ALSTON & BIRD

Night Note: The 1st 100 Days

*Trade in the First 100 Days of the Trump Administration**

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President Trump and the Republican Congress have consistently raised the notion of a "border tax" to address trade imbalances. While the President has advocated a border tax of 20% on imports from Mexico, congressional Republican leadership has instead proposed a border adjustable tax on all imports.

What Is the Border Adjustable Tax?

The Republican "Blue Print" for tax reform proposed a "border adjustable tax" as a primary vehicle to create revenues to offset overall corporate and personal tax rate reductions. Instead of a duty or an excise tax collected at the border, as perhaps imagined by President Trump, the Republican idea posits adjustments to taxes administered by the IRS. Generally, under the Blue Print, companies would be allowed to deduct certain costs related to exports but prevented from deducting certain, or possibly all, costs related to imports.

Will a Border Tax Really Happen?

Maybe. Political conditions are ripe for such a development. Importantly, Republican leaders view the border tax as a major source of revenue to pay for prized cuts to corporate and personal tax rates, making the concept politically valuable.

What's at Risk?

If your business relies on imports, or upon regional or global supply chains, the border tax issue will impact your bottom line. If you are an exporter, the damage caused by the tax to foreign trade partners is likely to create a more hostile environment in key foreign markets for U.S. products.

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What Should You Watch For?

- Major tax reform and not a specific provision, such as the border tax, being considered.
- Tax reform will compete for attention with a packed legislative agenda.
- Significant debate. Corporate America is split over the border tax. More than 100 companies, including importers, retailers, and automotive and supply chain firms, have already joined an anti-border tax coalition, Americans for Affordable Products. As exporters and consumer groups weigh in, the debate will intensify.

"Republican leaders view the border tax as a major source of revenue."

- The relationship between the border tax and the WTO. A border tax adjustment may violate the WTO principle of national treatment since imported products would be accorded a less favorable treatment than products of U.S. origin. That makes it very likely that the tax will be challenged in the WTO, and certain countries may retaliate in various forms against U.S. exporters and investors via regulatory actions, non-tariff barriers, and political means.
- Executive action. President Trump, frustrated with the slow pace of legislation, could attempt to achieve his objective through executive action, using aggressive interpretations of existing statutes to increase U.S. tariffs on foreign products.

*The Night Note has a long tradition in Washington, where for years it has been a channel used by cabinet secretaries to alert the White House of critical issues and vital news that should be among the President's priority concerns. We've adapted it here to communicate timely issues that concern the trade and investment community stemming from new policy actions and decisions taken by the Trump Administration.