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Global Tax Alert

News from Washington Council Ernst & Young

US Ways & Means trade hearing discusses BEPS 2.0 news

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The United States (US) House Ways and Means Committee held a hearing 17 June with US Trade Representative (USTR) Robert Lighthizer during which he confirmed press reports that the US suspended its involvement in the Organisation for Economic Co-operation and Development (OECD) negotiations to develop a new regime for taxing local profits of global companies under so-called Pillar 1 of the Base Erosion and Profit Shifting (BEPS) 2.0 project. According to a *Financial Times* report, Treasury Secretary Steven Mnuchin told counterparts from other nations in a letter that the talks had reached an impasse that prevented US agreement on even any interim implementation of Pillar 1 and the creation of new taxing right for countries that would augment the arms-length transfer pricing rules with a formulary approach to allocate profits into market jurisdictions. He reportedly said nations were "much closer to an agreement" on the Pillar 2 minimum tax element of the plan than Pillar 1.

Asked about the report by Rep. Don Beyer, Lighthizer said a variety of countries have decided that the easiest way to raise revenue is to tax other nations' companies like US tech companies; the US will not let that happen. The OECD negotiations were "not making headway on Pillar 1, which is the most important pillar in there," he said. Lighthizer said we need an international regime that not only focuses on certain sides and industries, but how to tax corporations internationally. The Secretary decided he would say we are no longer involved in the negotiations, he said.

On 2 June, the USTR [announced](#) Section 301 investigations of digital services taxes (DSTs) adopted or under consideration by Austria, Brazil, the Czech Republic, the European Union (EU), India, Indonesia, Italy, Spain, Turkey and the United Kingdom (UK). The investigations open the door to retaliatory tariffs of the type proposed for French goods before the US and France agreed to a cooling off period.

Rep. Lloyd Doggett said with regard to the Section 301 investigations that the better solution is an international agreement that determines how digital services companies are taxed, and he is concerned the Administration is about to start a trade war under which Americans will pay higher tariffs and industries will be disrupted. Lighthizer maintained that the US will put tariffs in place if countries unilaterally impose taxes on US companies. "I don't want tax systems that unfairly treat American companies," he said.

Beyond tax

Otherwise, the hearing was wide-ranging and included discussion of issues around the World Trade Organization (WTO), a potential UK trade deal, and alcohol taxes, as well as how the COVID-19 crisis has complicated an already busy trade landscape.

In an opening statement, Chairman Richard Neal noted that the Administration negotiated preliminary agreements with China and Japan that "both await more comprehensive and meaningful follow up," and is negotiating or preparing to negotiate trade agreements with the UK and Kenya. "Maybe the on-again, off-again discussions with the EU will come back to life – though that looks doubtful," he said.

Ranking Member Kevin Brady said COVID-19 has highlighted the necessity of durable supply chains and called for creation of "market-driven incentives that allow our companies to increase capacity for developing and manufacturing critical products here at home" and suspension of duties for medical products if there is no domestic opposition. He also thanked Lighthizer for insisting on real reform and "not papering over the WTO's wayward direction," and said, "We have to push our trading partners to address China's consistent practice of subverting the rules."

UK

Rep. Doggett asked if the Administration would have a UK agreement to present this year. Lighthizer said it is possible to get an agreement by then but unlikely it would be presented to Congress by then given the various time delays built into Trade Promotion Authority. Rep. George Holding said the two nations share a special bond and have benefitted from a prosperous trade relationship, and there are barriers that should be removed. Lighthizer said there are many issues to be addressed, including agriculture issues that have been raised in the UK press, but there are no glaring deal-breakers currently. He said there must be market access for US producers. Rep. Jason Smith expressed concern over the treatment of beef exports.

Alcohol taxes

Reps. Mike Thompson, Tom Reed and Danny K. Davis raised concerns over disparities in the imposition of alcohol excise taxes between the Alcohol and Tobacco Tax and Trade Bureau on domestic products and US Customs and Border Protection on foreign products. Thompson said it is a difficult issue because the agencies are not working from the same set of rules. On the topic of wine, Lighthizer said he understands importers of French wine don't like tariffs, but members of the Committee represent areas with some of the best wine in the world on which no tariffs apply.

WTO

The hearing comes as countries around the world begin to advance candidates for the soon to be open WTO Director General position. Lighthizer said, "I think the WTO is a mess" and has failed America and the international trading system and wants a new general who wants reform and has no history of anti-American sentiment.

Japan

Lighthizer said phase 2 talks with Japan should start within a few months and, like so many other things, have been beset by the coronavirus pandemic.

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