



Section 301 Committee
Office of the United States Trade Representative
600 17th Street, NW
Washington, DC 20508

Submitted via regulations.gov

Re: Docket Number USTR-2019-0009

Comments on the Initiation of a Section 301 Investigation of France's Digital Services Tax

August 12, 2019

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Thank you for the opportunity to provide comments on the Section 301 Investigation. These comments cover four areas.

1. The structure of the French digital services tax,
2. How that structure interacts with domestic and foreign firms,
3. The way that the tax could undermine current multilateral negotiations on international tax, and
4. The cost of potentially escalating the current trade war, and an alternative response.

Structure of the Tax

The French digital services tax is a 3 percent tax on certain revenues of large companies. Those certain revenues include revenues from:

1. Digital interfaces like online marketplaces, and
2. Online advertising services.

Large companies include firms with global revenues of at least €750 million (US \$841 million) and revenues from France of at least €25 million (\$28 million).

The tax is deductible against French corporate income tax, and the policy is retroactive to the beginning of 2019.

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Impact on Foreign Firms

As a tax on revenue rather than income, the tax will function very much like a tariff and discriminate between domestic and foreign firms. Foreign firms will face the tax on gross revenues at the point which their services cross the French border, or rather, when they hit a French IP address. Companies faced with the digital tax will likely pass this tax on to French consumers in the form of higher prices, as we have already seen.

The retroactivity of the tax adds an additional layer to the already narrow and distortionary design of the tax. Businesses impacted by the tax are having to commit resources to the complex effort of complying with the policy for a time period when they were not previously required to track revenues for a similar purpose.

Undermining Ongoing Negotiations

The tax comes at a time when countries are working toward a multilateral solution on international taxation at the OECD. France, rather than waiting for the OECD process to play out, has preempted the process with this policy. French policymakers have, at different times, suggested that the OECD process is important, and that the French policy is just a temporary measure.

However, a provision in an earlier version of the proposal which would have allowed the tax to expire was not included in the final legislation.

Unilateral action of this kind could undermine the OECD process by showing that countries might not need to adhere to whatever policy will be agreed upon in the coming months. In this way, the French policy is not only harming the targeted companies, it is also creating additional uncertainty around the process at the OECD. Such uncertainty can lead to delayed investment decisions and be a drag on economic growth.

Costs of Escalation Using Tariffs

Unfortunately, the harm of the French digital services tax could be compounded if the United States chooses to respond with retaliatory tariffs. The current trade war has already been costly for Americans and could become even more so. The Tax Foundation estimates that the total impact of imposed and announced tariffs will reduce long-run GDP in the U.S. by 0.6 percent. Simply put, this means lower wages and fewer jobs. Additional tariffs in retaliation to the French DST would mean even more harm to U.S. businesses and consumers.

Alternatively, the U.S. could use its negotiating position at the OECD to put pressure on France and other countries considering similar policies. At the very least, the U.S. should negotiate to have the OECD explicitly require removal of DSTs and similar policies as a condition of agreement on new international tax rules. Putting pressure on OECD countries to agree to such a condition in the context of the broader work plan could help to forestall similar unilateral actions from other countries.

In summary, this French policy effectively functions as a tariff on foreign firms, and the U.S. should consider a response to the tax which would increase stability rather than uncertainty for international tax and trade policy.

Sincerely,
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