CONFIDENTIAL

McLarty Update: Digital Trade and an America First Investment Policy

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TOPLINE

On February 21**, President Trump issued two new Presidential memoranda affecting digital trade, tax collection, and inbound and outbound foreign investment**. Consistent with several of his recent trade actions, President Trump's latest policies direct a number of executive agencies to analyze and provide recommended actions to the White House, though each of the respective memos signal a significant change in approach on the part of the White House on the respective subject matter.

This memorandum will outline and briefly analyze notable statements in the "America First Investment Policy" order and the "Defending American Companies and Innovators from Overseas Extortion and Unfair Fines and Penalties" order.

TRUMP MAKES KNOWN: AMERICA IS OPEN FOR BUSINESS (FOR LIKE-MINDED PARTNERS)

The America First Investment Policy articulates two clear policy intentions: first, to **continue to limit the ability of Chinese companies to invest in US critical infrastructure** (key sectors: technology, food supplies, farmland, minerals, natural resources, ports, and shipping terminals) and to limit US investments in China's military-industrial sector. These policies build upon recent actions taken during the first Trump administration and the Biden administration, including an update of rules governing the Committee on Foreign Investment in the United States (CFIUS) and restrictions on US investors in China. **Tucked in the memo is an important reference to review, and possibly suspend, existing agreements with China**, including the 1984 United States-The People's Republic of China Income Tax Convention and China's Most Favored Nation status at the WTO. The memo's rhetoric and policy directives make it clear that the second Trump administration will take a much harder line against China than the first. Beijing may have concluded that negotiations with the United States will be far more difficult than they had hoped.

The second objective of the memo is to increasingly **facilitate Foreign Direct Investment (FDI) from to-be-specified allies and partner countries** who agree to conditions that prevent investors from partnering with foreign adversaries, like China. This so-called "white list" of excepted investors was created as part of the Foreign Investment Risk Review Modernization Act of 2018 (FIRRMA), which updated the processes that oversee foreign investment in the United States. The initial list included a small group of foreign states – Australia, Canada and the United Kingdom – and provided exemptions from certain requirements. Trump's latest memo is a **positive signal for other US allies that have sought similar access to a "fast-track" system to facilitate easier access to investing in the United States.**

RENEWING TRUMP ADMINISTRATION DIGITAL TRADE POLICIES

The extortive foreign fines memo directs investigations of foreign digital services taxes, regulations, and Intellectual Property requirements, and threatens new tariffs or other retaliatory measures on foreign policy actions that undermine global competitiveness for American companies. The memo outlines sharp criticism of foreign digital regulatory, online moderation, and tax policies that discriminate against, and undermine the growth of American companies, particularly in the technology sector. While restating goals outlined in the America First Trade Policy memo, it also underscores an **intention to assess the impact that European digital sovereignty policies** like the Digital Markets Act and Digital Services Act have on American business abroad and re-affirms the United States' support for the World Trade Organization E-Commerce Moratorium, which would continue the permanent moratorium on customs duties on electronic transmissions that has been in place since 1998. **Lastly, it will create a process for American companies to report foreign tax or regulatory practices that disproportionately harm US companies.**

Recently imposed Digital Service Taxes (DSTs) in several key trading partners are typically around 3% and levied on revenues derived from digital services like online advertising services, digital platforms, and the transmission of user data. For over a decade, countries have wrestled with how to tax digital services given that services tax are typically only applied to where the issuer has a local presence. **The United States stands to lose the most with the rise of country-specific DSTs, given that the United States is the world's largest digital service exporter with $659 billion in value in 2023**. Around 30 countries, including major allies like France, the United Kingdom, Italy, Canada, Spain, and Türkiye, have enacted their own individual DST policies which tax digital service providers who may not even have physical locations in that country.

During the first Trump administration, USTR launched a series of Section 301 investigations over several DSTs, ultimately finding the measures discriminatory and announcing retaliatory tariffs until such time the DSTs were overturned.

In 2021, the Biden administration reached an agreement with the offending countries to suspend retaliation while working toward a global agreement on a process to tax digital services and to establish a global minimum tax at the Organization for Economic Cooperation and Development (OECD). As OECD negotiations stalled in 2023-2024, major allies, like Canada, began enacting new or previous DST policies, further compounding problems for multilateral negotiation.

Since taking office, President Trump has removed the US from the OECD negotiating table and has now directed the United States Trade Representative to review the status of current DSTs and to come to a decision as part of the April 1 deadline whether to renew dormant first Trump administration-era Section 301 investigations – and retaliation - on **France**, **Austria**, **Italy**, **Spain**, **Türkiye**, and the **United Kingdom**. President Trump also directed USTR to consider launching a US-Mexico-Canada Trade Agreement (USMCA) dispute panel against Canada, in response to consultations launched in August 2024 under the Biden administration which did not yield an outcome.

CONCLUSION

While the America First Investment Policy is likely to be regarded as a positive development by foreign allies and trading partners and a recognition to the importance the Trump administration will continue to place on FDI (an important figure foreign leaders are sure to highlight in their meetings with the president), the digital policy memo is a sharp, but not unexpected, tone at the European Union, which advanced a digital agenda decried by large US tech companies and members of Congress during the Biden administration. The focus on US technological innovation leadership, highlighted by Vice President Vance during his recent European visit, coupled with the Trump administration's focus on extraterritorial taxation portends significant near-term turbulence in the transatlantic relationship. McLarty will continue to monitor these actions as they develop.