

TRUMP-II TARGETS EU WITH TARIFFS AND INCOME-TAX HIKES: WHAT TO EXPECT AND HOW TO REACT?

Since taking office on January 20th 2025, the Trump-II administration has issued a set of initiatives that leave no doubt as to the intent to subdue the European Union into abandoning policies that are perceived as a discriminatory way of harming the interests of various US MNE's. This by branding a wide range of EU-policies as barriers. The March 31st 2025 report of the USTR, the subsequent tariffs-policies under alleged emergencies that were decreed by the President of the United States on 2nd and 9th April 2025, the build-up on Section 232 investigations in search for further national security threats and several tax provisions in the 'One Big Beautiful Bill' that was adopted on May 22nd 2025 - after a merely two hours of *authorised* debate in the House of Representatives - are all weaponized by start 2026 for use against EU-policies. For instance ; the Carbon Border Adjustment Mechanism ("CBAM") becomes effective in January 2026.

The debate on how to respond to this is no longer on trade-relations alone but on the sovereignty of the EU to protect its own democratic functioning, next to protecting the health, privacy and consumer rights of its citizens. The European Union should not enter a costly logic of retaliation tariffs but rather focus on speeding up its Clean Industry Act and extending the scope of CBAM. This blog advocates that such policies, together with a tax on digital activities and an aid-programme for exporting enterprises, will send a clear message to the world that the peoples of the EU shall not be bullied into paying for costs, nor risk their health, nor give in on consumer protection and privacy, nor in any way suffer for boosting US MNE's profits.

How is EU-law being targeted by the Trump-II administration?

The speech of February 14th 2025 of Vice-President Vance on the Munich Security Convention held a loud and clear message that still echoes. EU sovereignty was openly challenged by the remarks made on democratic election processes in the EU and government actions regarding content posted on social media. Algorithms are not to be hindered in any manner. They are after all mere vectors of free speech. Almost four months later, there is no longer room for doubt that since a strategy is being unfolded that seeks to weaken the EU and its functioning.

On March 31st 2025, the United States Trade Representative ("USTR") published a report of 397 pages, that perceived a wide set of barriers for US companies in a group of 57 countries, not including a single European Union Member State, but the European Union as a whole. This approach should not come as a surprise; the observed narrative being that the European Union is bad, but that separate Member States are nice, friendly guys to make deals with.

The following EU-policies¹ were branded as barriers for US business:

“Digital economy” barriers :

- Proposed EU Cybersecurity Certification Scheme for Cloud Services.
- Considered Network Usage Fees (for using telecommunication networks in the EU).
- Artificial Intelligence (AI) Act (that prohibits certain A.I. and regulates facial recognition technology, credit scoring, and critical infrastructure, providers of general-purpose AI).

¹ National Trade Estimate Report of March 31st 2025 on Foreign Trade Barriers of the President of the United States on the Trade Agreements Program, p. 137 – 170. The blog alters the order of presentation of barriers.

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- Data Act (regulates on cookies data transfers & cloud service and other data processing service providers that must remove obstacles for customers terminating their service).
- Data Localization (GDPR-rules).
- Digital Market Act (higher compliance costs for US companies).
- Digital Service Act (regulating power on US companies).
- Digital Services Taxes (in various EU – countries).
- Regulation on Privacy and Electronic Communications.

“Environmental” barriers :

- Fluorinated Greenhouse Gases.
- Packaging and Packing Waste Regulation.
- Deforestation-Free Supply Chain Regulation.
- Eco-design for Sustainable Products Regulation and the Digital Product Passport.
- Green Claims Directive.
- Renewable Energy Directive.
- EU Fumigation Requirements for Hardwood Lumber and Logs.
- EU Fluorinated Greenhouse Gas Regulation
- EU Carbon Border Adjustment Mechanism.

“Food-production” barriers :

- Import Licensing – Bananas.
- Pesticide Maximum Residue Limits for Environmental Objectives.
- Animal Byproducts, Including Tallow.
- Live Cattle.
- Trade in Raw and Processed Shellfish.
- Wine Labeling.
- Traditional Terms on Wine.
- Alcohol Labeling.
- Farm to Fork Strategy.
- Hormones and Beta-Agonists.
- Antimicrobial Resistance and the Restrictions on the Use of Veterinary Medicinal Products.
- Agricultural Biotechnology.
- Pesticide Maximum Residue Limits.
- Glyphosate Renewal.
- Hazard-based Cutoff Criteria for Agricultural Chemicals.

“Medical & chemical” barriers :

- Chemical Regulations.
- Classification, Labeling, and Packaging Hazard Classes.
- Per- and Polyfluoroalkyl Substances.
- Medical Devices and In-Vitro Diagnostics Regulation.
- Pathogen Reduction Treatments.
- Certification Requirements.
- Titanium Dioxide.
- Specified Risk Materials Certification Requirement.
- Categorization of Compounds as Endocrine Disruptors.

“General” barriers :

- Public procurement rules.
- Intellectual property.
- Audiovisual Media Services Directive.
- Subsidies
- Requirements of nationality for lawyers & auditors for some of their activities.

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Section 301 of the Trade Act of 1974² requires that the USTR determines appropriate sanctions, which may include imposing tariffs, where “*the rights of the United States under any trade agreement are being denied*” or “*an act, policy, or practice of a foreign country*” is “*unjustifiable and burdens or restricts United States commerce.*”. The USTR may impose duties also where the USTR determines that “*an act, policy, or practice of a foreign country is unreasonable or discriminatory and burdens or restricts United States commerce.*” This power is conditioned on extensive procedural requirements, including an investigation that culminates in an affirmative finding that another country imposed unfair trade barriers, a subsequent public notice of that investigation and a comment period.

Such a request for public notice and comment on the investigation’s findings, form the step-up towards effective sanctioning. No request was issued when this blog was posted. But this published report is a gun aimed at point-blank on major sections of EU-law, waiting to be fired.

President Trump mentioned on top of all that also EU VAT-rules on digital activities as one of the issues he considered unfair, when instrumentalizing on April 2nd 2025 *another law* that grants him the power to slam with tariffs without further ado. The President of the United States issued on that day the Executive Order 14257, invoking the International Emergency Economic Powers Act of 1977³ (“IEEPA”), to impose a general 10 percent ad valorem duty on “all imports from all trading partners,” which “shall increase for” a list of 57 countries to higher rates ranging from 11 % to as high as 50 %.

The President of the United States imposed these tariffs hikes in response to a self-declared “national emergency” with respect to “*underlying conditions, including a lack of reciprocity in our bilateral trade relationships, disparate tariff rates and non-tariff barriers, and U.S. trading partners’ economic policies that suppress domestic wages and consumption, as indicated by large and persistent annual U.S. goods trade deficits.*”. And a national emergency on fentanyl drugs for slamming Canada, China and Mexico with tariffs.

The European Union was subjected to a 20 % tariff increase on all imported goods. This increase fell back to 10 % while awaiting negotiations. The deadline for those negotiations expires on July 9th 2025. Claiming a lack of progress, a tariff increase of 50 % was said to be applied start June under that law, then this was withdrawn, then again imposed for steel and aluminium start June, based on yet *another law*. Section 232 of the Trade Expansion Act of 1962. Tariffs seemingly come and go as the wind turns, leaving companies in disarray.

Section 232 of the Trade Expansion Act of 1962⁴ is a similar provision as Section 301 of the Trade Act of 1974. It stems from the cold war and aims to protect the defence industry but also general welfare and employment. Where Section 301 targets discrimination of US business and seeks to find prove of that, Section 232 has no need for other findings than a perceived threat for the national security.

The President of the United States must first initiate an investigation into whether imports of a certain item pose a national security threat. If the investigation determines that they pose a threat, those imports may be taxed. Next to steel and aluminium, foreign cars and car parts imports were and are said to pose a threat to the US national security. And investigations are ongoing into various areas such as trucks, airplanes, semiconductors, lumber, copper, pharmaceuticals and critical minerals. These findings could relate to 40 percent of US imports.

A fourth build-up that can be observed relates to the ‘One Big Beautiful Bil’ that was introduced on May 20th 2025 in the House of Representatives and adopted on May 22nd 2025. The republican majority passed first a procedural vote that the debate may not exceed two hours. If the same process is repeated in the Senate, that Bill is in place by end June 2025. Some say July 4th is scheduled as the signing date by the President... It will apply fully on January 1st 2026. Consider this as a fourth cornerstone for bullying the EU into abandoning policies such as CBAM, that also is effective start 2026.

That Bill introduces two retaliatory tax measures that are triggered by a perceived disproportionate taxation of US persons. The first measure is a modification to the “Base Erosion and Anti-Abuse Tax’ (“BEAT”) rules which would apply to a US based corporation that is owned, directly or indirectly, by entities resident in jurisdictions which impose an ‘unfair foreign tax’. This relates to enlarging the tax base by refusing tax credits or deduction of costs and adding presumed taxable income. And the second measure is a new

² Trade act of 1974 of January 3, 1975 (Public Law 93–618, 88, Stat. 1978, as amended)

³ United States Code, Title 50, Chapter 35, §§ 1701–1707.

⁴ Trade Expansion Act of 11 October 1962 (Public Law 87-7940, 76 Stat. – H.R. 11970)

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'Enforcement of Remedies Against Unfair Foreign Taxes' section in the US internal revenue code (Section 899) that raises +5 % per year on top of the standard tax rate. With a maximum of 20 % increase above the normal tax rate on US income for foreign based corporations. Foreign based corporations under more than 50 % US control are not considered as foreign.

'Unfair foreign taxes' are defined as (1) Undertaxed Profits Rule (UTPR), (2) Digital Services Tax (DST), (3) Diverted Profits Tax (DPT) and (4) an open category of "extraterritorial" or "discriminatory" or "other tax as identified by the Secretary of Treasury that is disproportionately borne by US persons". It seemingly has a use for retaliation regarding taxation of digital activities that are already in place or that are being considered.

What may we be in for? Wanted Law asked lawyer Paul Verhaeghe of Wanted Law Tax.

Who is our blogger ?

Our blogger is a tax expert.

Paul Verhaeghe is a lawyer in Brussels. He is a tax lawyer with experience in financial criminal law, insurance law, liability law for the accountancy professions and inheritance law.

What happens if there is no agreement on July 9th 2025 on the 'IEEPA' tariffs? Are we in for 50 % tariffs on all EU export to the US?

One and a half out of these four policies are being operated at this moment; the 'IEEPA' and a 'limited' Section 232. All commented measures will become fully available start 2026.

Regarding Section 301, the USTR has first to go through a set of procedural requirements before sanctions can be advised and implemented. Investigations on threats posed to national security are ongoing under Section 232. Tax provisions generally kick in on the start of the next fiscal year after their adoption. Announcements on the intended use of these combined tools - Or should I say weapons aimed at EU sovereignty? – are to be expected by fall 2025.

On the short term, this is for the remainder of 2025 and start 2026, the 'limited' Section 232 regarding 'national security' and the 'IPEE' regarding 'national emergency' will be instrumentalized for bullying the EU into concessions regarding various policies.

There is little to be said about the criteria that apply for declaring national security threats. What is a threat? From what point on does something becomes one? Congress may well have considered that the President of the United States would not aim this mechanism at allies. Given the proper investigations completed, the President of the United States can act.

The Rule of law cannot come to the aid of the EU nor of the affected businesses. The World Trade Organisation is paralyzed, so no arbiter remains. One reaction that makes sense to me, is playing on the self-interest of the US in abandoning these subjective tariffs. Not by making concession on EU-policies but through well measured retaliation tariffs that push US voters to complain on the havoc the tariffs bring for their businesses and lives. That seems to be the kind of policy the European Commission has adopted against the 'limited' Section 232 tariffs.

The 'IEEPA' tariffs are based on national emergencies. Such a criterion can more easily be factually objectivated and can therefore be tested by the judiciary. All legal systems provide exemptions for overriding normal procedures when emergencies occur. The Rule of Law requires in turn strict conditions for calling an emergency that entrusts extraordinary power to the government. There is a Constitution in the United States and there are laws the President of the United States is expected to observe in this field. Willingly or unwillingly, after due process by those affected.

There are more than 120 statutory powers that the President of the United States can invoke when declaring a national emergency⁵. Presidents of the United States having been using 'IEEPA' provisions

⁵ <https://www.brennancenter.org/our-work/policy-solutions/checking-presidents-sanctions-powers>

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relating to a national emergency for decreeing sanctions against Iran, North-Corea etc.. that last for decades.

But the Trump-I administration ordered in 2020 also "IEEPA" typed-sanctions to intimidate international civil servants of the International Criminal Court (ICC) who were investigating alleged U.S. and Israeli war crimes⁶. On April 2nd 2025, the Trump-II administration claimed a national emergency so it could intimidate the European Union and 57 third countries with a threat of immediate tariff hikes. In a Judgment of May 28th 2025 the US Court of International Trade found⁷ that the Trump-II administration lacks the authority to do so under the Constitution of the United States. The Congress did not yield unconditionally its power to legislate. Section 122 of that law obliges the President of the United States to exert that power in response to a "balance-of-payments deficit". And that Court so found that :

"The President's assertion of tariff-making authority in the instant case, unbounded as it is by any limitation in duration or scope, exceeds any tariff authority delegated to the President under IEEPA. The Worldwide and Retaliatory tariffs are thus ultra vires and contrary to law."

An appeal was lodged by the Trump-II administration and the tariffs could so temporarily be maintained for a couple of more weeks, maybe a month. Then the road is open to the Supreme Court of the United States. If the Trump-II administration loses this fight, all paid import tariffs can be the object of a claim for relief. Even if there is no decision of the Court of Appeal before July 9th, the "IEEPA" approach is most likely to be used with more care.

Facing what may well be illegal measures and a period of relative calm of imposing new tariffs under the 'IEEPA' that can logically be expected, I think the EU would do best to not respond with retaliation tariffs. In any event, negotiations on one type of tariffs are to include the whole package of tariffs and income-tax hikes.

This relative calm for the remainder of 2025, while the US judges are determining the faith of these tariffs, could be used by the European Commission and the Member States to regroup after this sudden hit. And focus on how to state-aid by Member States or even the European Commission itself can be allowed for the exporting companies that suffered a significant drop in their sales to the US because of these tariffs. Such an approach prepares at the same time for 2026, when the full package of tariffs under sections 232 and 301 may be unleashed, and especially 2027, when income-tax hikes may apply.

Why would these income-tax hikes only make call for aid from 2027 on?

The income-tax hikes will strike the 2026 revenue. The impact of income taxes levied on US based & foreign controlled companies or on foreign based & not US controlled companies will have impact in 2027 when these taxes are due. Groups could look by then if and how they can organise parts of their subsidiaries not to fall under these measures and/or avoid cash streaming up between 2026 and 2029 and adapt financial planning.

These companies find themselves in a position where they are damned if they invest in the US to avoid tariffs. Because they expose themselves to those income-tax hikes. But they are also damned if they do not invest in the US because their import into the US may so become subject to these lose tariffs... But then again, it may as well be that tariffs will be gone by mid 2026 when the damage to the US economy and/or national deficit went out of control.

There is also already a tax provision, section 891 of the US internal revenue code, that grants the President of the United States the power to double tax rates, without exceeding 80 % taxes on the targeted revenue, when "under the laws of any foreign country, citizens or corporations of the United States are being subjected to discriminatory or extraterritorial taxes". That weapon is already in place and looks quite like these new provisions. So why did the Trump-II administration had need for another section 899 in the US internal revenue code?

⁶ See BBC, "International Criminal Court Officials Sanctioned by US," September 2, 2020, <https://www.bbc.com/news/world-us-canada-54003527>.

⁷ USCIT, May 28th 2025, *V.O.S. SELECTIONS, INC a.o. & 11 States v. US*, Case 1:25-cv-00066-GSK-TMR-JAR Document 55

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Section 891 is a kind of 'nothing or all' provision; doubling tax rates is not handy at all for haggling over policies. The new section 899 allows to tease better, building up slowly + 5 % tax pressure per fiscal year. With a maximum increase of 20 % after four years. But most importantly, there are no investigations. It holds presumptions of what kind of policies will trigger the income-tax hikes but also organizes waivers. Except to the extent provided by the Secretary, an extraterritorial tax and a discriminatory tax do not include:

"any generally applicable tax"

that constitutes:

- (i) an income tax generally imposed on the citizens or residents of the foreign country, even if the computation of income includes payments that would be foreign source income;*
- (ii) an income tax that would otherwise be an unfair foreign tax solely because it is imposed on the income of non-residents attributable to a trade or business in such foreign country;*
- (iii) an income tax that would otherwise be an unfair foreign tax solely because it is imposed on citizens or residents of such foreign country by reference to the income of a corporate subsidiary of such person;*
- (iv) a withholding tax or gross basis tax on any amount described in section 871(a)(1) or 881(a) other than a withholding tax or gross basis tax imposed with respect to services performed by persons other than individuals;*
- (v) a value added tax, goods and services tax, sales tax, or other similar tax on consumption;*
- (vi) a tax imposed with respect to transactions on a per-unit or per-transaction basis;*
- (vii) a tax on real or personal property, an estate tax, gift tax, or other similar tax;*
- (viii) a tax that would otherwise be an extraterritorial tax or discriminatory tax solely by reason of consolidation or loss sharing rules, provided that the consolidation or loss sharing rules generally apply only with respect to income of tax residents of the foreign country; or*
- (ix) any other tax identified by the Secretary."*

These carve-outs do not apply on digital service taxes multiple Member States have levied and will give cause for further tensions between the EU and the US in 2026 and beyond. These carve-outs aim at tax regimes that single digital business models out that are mainly provided by large US MNE's in their national territory. I consider these carve-outs as an opening for a tax on digital activities that meets requirements of equal treatment of all companies engaged in similar digital activities in the national territory. The blog suggests introducing several taxes that apply such equal treatment.

For the remainder of 2025, tariffs may still be applied under Section 232, in its temporarily limited version. It is suggested to respond to such tariffs through moderated retaliation, excluding goods that fall under CBAM.

The 'IIEPA' tariffs will face legal testing by the US judges for the remainder of 2025. Given the option of relief by an ordered reimbursement of these tariffs, it can be expected that this instrument will be used with much more care. It is suggested not to retaliate and rather focus in the remainder of 2025 on allowing and organizing state-aid by the Member States for strongly affected exporting companies and groups that will be hit in their liquidities in 2027.

The Section 301 tariffs and the new Section 899 tax provision will cause issues over existing taxes on digital activities that multiple Member States are already levying. Taxing digital activities must be organised around clear criterions of equal treatment to avoid Sections 891 and 899 of the US internal revenue code.

The EU negotiators should anticipate the coming into effect of all tariffs and income-tax hikes start 2026. An agreement in 2025 should cover the set of tariffs and income-tax hikes and may not result in abandoning or adapting EU-policies.

Next to preparing for impact, should the EU propose to stall CBAM or other policies?

The European Commission cannot overwrite EU-law as part of a deal over tariffs and avoiding income-tax hikes on US revenue for EU groups, companies and citizens. The European Commission is the guardian of Union law and that's why negotiations must be kept on the level of the EU.

You cannot trust that agreements will be respected, nor for how long. By giving a concession on one single policy that has no reasonable rationale of discrimination as the justification for that concession, you would find yourself ultimately in a sort of position of constant threats and haggling over adapting or removing EU-policies during the years to come.

You can undo that extortion technique – by want for a better word - by considering it as a sort of temporary black swan event you can simply not avoid. Just prepare for impact like for an earthquake that could give cause to a tsunami or to a foot high increase of the sea level for a short period of time. If the outcome of the negotiations with the Trump-II administration would force the European Commission to abandon or to weaken EU policies, then you are creating insecurity in the EU economy as a whole and you are weakening competition against US companies for the EU companies that still comply with these EU-policies.

There is the Clean Industry Deal the European Commission is working on. The European Parliament adopted on April 3rd 2025 a resolution regarding support policies for energy-intensive industries in the EU. That resolution⁸ holds 15 recommendations. The European Parliament so calls upon the Commission and the Council to speed up the de-carbonisation of EU-industry (recommendations # 1 to 5), de-coupling electricity price-setting from gas prices (recommendation # 6) and boost CBAM by a swift implantation and enlarging its scoop to other sectors (recommendation # 12). The resume of its objectives is⁹:

"We have no time to lose: we need to act to ensure European industry can endure and protect its jobs. The technological innovation needed to accelerate the decarbonisation of energy-intensive industries requires substantial investment, which the EU has a responsibility to support with public resources," lead MEP Giorgio Gori (S&D, IT) said. "In the meantime, these industries must be protected — from dumping, tariffs, unfair competition, and the subsidised overcapacity of other countries — to prevent carbon leakage and businesses leaving Europe."

Swiftly implementing the recommendations that this resolution commends would:

- (1) Give a loud and clear message to the Trump-II administration and the rest of the world that instead of weakening EU sovereignty, the result of bullying and slamming with tariffs and income-tax hikes, had the adverse effect of strengthening EU-policies.
- (2) By enlarging CBAM, more industries in the US are incited to produce according to European climate standards. This would counter the internal tax policies of the Trump-II administration that removed tax benefits for climate investments. On the other hand, by imposing general tariffs on import of US goods as a retaliation measure, you would weaken in the US that worldwide effect of CBAM.
- (3) By enlarging the scope of CBAM and carving these goods out from retaliation measures, you reward and bolster those States in the US that oppose the anti-climate measures the Trump administration advocates.
- (4) Reducing the effect of the factor gas in price setting for electricity, allows for more long-term stability in the electricity price. That will incite EU industries to invest sooner in de-carbonised

⁸ P10_TA(2025)0065 - Energy-intensive industries - European Parliament resolution of 3 April 2025 on energy-intensive industries (2025/2536(RSP)).

⁹ Quote from the European parliament website regarding this resolution.

<https://www.europarl.europa.eu/news/en/press-room/20250331IPR27550/meps-adopt-their-roadmap-for-supporting-energy-intensive-industries>

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production and make the EU less dependent on import of gas. This also for gas from the US. EU sovereignty and climate mitigation boosts in the long run.

Adopting policies such as the Clean Industrial Deal and these recommendations are a smart reaction that thwarts the Trump-II administration objectives to attack EU sovereignty by meddling with tariffs into EU-policies that seek to protect the climate.

But what with our exporting industries that may face up to 50 % tariffs and income-tax hikes on their US revenue start 2026?

What is to come from the US in terms of tariffs and income-tax hikes is a hazardous event that may last a couple of years or just a couple of months. Depending on how the US economy is impacted. The exporting EU-industry will suffer in any event because it is unable to plan for the remainder of the duration of the Trump-II administration. Even if you can reach at some point a deal with the Trump-II administration, it may change overnight.

By haggling over EU-policies that would no longer apply for US companies, you would import insecurity for the whole of your EU-industry. The threat of income-tax hikes on US earned income opposes the goal of reallocating production in the US. Only US companies are safe to reallocate production to the US. All businesses' financial planning on investing in the US are hostage on how the Trump administration qualifies at any given moment for any loony reason the policies of the country where their shareholders and headquarters are established.

By retaliating through tariffs, you weaken your own economy when the imported goods are required for your production. Only consumer goods can be considered for restrained retaliations. With tariffs you undo the policy effect of CBAM on carbon-free production outside the EU. You also give attention to the objectives the Trump administration seeks to accomplish, and you may even boost nationalistic sentiments for the midterm elections that the Trump-II administration will call upon in the face of retaliating tariffs. In short ; by retaliating you put on the hide of the scape goat. That is just the type of outsider an authoritarian regime needs for imposing and maintaining itself. China had logically no issues about assuming that part. But a relationship between allies requires more restraint.

In response to the tariffs, I suggest the European Commission allows Member States to organise state aid to their exporting industries to overcome that period of random events of tariffs and income-tax hikes. This state aid can take the form of increased tax deductions for assets that are idle or on reduced productivity to compensate for losses or can take the form of subsidies. These aids can be conditioned to switch production towards de-carbonising. By the time these assets will be build and operational, the Trump-II administration era may well have passed.

Extension of CBAM provides income for both the EU and Member States : the 20 % extra income can help the EU to reimburse the EU-bonds for the pandemic and the 80 % extra income can be used in part to compensate exporting industries for tax deductions or subsidise expenditure in carbon-free transformations of plants.

The European Commission cannot overwrite EU-law as part of a deal over tariffs and avoiding income-tax hikes on US revenue for EU companies and citizens.

Even if you reach a deal, it can change overnight. You would find yourself ultimately in a sort of position of constant threats and haggling over adapting of removing EU-policies for the remainder of the Trump II administration. Weakening EU-sovereignty.

Adopting the Clean Industry Act and implementing the recommendations of the Resolution on Energy-intensive industries of April 3rd 2025 are the way forward that will boost EU-sovereignty on the long run. If negotiations fail, no retaliation tariffs but State aid should be considered as effective for exporting industries. The remaining time of the Tump II administration may be used to prioritise de-carbonised production for these industries.

And how for Member States that not have borders to levy CBAM taxes in 2026?

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There is the BEFIT proposal from the European Commission to the Council that aims at boosting revenue collection from corporate taxation¹⁰. That proposal states its objective :

"..the tax bases of Member States shift as a result of megatrends, such as globalisation, digitalisation, climate change, environmental degradation, an ageing population, and a transforming labour market. In particular, globalisation and digitalisation have paved the way for profit shifting through tax planning practises which previously have been addressed by the Union and Member States by adopting anti-tax evasion and avoidance measures. (...) This proposal seeks a way forward that reconciliates all aspects by introducing a common framework for corporate income taxation in the Union."

Similar policies were considered in 2016 before Trump was elected for the first time. They were referred to as 'CCTB' and 'CCCTB'. This updated proposal takes stock of international tax discussions regarding the digital economy in the past years. It provides the means for aiding exporting industries, pay for the speeding up of clean energy production, building up military force. Of course, unanimity in the Council is an issue and that will take up time the exporting industries may lack in the event they face steep tariffs in June or July 2025. It may even well be that the Trump-II administration is already over and tariffs went back to more normal levels before that the adopted proposal is transposed by the Member States.

Practically, when new revenues must be effectively collected on a short-term notice, and having in mind the carve-outs for the US income-tax hikes that are about equal treatment, Member States may consider adopting one or more of the following measures to raise funds and have all companies contribute an equal share levied on their digital business models that occur in the territory of that Member State:

(1) Apply VAT on free digital services.

The Court of Justice of the European Union has held that when a counterpart must be given in order to receive a service for free, VAT must be applied on that service¹¹. Such a unconditional demand for a counterpart is key here, since it is considered as payment. A rendered interpretation of a directive by the ECJ is mandatory for the institutions, the Member States and their administrations. By lack of a charged price, the cost of that counterpart for receiving that free digital service from the side of its user or for rendering that service from the side of its provider can be taken under consideration as a tax base.

Mandatory cookies trigger such tax base. It is the electricity consumption of the activity of the cookies on the digital interfaces of the user (portable phone, laptop, desktop, tablet etc..) that is given as a mandatory counterpart to the provider for the digital service to occur in that Member State. It is a presumption based activity ; without clicking by the user, no service.

The tax base from the side of the users can be presumed as the average price for that month for 1 kW of electricity in that Member State for households x kW needed for one hour of activity by that type of digital activity x total number of hours of that type of digital activity accessed that month through connections made from the territory of that Member State to services offered for free.

The free digital services can be divided into two categories¹² :

- high electricity consumption: many images (screen calls, streaming) : 0,15 kw per hour,
- low electricity consumption: few images (surfing, e-mailing) : 0,075 kW per hour.

Such tax may trigger algorithms to 'pause' themselves on inciting further use, lifting some part of its addicting effects on users. B2B free digital services rendered against mandatory cookies must be invoiced to these taxpayer-users when both the time spent and the identity of the tax payer are known by the provider. If not, auto-liquidation is to be applied as for households.

¹⁰ Proposal for a COUNCIL DIRECTIVE on Business in Europe: Framework for Income Taxation (BEFIT) {SWD(2023) 308 final} - {SWD(2023) 309 final}

¹¹ CJUE, 3 March 1994, C-16/93, R.J. Tolma, EU:C:1994:80

¹² For estimations of energy-consumption: Joanna Moulhierac, Guillaume Urvoy-Keller, Marco Dinuzzi, Zhejiayu Ma. 'What is the carbon footprint of one hour of video streaming?' Université Côte d'Azur. 2023. hal-04069500v2 and <https://www.energuide.be/en/questions-answers/how-much-power-does-a-computer-use-and-how-much-co2-does-that-represent/54/>

(2) Apply VAT on bartering or payment with crypto-currencies, Bitcoins in particular. That are not considered as legal tender.

The IMF called in summer 2024 to tax crypto asset transfers in order to slow down the staggering energy consumption hikes for this type of digital activity¹³. Including bitcoins, these transfers consume worldwide as much electricity as Japan's economy in a whole year. Trading one full bitcoin requires as much electricity as an average German citizen consumes in a whole month. Putting that electricity to better use for climate goals (production, transport and heating purposes) will dampen demand for fossil production electricity, especially gas. Member States could introduce formulas such as :

Fixed average number of kW needed for transferring 1 bitcoin x total number of bitcoins traded OR transferred for consumers located in that Member State in that month x average price of electricity for households in that Member State in the month before notification.

Effective kW consumed for all transfers of tokens as payment or bartering x total number of transfers for consumers in that Member State that month x average price of electricity for households in that Member State in the month before notification.

The result OR the price charged for the transfer by the provider of that transfer service if it is higher, are subject to auto liquidation by the provider of the transfer service of crypto-currencies to the consumer in that Member State.

(3) Have their citizens declare their tokens for income tax purposes and social benefits.

Counters also informal economy (undeclared work) and money laundering.

(4) Adopt a digital corporate income tax¹⁴.

That is applied on digital business models that lend themselves to tax avoidance by either collecting payment abroad or allocating intra-group costs on part of the digital business model that takes place abroad:

- (a) Free digital services.
- (b) Paying standardised digital services.
- (c) Devices that allow connection to the internet that remain intra-group from production to their sale (rights form an important part of that sale price ; CFC's and anti-abuse rules are not effective against these rights).
- (d) Digital sales of goods that the selling group does not produce self. When self-produced CFC & anti-abuse rules generally allow controlling the price that can be applied at arms-length between companies of that same group.
- (e) Payment orders and paying platforms.
- (f) Offering paying personalised digital services.

Since 2017 the OECD model treaties have also as objective addressing tax evasion and tax optimization¹⁵. Tax treaties can now be interpreted under this new objective. Since December 2018 the Customary International Law on the Interpretation of Treaties has been updated through two resolutions of the General Assembly of the United Nations¹⁶. There is no longer a hierarchy among methods of interpretations under that law; all methods must be used together, in good faith, and the result may not be manifestly absurd or unreasonable.

¹³ <https://www.imf.org/en/Blogs/Articles/2024/08/15/carbon-emissions-from-ai-and-crypto-are-surging-and-tax-policy-can-help>

¹⁴ For a detailed rationale on the points 4) to 6), read the article [published](#) on the website of Wanted Law.

¹⁵ https://read.oecd-ilibrary.org/taxation/model-tax-convention-on-income-and-on-capital-condensed-version-2017_mtc_cond-2017-en#page1, points 8,9 and 15.6.

¹⁶ UN General Assembly Resolutions of 20 December 2018, # 73/203 on *Identification of customary international law* and # 73/202 on *Subsequent agreements and subsequent practice in relation to the interpretation of treaties*, to be read for full understanding of its meaning with the Report of the INTERNATIONAL LAW COMMISSION, Chapter IV Yearbook 2018.

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A taxable activity qualifies as a fixed establishment (article 5 OECD) under that updated Customary International Law on the Interpretation of Treaties when a 'quasi-constant digital economic activity' occurs in the national territory. With references to both case-law of the Supreme Court of the United States ("SCOTUS")¹⁷ and proposals of the European Commission, suggested presence criteria are :

- a) 50.000 users per million or 250.000 connections per million on an annual basis from the territory of the Member State to the websites,
- b) a number of 2,400 contracts when no physical presence is required for the conclusion or the execution of the contract.

Taxable income (article 7 OECD) from that taxable activity qualifies under the updated Customary International Law on the Interpretation of Treaties as 'the uncertain revenue obtained from a hazardous economic activity'. This with reference to case-law of the ECJ¹⁸.

It is the presumed national share of that Member State in the global turnover of the digital business model that forms the taxable income OR the taxable income as proven by the provider of that digital business model.

Criterion "users" or "connections" for allocation of taxable income = (number of connections OR users from that Member State / worldwide number of comparable connections OR users) x the worldwide revenue obtained from that digital business model x (the Gross Domestic Product of that Member State per capita/the average of the Gross Domestic Products per capita of countries with equal or higher presence criteria, that Member State included)

Criterion contracts for allocation of taxable income = invoiced turnover.

A bartering transaction including virtual currencies, tokens or any other form of digital data or their purchase or sale against payment in legal tenders shall be considered a digital contract. If such services are offered free of charge, the amount acquired from this offered service will be set at 3% of the equivalent value of the digital data transferred upon their sale or purchase against legal tender.

The highest amount of the three criteria to determine the taxable income is retained for that digital business model. The same company can have several digital business models in that Member State.

A Save Harbor criterion protects starting enterprises against the high costs of compliance with the reporting obligations. The Save Harbor applies if on an annual basis no amount of more than EUR 100.000 per million inhabitants in that Member State is obtained as taxable income allocated in that Member State from ALL digital business models with a reporting obligation for the provider.

Base : presumed between 10 % and 25 % of the allocated taxable income in function of five factors :

- (5 %) because the digital business model is BEPS-sensitive = objective of minimum income tax,
- (5 %) if high data harvesting from user data is required for that digital activity; that means a bigger share of the digital activity takes place in that Member State (presumption),
- (5%) if high profit margins are present (ability to pay - progressivity),
- (5%) if higher need for local services (roads),
- (5%) if negative impact on employment (contributions for costs for unemployment).

Rate & tax : the standard corporate tax rate in that Member State x the factors that apply on that digital business model x the allocated tax base = digital corporate income tax

That digital corporate income tax can be set off against the share of the normal corporate income tax that is due on the part of the income that originates from digital business models in that Member State and that qualify for taxation under the digital corporate income tax.

¹⁷ [SCOTUS, June 21st 2018, State of South Dakota v. Wayfair](#) & ECJ, October 1st 2015, *Wellimmo*, C-230/14, EU:C:2015:639 : the word establishment is an open notion that refers to a presence that has been observed

¹⁸ ECJ, September 12th 2017, *Austria v. Germany*, C-648/15, EU:C:2017:664, §§ 40 and 41 in particular regarding the notion of profit.

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(5) Adopt a digital withholding tax.

Set at 80 % of the digital corporate income tax of the previous year, payable for ¼ each trimester. It can be deducted from corporate taxes levied on the income from digital business models that year but is not refundable. Withholding taxes do not only provide earlier income, which may be crucial for organizing an effective aid for the exporting industries. They are also effective in discouraging tax optimization. You may consider strengthening that effect by conditioning the right to deduct the withholding tax from digital corporate income taxes by observing a timely and complete reporting obligation.

(6) Adopt a digital indirect tax.

Calculated on the taxable income that is presumed to be earned during a trimester. A Save Harbour applies when less than 25.000 EUR per million inhabitants in that Member State is earned that trimester.

Rate = $6\% \times \text{cost factor}$ in function of whether that digital activity requires more electricity and has need for a high frequency of connections. User data that are harvested by cookies have a typical need for a very high frequency of connections to servers.

Cost factor :

(a) 20 % (= 1,2 %) for digital activities that allow their users to make electronic payments or require exchange of electronic data with a low amount of energy,

(b) 30 % (= 1,8 %) for digital activities that allow their users to :

- in return for payment, acquire goods or personalised services produced by the company or group itself,
- free electronic payments or an exchange of electronic data requiring a low amount of energy for this purpose,

(c) 40% (= 2,4%) for digital activities that allow their users to :

- acquire standardised information services against payment,
- make electronic payments or exchange electronic data requiring a large amount of energy for this purpose

(d) 50 % (= 3 %) for digital activities that allow their users to :

- obtain goods, personalised or standardised services free of charge, purchase them, or allow them to exchange goods and services with other users, with the exception of electronic payment services or electronic data exchange referred to in the previous paragraphs,

This cost factor expresses a rationale for the participation by these companies in the costs for upgrading the telecommunication and electricity grid and boosting renewable energy. 25 % of all electricity produced in the EU goes to the digital interfaces and the telecommunication network. Datacentres consume an additional percentage of electricity in Member States (2 % in most Member States, 4 % in Belgium, 21 % in Ireland).

This indirect tax applies the benefit-principle as recognized in the case-law of SCOTUS¹⁹ and in international tax law since hundreds of years. All comparable digital activities are contributing in a comparable way to the costs they trigger in that national territory for using 'digital highways'.

The cost factors oppose, with or without an allocated taxable income, a qualification as a prohibited tax that is similar to VAT. Sectors where indirect taxations by the Member States are not allowed are to be exempted from this tax.

Adopting these 6 suggested tax policies implies also taxing all national companies with such digital business models. This is required for observing equal treatment and not providing a rationale for tariffs and income-tax hikes.

¹⁹ [SCOTUS, May 18th 2015, Comptroller of the Treasury of Maryland v. Wynne](#)

In the EU Tax symposium of March 2025, organised by the tax administration of the European Commission and the tax sub-committee of the European Parliament, it was noted by the panels that the Trump-II administration had refused implementing the Pillar II solution on minimal taxation of revenues in market jurisdictions and has redrawn the US from the OECD talks on Pillar I (on modifying tax treaties for taxing digital activities) and the negotiations in the General Assembly of the United Nations regarding an international tax treaty that is adapted to the digital economy. It was obvious that in that new setting brought on by the US, many thoughts of those present lingered on a European tax initiative regarding digital activities. These 6 proposals are to the best of my knowledge compliant with the rules laid down in the General Agreement on Trade and Tariffs, the General Agreement on Trade in Services, Union Law and tax treaties.

What can you tell us more on the EU Tax symposium of March 2025?

That it was held before the USTR published his report on March 31st 2025 on barriers by the European Union and 57 countries and before the Trump-II administration slammed subsequently tariffs on 57 countries and the European Union as a whole with reference to another law. But already by then, the European Institutions had seen two months of Trump-II administration in action, and it was palpable in that symposium that for the panels various longstanding policies were now open to review. Where the EU stood next to the US in defending the OECD approach during decades, this seems no longer granted. The US may find itself quite isolated in the United Nations.

A lot of consideration was given to taxing the so-called Ultra High Net Worth Individuals as a possible new resource for the European Union. This would be a tax on wealth for individuals with more than 100 million euros of assets. There were also considerations on datamining options in the new VAT rules on e-invoicing and protecting households and companies against steep electricity prices through the effect of gas prices and the big profits that energy companies can make. That link in pricing had to be reviewed. In a way, that panel shared insights that can also be found in the resolution of April 3rd 2025 of the European Parliament.

The BEFIT proposal picks the 2016 CCTB and CCCTB proposals up. It provides the means for coming to aid for exporting industries, pay for the speeding up of clean energy production, transportation and powering up energy-intensive industries. But the Trump-II administration may have already ended, and tariffs go back to normal, before that proposal can be adopted under the requirement of unanimity by the Council and transposed by the Member States.

As an alternative for the short term, six concrete tax measures are proposed for an immediate implementation by the Member States. This given the urgency in financing the war efforts in Ukraine, the building up of military strength, maintaining the European social welfare model in a digitalising world and providing aid to exporting companies or groups that are hit by the Trump-II administration's policies in 2025 and 2026.

So, in summary, you argue that taxing digital business models, speeding up on the Clean Industry Act, expanding the scope of CBAM and organizing aid for EU companies is to be preferred over retaliation tariffs?

The introduction of this blog warns that these aggressive policies are about more than trade issues and taxes. Once the full package is operational, I fear that pressure will grow upon the EU and its Member States to abandon certain EU-policies. Especially the CBAM-mechanism. The set of measures is so vast that there is only one option to overcome them without giving in on EU-policies. This by basically ignoring these tariffs, holding on EU-sovereignty, protecting the affected companies and groups for the time needed, as in a pandemic situation, and hoping that the self-inflicted harm done to the US economy will lead to more reasonable policies by Spring 2026.

The suggested approach is playing to the strengths of the European Union as a market jurisdiction and pursues its long-term objectives for climate mitigation and greater sovereignty through de-carbonised

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production. By not imposing retaliation tariffs the whole of the EU economy is less hurt and CBAM policies objectives are not weakened. The exporting industries must in any event wait for the moment reason will come back into the transatlantic trade relations before they can start again their financial planning with some minimal level of tax certainty. That period of reduced and hazardous sales to the US can be overcome with tax reliefs and subsidies that prioritize a shift to de-carbonised production. The European Commission can allow this and organize that framework in the coming months.

Next to an increased income from the larger scope of CBAM, several taxes are suggested that Member States could levy to update taxation in a digital economy and provide aid to the exporting industries and groups that are hit. Relation tariffs will only bring more harm to both economies. But as said, regarding Section 232 tariffs, I support limited and well weighted retaliation tariffs on consumer goods that are not in scope for CBAM. This to encourage political opposition in the US against these policies.

Suggestions :

(1) Adapt trade policies to **boost the clean industry act** and **enlarge the scope of CBAM**. Don't abandon the EU-core policy of achieving peace through trade by responding with tariff retaliation. This would hit innocents, weakens EU-U.S. bonds further and hurts our economy.

(2) The Trump administration will not be there for ever and by not raising tariffs we protect our economy best. Consider **aiding the enterprises that are hit by tariffs and income-tax hikes on their U.S. income**. Use this crisis to **prioritise carbon-free production** switches for our exporting industries. **Reduce the effect of gas on electricity-price setting** to boost clean production investment decisions in our economy.

(3) **Have the digital economy contribute a minimum fair share** on its revenues obtained in the member-states. Member-states can use that money for expenditures in Ukraine, military build-up, aiding our industries that are hit by U.S. tariffs and income-tax hikes, telecommunication- and electricity network costs, green energy production, paying back the Covid-loans and EU-bonds and maintain the EU Social Welfare model in a new digital age.

Thank you for reading through this blog.

Brussels, 3rd June 2025,

Paul Verhaeghe