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Trump considers imposing tariffs in response to foreign DSTs, Ways and Means trade hearing addresses taxes

President Trump's international and trade agenda continued to take focus as the White House issued a memorandum which takes aim at foreign countries' imposition of digital services taxes (DSTs), at least when imposed on American business, and likely serves as a warning to any country that the imposition of retaliatory measures by the United States is possible, if not likely if DSTs are imposed on American companies; meanwhile, members of the House Ways and Means Subcommittee on Trade debated US trade enforcement priorities, including tariffs, and also addressed several tax and fiscal policy issues.

Trump memo on trade and taxes

President Trump's February 21 memorandum that ordered the US Trade Representative (USTR), the Secretary of the Treasury, and the Secretary of Commerce to begin taking steps that could lay the groundwork for imposing tariffs or other retaliatory measures in response to foreign DSTs, EU and UK content moderation rules governing the products or services of US companies, or other measures that disproportionately harm US companies, especially those in the technology and digital services sector. Note that nothing in the February 21 memorandum imposes immediate action against a foreign country but does raise that possibility.
URL: https://www.whitehouse.gov/presidential-actions/2025/02/defending-american-companies-and-innovators-from-overseas-extortion-and-unfair-fines-and-penalties/

The memorandum appears consistent with two prior executive memos, both released on January 20: "The Organization for Economic Co-operation and Development (OECD) Global Tax Deal (Global Tax Deal)" (text) and "America First Trade Policy" (text). However, as this new executive memo is primarily focused on intellectual property (IP), it asks the Treasury Secretary to take into account DSTs (or any other "extraterritorial authority" as it relates to IP) when preparing the reports already required under the Global Tax Deal and America First Trade Policy memos. (For prior coverage, see *Tax News & Views*, Vol. 26, No. 3 (Jan. 21, 2025.)
URL: https://www.whitehouse.gov/presidential-actions/2025/01/the-organization-for-economic-co-operation-and-development-oecd-global-tax-deal-global-tax-deal/
URL: https://www.whitehouse.gov/presidential-actions/2025/01/america-first-trade-policy/
URL: https://dhub.deloitte.com/Newsletters/Tax/2025/TNV/250121_1.html

Notably, the America First Trade Policy memorandum, along with this new one, both raise the possibility that the administration would use existing tax law (IRC section 891) to double tax rates on investors from foreign countries determined to be imposing extraterritorial taxes, which could potentially include countries imposing DSTs.

Deloitte Tax LLP reviews the White House memorandum in greater detail in this new tax alert.
URL: https://www2.deloitte.com/content/dam/Deloitte/us/Documents/Tax/dttl-tax-alert-us-28-february-2025.pdf

Taxes and other fiscal issues

The House Ways and Means Subcommittee on Trade primarily debated trade enforcement, the practical effects of imposing tariffs, and implications of China's trade policies at its February 25 hearing, though several subcommittee members also deliberated on tax and fiscal policy matters, including President Trump's actions regarding retaliatory tariffs and taxes on certain countries.

America First Trade Policy: Several Republican subcommittee members, including Chairman Adrian Smith of Nebraska and Claudia Tenney of New York endorsed the president's day-one memorandum on trade policy.

"On his first day in office, President Trump laid out a strong vision for our nation's trade policy through the America First Trade Policy memorandum. This vision builds on the many successes of President Trump's first term, and after four years of inaction, I am confident we can work together to right the ship," subcommittee Chair Smith told the panel.

The day-one memorandum instructed the Treasury Secretary to investigate whether any foreign country subjects the United States citizens or corporations to extraterritorial taxes under section 891 of the Internal Revenue Code, which is also presumably at least in part related to the OECD's Pillar Two project. Generally, section 891 provides for doubling of tax rates on citizens and corporations of certain foreign countries when the president finds that US citizens or corporations are being subject to discriminatory or extraterritorial taxes by that nation. (Pillar Two is a global framework which imposes on a business a minimum tax of 15 percent in a country in which it operates. The US had not taken any action to come into compliance with Pillar Two (or Pillar One) of the OECD framework, a two-part international agreement signed on to by the Biden administration in 2021 with 140 other countries.)
URL: https://www.whitehouse.gov/presidential-actions/2025/01/america-first-trade-policy/

Increasing revenue: House Ways and Means Committee Chairman Jason Smith (R-Mo.) maintained that President Trump's existing tariffs that were imposed on imports from China during his first administration "are already netting roughly $40 billion" in additional revenues to the United States each year. On that note, he asked Ambassador Jeffrey Gerrish, a former trade official in the first Trump administration and current partner for Schagrin Associates, how the role of tariffs, including tariffs on China, serve a broader fiscal and economic agenda for the nation. Gerrish emphasized that tariffs that he considered would be imposed in the second Trump administration would have the prospect of raising "hundreds of billions of dollars" each year in revenue for the US government.

To counter Smith's statements about using tariffs to raise revenue, Rep. Don Beyer (D-Va.) questioned Witness Greta Peisch, a partner at Wiley Rein LLP, regarding the use of tariffs as a long-term tool for increasing revenue. Peisch stressed that tariffs are a trade enforcement tool and their objective, or legal justification, "is not to raise revenue."

Increase in taxes: Rep. Suzan DelBene (D-Wash.), for her part, appeared to equate imposing tariffs with a tax increase on the American people because tariffs, as she insisted, would raise a household's cost of living. She claimed that “President Trump is abusing the executive power, including by attempting to impose the largest tax increase in a generation on the American people through tariffs without a vote in Congress.”

DelBene and Beyer introduced the Prevent Tariff Abuse Act (H.R. 407) last month to stop the president of the United States from imposing tariffs without Congressional approval. DelBene stated at the time she introduced the bill that “proposed tariffs could raise prices on families by thousands of dollars a year.”
URL: https://delbene.house.gov/uploadedfiles/delbene_tariff_bill_119th.pdf
URL: https://delbene.house.gov/news/documentsingle.aspx?DocumentID=4013

Digital services taxes: Rep. Darin LaHood (R-Ill.) commended President Trump for signing the order to February 21 that directly addressed the imposition of DSTs and noted that these taxes and “other taxes or regulatory frameworks” have unfairly targeted US businesses. A DST is a gross-revenue tax on businesses, usually large multinational companies, which provide goods or services online in a specific jurisdiction and generally are imposed when a government deems it has not been able to collect enough income tax payments from those businesses that operate in their jurisdiction.

Pay fors: Beyer cautioned that if tariffs are used, even partially, to pay for the cost of the budget reconciliation package the GOP is intending to pass this Congress, then these tariffs he said could be rescinded without the ability of Congress to intervene and would increase the already rising deficit.

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