



[Billing Code 3290-F9]

OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

[Docket No. USTR-2019-0009]

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

AGENCY: Office of the United States Trade Representative.

ACTION: Notice of initiation of investigation, public hearing, and request for comments.

SUMMARY: The U.S. Trade Representative (Trade Representative) is initiating an investigation with respect to the Digital Services Tax (DST) under consideration by the Government of France. The Section 301 Committee will hold a public hearing and is seeking public comments in connection with this investigation.

DATES:

July 10, 2019: The Trade Representative initiated the investigation with respect to the French DST.

August 12, 2019 at noon EDT: Deadline for filing requests to appear at the August 19, 2019 public hearing, and for filing written version of your oral testimony.

August 19, 2019 at noon EDT: To be assured of consideration, written comments must be submitted by this date.

August 19, 2019: The 301 Committee will convene a public hearing at 9:30 a.m. in Rooms 1 and 2, 1724 F Street NW, Washington, D.C. 20508.

August 26, 2019: Due date for filing post-hearing submissions.

ADDRESSES: You should submit written comments through the Federal eRulemaking Portal: <http://www.regulations.gov>. Follow the instructions for submitting comments in section IV and V. The docket number is USTR-2019-0009. For issues with on-line

submissions, please contact the Office of the United States Trade Representative (USTR) Section 301 line at (202) 395-5725.

FOR FURTHER INFORMATION CONTACT: For procedural questions concerning the submission of written comments or participating in the public hearing, please contact the Office of the United States Trade Representative (USTR) Section 301 line at (202) 395-5725. For all other questions concerning the investigation, please contact the USTR Section 301 line or Kate Hadley, Assistant General Counsel at (202) 395-4959, Robert Tanner, Director, Services and Investment, (202) 395-6125, or Michael Rogers, Trade Policy Analyst, Europe and the Middle East, (202) 395-2684.

SUPPLEMENTARY INFORMATION:

I. The Digital Services Tax

On March 6, 2019, the Government of France released a proposal for a 3% levy on revenues that certain companies generate from providing certain digital services to, or aimed at, French users (the Digital Services Tax, or the DST). On June 26, a joint committee of the two houses of the French Parliament agreed to a joint committee DST bill. On July 4, the French National Assembly passed the DST bill. The French Senate is expected to take up the bill on July 11.

Under the joint committee bill, the DST applies to revenues generated from certain “digital interface” services (*e.g.*, e-marketplaces for goods and services) and certain Internet advertising services. Certain services that would otherwise be covered are excluded, including digital interfaces for the delivery of “digital content.” The tax applies only to companies with annual revenues from the covered services of at least €750 million globally and €25 million in France. The DST applies to gross revenues

from providing the covered services to, or aimed at, French individuals, not to income. Many of the companies likely to be covered are not domiciled in France and have no permanent establishment there. Under current international tax rules, these companies do not pay—or expect to pay—taxes to France on the revenue they earn by providing services to, or aimed at, French individuals. The tax applies retroactively beginning January 1, 2019. Available evidence, including statements by French officials, suggest that France expects the tax to target certain large, U.S.-based tech companies.

II. Initiation of Section 301 Investigation

Section 302(b)(1)(A) of the Trade Act of 1974, as amended (Trade Act), authorizes the United States Trade Representative (Trade Representative) to initiate an investigation to determine whether an act, policy, or practice of a foreign country is actionable under section 301 of the Trade Act. Actionable matters under section 301 include, *inter alia*, acts, policies, and practices of a foreign country that are unreasonable or discriminatory and burden or restrict U.S. commerce. An act, policy, or practice is unreasonable if the act, policy, or practice, while not necessarily in violation of, or inconsistent with, the international legal rights of the United States, is otherwise unfair and inequitable.

Pursuant to section 302(b)(1)(B), USTR has consulted with the appropriate advisory committees. USTR also has consulted with the inter-agency Section 301 Committee. In light of concerns with France's DST policy, as set out in the joint committee bill, the Trade Representative initiated a Section 301 investigation on July 10, 2019. Pursuant to section 303(a) of the Trade Act, the Trade Representative has requested consultations with the Government of France.

Pursuant to section 304 of the Trade Act, the USTR must determine whether the act, policy, or practice under investigation is actionable under Section 301. If that determination is affirmative, the USTR must determine what action to take.

The investigation initially will focus on the following concerns with the DST, as reflected in the joint committee bill.

- (1) Discrimination: Available evidence, including statements by French officials, indicates that the DST will amount to *de facto* discrimination against U.S. companies. For example, the revenue thresholds have the effect of subjecting to the DST larger companies – which, in the covered sectors, tend to be U.S. companies – while exempting smaller companies, particularly those that operate only in France.
- (2) Retroactivity: The DST would be a substantively new tax that applies retroactively to January 1, 2019. This feature calls into question the fairness of the DST. Further, since the tax is retroactive, companies covered by the DST may not track the data necessary to calculate their potential liability back to the beginning of 2019.
- (3) Unreasonable tax policy: The DST appears to diverge from norms reflected in the U.S. tax system and the international tax system in several respects. These apparent departures include: extraterritoriality; taxing revenue not income; and a purpose of penalizing particular technology companies for their commercial success.

In addition to these areas of concern with the DST, interested parties are invited to raise other aspects that may warrant a finding that the French DST is actionable under Section 301.

III. Request for Public Comments

Interested persons are invited to submit written comments or oral testimony on any issue covered by the investigation. In particular, USTR invites comments with respect to:

- Concerns with the French digital services tax, as set out in the joint committee bill or as subsequently modified or adopted by the Government of France, including the specific concerns identified above;
- Whether the French DST is unreasonable or discriminatory;
- The extent to which the French DST burdens or restricts U.S. commerce;
- Whether the French DST is inconsistent with France's obligations under the WTO Agreement or any other international agreement; and
- The determinations required under section 304 of the Trade Act, including what action, if any, should be taken.

IV. Hearing Participation

The Section 301 Committee will convene a public hearing at the Office of the U.S. Trade Representative, located at 1724 F Street N.W., Washington, D.C. 20508, Rooms 1 and 2, beginning at 9:30 a.m. on August 19, 2019. You must submit requests to appear at the hearing by August 12, 2019. The request to appear should include a written version of the testimony you expect to give. Remarks at the hearing may be no longer than five minutes to allow time for questions from the Section 301 Committee.

All submissions must be in English and sent electronically via *www.regulations.gov*. To submit a request to appear at the hearing via *www.regulations.gov*, enter docket number USTR-2019-0009. In the “type comment” field, include the name, address, email address, and telephone number of the person presenting the testimony. Attach testimony, and a pre-hearing submission if provided, by using the “upload file” field. USTR strongly prefers submissions in Adobe Acrobat (.pdf). The file name should include the name of the person who will be presenting the testimony. In addition, please submit a request to appear by email to *301DST@ustr.eop.gov*. In the subject line of the email, please include the name of the person who will be presenting the testimony, followed by ‘Request to Appear’. Please also include the name, address, email address, and telephone number of the person who will be presenting testimony in the body of the email message.

V. Procedures for Written Submissions

All submissions must be in English and sent electronically via *www.regulations.gov*. To submit comments via *www.regulations.gov*, enter docket number USTR-2019-0009. Find a reference to this notice and click on the link entitled “comment now!” For further information on using the *www.regulations.gov* website, please consult the resources provided on the website by clicking on “how to use *regulations.gov*” on the bottom of the *www.regulations.gov* home page. We will not accept hand-delivered submissions.

The *www.regulations.gov* website allows users to submit comments by filling in a “type comment” field or by attaching a document using an “upload file” field. USTR prefers that you submit comments in an attached document. If you attach a document, it

is sufficient to type “see attached” in the “type comment” field. USTR strongly prefers submissions in Adobe Acrobat (.pdf). If you use an application other than Adobe Acrobat or Word (.doc), please indicate the name of the application in the “type comment” field.

File names should reflect the name of the person or entity submitting the comments. Please do not attach separate cover letters to electronic submissions; rather, include any information that might appear in a cover letter in the comments themselves. Similarly, to the extent possible, please include any exhibits, annexes, or other attachments in the same file as the comment itself, rather than submitting them as separate files.

For any comments submitted electronically containing business confidential information, the file name of the business confidential version should begin with the characters “BC”. Any page containing business confidential information must be clearly marked “BUSINESS CONFIDENTIAL” on the top of that page and the submission should clearly indicate, via brackets, highlighting, or other means, the specific information that is business confidential. If you request business confidential treatment, you must certify in writing that disclosure of the information would endanger trade secrets or profitability, and that the information would not customarily be released to the public. Filers of submissions containing business confidential information also must submit a public version of their comments. The file name of the public version should begin with the character “P”. The “BC” and “P” should be followed by the name of the person or entity submitting the comments or rebuttal comments. If these procedures are not sufficient to protect business confidential information or otherwise protect business

interests, please contact the USTR Section 301 line at (202) 395-5725 to discuss whether alternative arrangements are possible.

USTR will post submissions in the docket for public inspection, except business confidential information. You can view submissions on the <https://www.regulations.gov> website by entering docket number USTR-2019-0009 in the search field on the home page.

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