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United States Trade Representative finds the French Digital Services Tax burdensome and unfair to US companies

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The United States Trade Representative (USTR) delivered its final report^[1] on the French Digital Services Tax (DST), concluding that the tax “is inconsistent with prevailing principles of tax policy and unusually burdensome for affected U.S. companies,” thereby triggering possible tariffs under Section 301 of the Trade Act of 1974. Section 301 is a legal provision that gives the U.S. president broad authority to retaliate against trading partners; the U.S. has previously used Section 301 to justify tariffs against China, the European Union, Canada, Japan and Mexico.

The report signals the possibility of tariffs against key French imports to the U.S., such as wine and cheese, as well as similar Section 301 actions against other proposed digital service tax regimes in other countries. The DST was enacted into French law on July 24, 2019; is retroactive to January 1, 2019; and required payment as of November 2019. Covered entities (of which Google, Apple, Facebook and Amazon are the most prominent) face regulatory, administrative and operational burdens and costs regardless of what the U.S. decides to do.

If tariffs are indeed imposed — and investigations launched into other tax proposals — then the disruption will not be contained to digital services companies but will undoubtedly affect industries across the spectrum as new tariffs and duties are applied to a variety of goods and services.

The Digital Services Tax basics

The DST is a 3% gross receipts tax on receipts from certain digital services sourced to France and affects companies with gross receipts (1) exceeding EUR 750 million worldwide, and (2) exceeding EUR 25 million in France in the previous year. The tax applies to three major categories^[2]

1. Digital intermediary services (i.e., social media and other services that allow users to connect with each other).
2. Advertising, primarily ads based on user data.
3. Sales of data collected or generated from users located in France.

Some of the administrative burdens the DST imposes include:

- Identifying in-scope activities and determining how these activities are taxed under the DST.
 - Tweaking financial reporting to accommodate multiple treaty implications, tax regimes and other tax requirements and deductions.
 - Mapping receipts to geolocation and mapping taxable actions.
 - Designing new tools to develop the data required under the DST reporting mechanisms, which have yet to
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be completely fleshed out by the French government.

- Determining how the DST interacts with other tax regimes.
- Planning for the introduction of more DST requirements from other countries.

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