorities to Target Foreign Countries' Digital Services Taxes

White House Issues Memorandum Seeking to Protect American Companies from Foreign-Imposed Taxes and Regulations

SUMMARY

On February 21, 2025, President Donald J. Trump issued a memorandum (the "Memorandum") directing the Secretary of the Treasury, the Secretary of Commerce, and the United States Trade Representative to broadly address foreign taxes and regulations that target American companies, focusing largely on the digital economy. The Memorandum (i) instructs the United States Trade Representative to consider renewing or initiating investigations under Section 301 of the Trade Act of 1974 into foreign countries' discriminatory digital services taxes; (ii) directs U.S. agencies to consider imposing tariffs and other measures in response to such countries' taxes or regulations that are designed to extract funds or intellectual property from U.S. businesses; (iii) directs the Secretary of the Treasury to determine whether any foreign tax regimes violate U.S. tax treaties or warrant action under existing tax laws; (iv) calls for a permanent moratorium on customs duties for electronic transmissions; and (v) establishes a new reporting process for U.S. businesses to identify harmful foreign tax or regulatory practices.

BACKGROUND

Digital Services Taxes ("DSTs") are levies imposed on multinational enterprises that provide digital services to users within a given jurisdiction. These taxes apply to total revenue generated from various digital activities, including digital advertising sales, the operation of online marketplaces, and the monetization of user data. Combining elements of both gross receipts taxes and transaction taxes, DSTs enable countries to tax business activities occurring within their borders, even if the company's headquarters, employees, and assets are located elsewhere. Approximately 30 countries have adopted or proposed DSTs in recent years. These include key trading partners of the United States, such as France, Italy, Spain, the United Kingdom, and Canada.

During President Trump's first term, his administration took significant actions in response to DSTs imposed by various countries, viewing them as discriminatory towards American technology companies. In July 2019, the U.S. Trade Representative (USTR) initiated an investigation under Section 301 of the Trade Act of 1974 into the DST adopted by France. Thereafter, in June 2020, the USTR announced additional investigations of the DSTs enacted by Austria, Italy, Spain, Turkey, and the United Kingdom. As a result of these investigations, the USTR proposed enacting reciprocal tariffs. For example, in December 2019, the administration announced potential tariffs of up to 100% on $2.4 billion worth of French imports, including luxury goods like Champagne, cheeses, and handbags, as a retaliatory measure against France's DST. The administration suspended these tariffs, however, to allow for negotiations within the Organization for Economic Cooperation and Development (OECD) aimed at formulating a multilateral solution to digital taxation. These negotiations resulted in the Pillar One proposal, which would have reallocated a portion of profits from large multinational enterprises to the countries where their consumers are located and was meant to facilitate the eventual removal of unilateral DSTs in favor of a coordinated global framework. However, the implementation of Pillar One stalled, leading some countries to maintain or re-introduce unilateral DSTs.

THE MEMORANDUM

The Memorandum states at the outset that in recent years, "the gross domestic product of the United States' digital economy alone, driven by cutting-edge American technology companies, has been bigger than the entire economy of Australia, Canada, or most members of the European Union." It further asserts, however, that "[i]nstead of empowering their own workers and economies, foreign governments have increasingly exerted extraterritorial authority over American companies, particularly in the technology sector, hindering these companies' success and appropriating revenues that should contribute to [the United States'] well-being, not theirs."

To address these concerns, the Memorandum directs:

- the USTR to (i) determine whether to renew or initiate investigations under Section 301 (19 U.S.C. § 2411) and Section 302(b) (19 U.S.C. § 2412(b)) into existing or proposed DSTs, including by reviewing previously launched investigations into France, Austria, Italy, Spain, Turkey, and the United Kingdom, and (ii) determine whether to pursue a dispute panel under the United States-Mexico-Canada Agreement (USMCA) to challenge Canada's DST;
- the Secretary of the Treasury, in consultation with the Secretary of Commerce and the USTR, to assess whether any foreign tax measures violate U.S. tax treaties or justify action under 26 U.S.C. § 891, including targeted countermeasures against countries imposing extraterritorial tax policies on American businesses;
- the Secretary of the Treasury, Secretary of Commerce, and the USTR to (i) evaluate broader foreign regulations that disproportionately burden U.S. firms, including restrictions on data flows, requirements for U.S. companies to fund foreign content, and internet access fees, and (ii) direct an investigation into whether European Union ("EU") and United Kingdom ("UK") policies restrict freedom of speech by imposing content moderation requirements on American platforms;

- the USTR to pursue a permanent moratorium on customs duties for electronic transmissions (non-physical goods, such as streaming services) among U.S. trading partners, following the 2026 expiration of such a moratorium that the members of the World Trade Organization (WTO) originally implemented in 1998 and extended multiple times; and
- the USTR, in coordination with the Secretary of Commerce and the Senior Counselor to the President for Trade and Manufacturing, to establish a reporting system for U.S. companies to submit concerns regarding foreign tax or regulatory policies.

OBSERVATIONS AND IMPLICATIONS

The Memorandum reaffirms the administration's policy of combatting foreign-imposed tariffs and other regulatory measures that it believes disproportionately affect U.S. businesses. Companies should keep several points in mind as they navigate global tariffs and the trade landscape in light of this new directive:

First, companies that rely on cross-border data flows, digital advertising, and streaming services should reevaluate their global footprints to mitigate exposure to foreign DSTs, U.S. countermeasures, and potential retaliatory actions by foreign governments. For example, businesses should carefully consider how changes to existing regulations could disrupt their digital trade and supply chains when other companies, including their suppliers and business partners, grapple with these changing trade measures.

Second, although the second Trump administration's trade measures to date have created legal uncertainty in the global trade regime, a consistent and recurring theme of the administration's policies is reciprocity. The February 21, 2025 Memorandum, the administration's January 20, 2025 America First Trade Policy Memorandum, and its February 13, 2025 Memorandum regarding reciprocal tariffs all make clear that in imposing new trade measures, the administration will likely target and prioritize foreign governments that currently impose perceived unfair regulatory burdens on United States businesses, particularly those of the EU and the UK due to their strict online content and digital markets regulations. Therefore, companies seeking to predict which geographies within their digital supply chains are at greatest risk of new tariffs should look first to those foreign countries that most severely disadvantage U.S. technology companies.

Third, the Memorandum suggests that when assessing potential trade measures, U.S. agencies will broadly consider the impact of various burdens imposed by foreign governments well beyond tariffs—including intellectual property infringements, antitrust fines, digital markets regulations, tax policies, censorship, and other regulatory requirements. Thus, the administration will likely use trade measures to combat perceived unfairness across a wide range of areas not limited solely to tariffs on imported goods. Accordingly, businesses should closely monitor developments in all of these areas, engage with U.S. trade authorities, and adopt compliance strategies to address potential new regulations beyond traditional trade and customs laws.

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