

U.S. Trade Representative Solicits Comments Regarding France’s Digital Services Tax

Proposes to Tax Imports of France Valued at Over \$2.4 Billion
and to Impose Restrictions or Fees on Services of France

December 9, 2019

International Trade, Tax

On December 6, 2019, the Office of the U.S. Trade Representative (“USTR”) published a [notice](#) determining that the Digital Service Tax of France (“the DST”) is unreasonable or discriminatory and burdens or restricts U.S. commerce under Section 301 of the Trade Act of 1974. USTR now seeks comments from interested parties about how to respond including: the specific imports of France to subject to an additional tariff of up to 100%; the level of tariff to impose on these imports; the aggregate level of trade to be covered by these tariffs; whether the Section 301 action should impose fees or restrictions on services of France; and the level of the burden or restriction on the U.S. economy resulting from the DST. Written comments are due on **January 6**, a hearing is scheduled for **January 7**, and rebuttal comments are due on **January 14, 2020**. The deadline to submit a request to appear at the hearing and a summary of testimony is **December 30, 2019**.

Background on the DST

USTR describes the DST in a detailed [report](#). The DST, which France enacted earlier this year, imposes a 3% tax on gross revenues generated in France from two categories of taxable services: (1) “digital interface” services, and (2) “targeted advertising” services. For the DST to apply, there are two monetary thresholds: a company must earn annual revenues from supplying the covered services of more than €750 million globally and €25 million in France. The law provides certain formulas by which companies can calculate the portion of their revenues that are attributable to France. The law is unusual in that it applies to *revenue* rather than income and retroactively to January 1, 2019.

For the first category of taxable services, USTR’s report explains that “digital interface” services are defined under the DST to include “[t]he provision, by electronic communication, of a digital interface allowing users to be in contact with other users and to interact with them, especially for the purpose of delivering goods or providing services directly between the users” but does not include sale of goods or services by a digital interface provider that itself owns those products. Notably, the law includes carve-outs, for digital interfaces that provide primarily “digital content,” “communications,” “payment services,” and various banking and financial services. For the

second category of taxable services, USTR explains that the DST defines “targeted advertising” to include the placement or monitoring “of an ad targeted based on data concerning the individual who views the ad” and “the sale of user data in connection with Internet advertising.”

Section 301 Determination & Request for Comments

USTR has determined that France’s DST disproportionately affects and discriminates against U.S. digital companies, such as through the DST’s selection of which services are covered and imposition of revenue thresholds. USTR also raised concerns about the DST’s retroactivity to January 1, 2019, which threatens tax certainty for companies and puts an undue burden on companies to determine their DST liability for digital interface and targeted advertising services provided throughout 2019. Finally, USTR has expressed concern that the DST violates numerous principles of international taxation and burdens U.S. companies that are subject to it.

Based on this determination, USTR proposes tariffs of up to 100% *ad valorem* on a variety of French imports. USTR’s notice includes an Annex that contains a preliminary list of 63 classifications of goods that could be subject to these new tariffs, and estimates the import trade value of these goods at approximately \$2.4 billion during calendar year 2018. These 63 classifications cover imports ranging from dairy products, including cheese; sparkling wine; cosmetics and soaps; handbags; and porcelain, china, and cast iron table and kitchenware. In addition to targeting French imports, USTR is contemplating imposing fees or restrictions on French services but has not identified specific services that might be targeted. USTR has also not explained the amount of fees or the types of restrictions that may be imposed.

In its request, USTR invites comments on: (1) the proposed Section 301 response to the DST, on either the proposed additional tariffs on imports or the imposition of fees or restrictions on services, and (2) the level of harm caused by the DST on the U.S. economy.

- Regarding USTR’s proposal to increase tariffs, parties may comment on which French imports should be subject to tariffs including the inclusion or removal of particular products from the proposed list, the level of the tariff, and the level of trade that should be covered. Parties should address whether the imposition of tariffs on particular imports would: (i) be practicable or effective at convincing France to alter or eliminate the DST or (ii) cause harm to the U.S. economy including small- or medium-size businesses.
- Regarding potential targeting of French services, parties may comment on which services the U.S. should target, whether the U.S. should impose fees or restrictions on those services, and the amount of fee or form of restriction. Parties should address whether imposing a fee or restriction on services would be practicable or effective at convincing France to alter or eliminate the DST.
- Regarding level of economic harm, parties may comment on the amount of DST payments and/or projected growth rate of these payments owed by U.S. companies, the costs to comply with the DST, or other anticipated effects of the DST.

As noted above, the deadline to submit comments and rebuttal comments is January 6, and 14, 2020, respectively. USTR will hold a public hearing on January 7, 2020, and the deadline to submit a request to appear and a summary of testimony is December 30, 2019.

If you have any questions concerning the material discussed in this client alert, please contact the following members of our International Trade practice:

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