

[Billing Code 3290-F0]

OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

Docket No. USTR-2019-0009

**Notice of Determination and Request for Comments Concerning Action Pursuant to
Section 301: France's Digital Services Tax**

AGENCY: Office of the United States Trade Representative.

ACTION: Notice of determination, request for comments, and notice of public hearing.

SUMMARY: The U.S. Trade Representative has determined that France's Digital Services Tax is unreasonable or discriminatory and burdens or restricts U.S. commerce. The U.S. Trade Representative proposes action in the form of additional duties of up to 100 percent on products of France to be drawn from the preliminary list in the Annex to this notice. The Office of the United States Trade Representative (USTR) seeks comments on this proposed action, as well as on other options including the imposition of fees or restrictions on services of France. The interagency Section 301 Committee will hold a public hearing in connection with the action to be taken under Section 301.

DATES: To be assured of consideration, the following schedule applies:

December 30, 2019: Due date for submission of a request to appear at the public hearing and a summary of testimony.

January 6, 2020: Due date for written comments.

January 7, 2020: The Section 301 Committee will convene a public hearing in the main hearing room of the U.S. International Trade Commission, 500 E Street SW, Washington DC 20436 beginning at 9:30 am.

January 14, 2020: Due date for submission of post-hearing rebuttal comments.

ADDRESSES: You should submit written comments through the Federal eRulemaking Portal: <http://www.regulations.gov>. Follow the instructions for submissions in sections V and VI below. The docket number is USTR-2019-0009. For issues with on-line submissions, please contact the 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 USTR Section 301 line at (202) 395-5725. For questions concerning the investigation, please contact Kate Hadley, Assistant General Counsel at (202) 395-4959, Robert Tanner, Director, Services and Investment at (202) 395-6125, or Michael Rogers, Director, Europe and the Middle East at (202) 395-2684.

SUPPLEMENTARY INFORMATION:

I. Proceedings in the Investigation

On March 6, 2019, the Government of France released a proposal for a 3 percent levy on revenues that certain companies generate from providing certain digital services to, or aimed at, persons in France (the Digital Services Tax, or the DST). The two houses of the French parliament passed DST bills on April 9 and May 21, 2019, and agreed on a final bill on July 4. President Emmanuel Macron signed the bill into law on July 24.

On July 10, 2019, USTR initiated an investigation of the French DST pursuant to section 302(b)(1)(A) of the Trade Act of 1974, as amended (the Trade Act). The notice of initiation (84 FR 34042) solicited written comments on, *inter alia*, the following aspects of the French DST:

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.

Interested persons filed 36 written submissions. USTR and the Section 301 Committee convened a public hearing on August 19, 2019, during which witnesses provided testimony and responded to questions. The public submissions and a transcript of the hearing are available on www.regulations.gov in docket number USTR-2019-0009.

Under Section 303 of the Trade Act, the U.S. Trade Representative requested consultations with the Government of France regarding the issues involved in the investigation. Consultations were held on November 14, 2019.

Based on information obtained during the investigation, including the public submissions and the public hearing, USTR and the Section 301 Committee have prepared a comprehensive report on the acts, policies, and practices under investigation. The report is posted on the USTR website. The report supports findings that the French DST is unreasonable or discriminatory and burdens or restricts U.S. commerce.

II. Determination on the Act, Policy, or Practice under Investigation

Based on the information obtained during the investigation and the advice of the Section 301 Committee, and as reflected in the publicly available report on the findings in the investigation, the U.S. Trade Representative has made the following determination under sections 301(b) and 304(a) of the Trade Act (19 U.S.C. 2411(b) and 2414(a)): the act, policy, or practice covered in the investigation, namely the French DST, is unreasonable or discriminatory and burdens or restricts U.S. commerce, and is thus actionable under section 301(b) of the Trade Act. In particular:

1. The French DST is intended to, and by its structure and operation does, discriminate against U.S. digital companies, including due to the selection of services covered and the revenue thresholds.
2. The French DST's retroactive application is unusual and inconsistent with prevailing tax principles and renders the tax particularly burdensome for covered U.S. companies.
3. The French DST's application to revenue rather than income contravenes prevailing tax principles and is particularly burdensome for covered U.S. companies.
4. The French DST's application to revenues unconnected to a physical presence in France contravenes prevailing international tax principles and is particularly burdensome for covered U.S. companies.
5. The French DST's application to a small group of digital companies contravenes international tax principles counseling against targeting the digital economy for special, unfavorable tax treatment.

III. Action to Be Taken in the Investigation

Section 301(b) provides that upon determining that the acts, policies, and practices under investigation are actionable and that action is appropriate, the U.S. Trade Representative shall

take all appropriate and feasible action authorized under section 301(c), subject to the specific direction, if any, of the President regarding such action, and all other appropriate and feasible action within the power of the President that the President may direct the U.S. Trade Representative to take under section 301(b), to obtain the elimination of that act, policy, or practice.

Section 301(c)(1)(B) of the Trade Act authorizes the U.S. Trade Representative to impose duties on the goods of the foreign country subject to the investigation. Pursuant to sections 301(b) and (c), the U.S. Trade Representative proposes to determine that action is appropriate and that appropriate action would include the imposition of additional *ad valorem* duties of up to 100 percent on certain products of France.

In determining the appropriate action, the U.S. Trade Representative may take account of the level of harm to the U.S. economy caused by France's DST. USTR seeks public comments on the level of harm, including DST payments owed by U.S. companies, the annual growth rate of such payments, and other effects, such as compliance costs.

The Annex to this notice contains a preliminary list of 63 tariff subheadings, with an estimated import trade value for calendar year 2018 of approximately \$2.4 billion. The U.S. Trade Representative proposes to draw a final list of products subject to additional duties from this preliminary list.

Section 301(c)(1)(B) of the Trade Act also authorizes the U.S. Trade Representative to impose fees or restrictions on the services of the goods of the foreign country subject to the investigation. In light of the fact that the actionable act, policy, or practice of France involves a tax on U.S. service providers, the U.S. Trade Representative is considering whether to impose

fees or restrictions on services of France. As noted below, USTR invites public comments on this matter.

IV. Request for Public Comments

In accordance with section 304(b) of the Trade Act (19 U.S.C. 2414(b)), USTR invites comments from interested persons with respect to whether action is appropriate, and if so, the appropriate action to be taken. To be assured of consideration, you must submit written comments on the proposed action in response France's acts, policies, and practices by January 6, 2020, and post-hearing rebuttal comments by January 14, 2020.

USTR requests comments with respect to any issue related to the action to be taken in this investigation. With respect to action in the form of additional duties, USTR invites comments regarding:

- The specific products to be subject to increased duties, including whether products listed in the Annex should be retained or removed, or whether products not currently on the list should be added.
- The level of the increase, if any, in the rate of duty.
- The level of the burden or restriction on the U.S. economy resulting from the DST.
- The appropriate aggregate level of trade to be covered by additional duties.

In commenting on the inclusion or removal of particular products on the list of products subject to the proposed additional duties, USTR requests that commenters address specifically whether imposing increased duties on a particular product would be practicable or effective to obtain the elimination of France's acts, policies, and practices, and whether imposing additional duties on a particular product would cause disproportionate economic harm to U.S. interests, including small- or medium-size businesses and consumers.

With respect to action in the form of fees or restrictions on services of France, USTR seeks comments on issues such as:

- Which services would be covered by a fee or restriction.
- If a fee is imposed, the rate (flat or percentage) of the fee, and the basis upon which any fee would be applied.
- If a restriction is imposed, the form of such restriction.
- Whether imposing fees or restrictions on services of France would be practicable or effective to obtain the elimination of France's acts, policies, and practices.

V. Hearing Participation

The Section 301 Committee will convene a public hearing in the main hearing room of the U.S. International Trade Commission, 500 E Street SW, Washington DC 20436, beginning at 9:30 am on Tuesday, January 7, 2020. You must submit requests to appear at the hearing by December 30, 2019. The request to appear must include a summary of testimony, and may be accompanied by a pre-hearing submission. Remarks at the hearing may be no longer than five minutes to allow for possible 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 a summary of the testimony, and a pre-hearing submission if provided, by using the 'upload file' field. 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 presenting testimony.

VI. 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 on the home page and click “search.” The site will provide a search results page listing all documents associated with this docket. 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](http://www.regulations.gov)’ on the bottom of the home page. USTR 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.

Do not submit comments containing business confidential information (BCI) via www.regulations.gov. Instead, you should email any comments containing BCI to

301DST@ustr.eop.gov. The file name of the business confidential version should begin with the characters 'BC'. Any page containing BCI 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 BCI also must submit a public version of their comments. The file name of the public version, which you must submit on www.regulations.gov, 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 BCI or otherwise protect business interests, please contact the USTR Section Hotline 301 line at (202) 395-5725 to discuss whether alternative arrangements are possible.

USTR will post submissions in the docket for public inspection, except BCI. 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.

Joseph Barloon
General Counsel
Office of the U.S. Trade Representative.

Annex

Note: All products that are classified in the 8-digit subheadings of the HTS that are listed in this Annex are covered by the proposed action. The product descriptions that are contained in this Annex are provided for informational purposes only, and are not intended to delimit in any way the scope of the proposed action. Any questions regarding the scope of a particular HTS subheading should be referred to U.S. Customs and Border Protection. In the product descriptions, the abbreviation "nesoi" means "not elsewhere specified or included".

HTS Subheading	Product Description
0403.10.90	Yogurt, not in dry form, whether or not flavored or containing add fruit or cocoa
0404.10.05	Whey protein concentrates
0405.10.10	Butter subject to quota pursuant to chapter 4 additional US note 6
0405.10.20	Butter not subject to general note 15 and in excess of quota in chapter 4 additional U.S. note 6
0405.90.10	Fats and oils derived from milk, other than butter or dairy spreads, subject to quota pursuant to chapter 4 additional US note 14
0406.10.84	Fresh cheese, and substitutes for cheese, cont. cows milk, nesoi, o/0.5% by wt. of butterfat, descr in add US note 16 to Ch 4, not GN15
0406.10.88	Fresh cheese, and substitutes for cheese, cont. cows milk, nesoi, o/0.5% by wt. of butterfat, not descr in add US note 16 to Ch 4, not GN 15
0406.10.95	Fresh cheese, and substitutes for cheese, not cont. cows milk, nesoi, o/0.5% by wt. of butterfat
0406.20.10	Roquefort cheese, grated or powdered
0406.30.48	Edam and gouda cheese, processed, not grated or powdered, not subject to gen note 15 or add. US note 20 to Ch. 4
0406.30.51	Gruyere-process cheese, processed, not grated or powdered, subject to add. US note 22 to Ch. 4
0406.30.53	Gruyere-process cheese, processed, not grated or powdered, not subject to gen note 15 or add. US note 22 to Ch. 4
0406.30.89	Processed cheese (incl. mixtures), nesoi, w/cow's milk, not grated or powdered, subject to add US note 16 to Ch. 4, not GN15
0406.40.54	Blue-veined cheese, nesoi, in original loaves, subject to add. US note 17 to Ch. 4
0406.90.08	Cheddar cheese, nesoi, subject to add. US note 18 to Ch. 4
0406.90.12	Cheddar cheese, nesoi, not subject to gen. note 15 of the HTS or to add. US note 18 to Ch. 4
0406.90.16	Edam and gouda cheese, nesoi, subject to add. US note 20 to Ch. 4
0406.90.41	Romano, Reggiano, Parmesan, Provolone, and Provoletti cheese, nesoi, from cow's milk, subject to add. US note 21 to Ch. 4
0406.90.42	Romano, Reggiano, Parmesan, Provolone, and Provoletti cheese, nesoi, from cow's milk, not subj to GN 15 or Ch4 US note 21

HTS Subheading	Product Description
0406.90.46	Swiss or Emmentaler cheese with eye formation, nesoi, subject to add. US note 25 to Ch. 4
0406.90.48	Swiss or Emmentaler cheese with eye formation, nesoi, not subject to gen. note 15 or to add. US note 25 to Ch. 4
0406.90.56	Cheeses, nesoi, from sheep's milk in original loaves and suitable for grating
0406.90.57	Pecorino cheese, from sheep's milk, in original loaves, not suitable for grating
0406.90.90	Cheeses & subst. for cheese (incl. mixt.), nesoi, w/ or from swiss, emmentaler or gruyere, subj. to add. US note 22 to Ch.4, not GN15
0406.90.95	Cheeses & subst. for cheese (incl. mixt.), nesoi, w/cows milk, w/butterfat o/0.5% by wt, subject to Ch 4 US note 16 (quota)
0406.90.97	Cheeses & subst. for cheese (incl. mixt.), nesoi, w/cows milk, w/butterfat o/0.5% by wt, not subject to Ch4 US note 16, not GN15
0406.90.99	Cheeses & subst. for cheese (incl. mixt.), nesoi, w/o cows milk, w/butterfat o/0.5% by wt, not GN15
2204.10.00	Sparkling wine, made from grapes
3304.10.00	Lip make-up preparations
3304.20.00	Eye make-up preparations
3304.30.00	Manicure or pedicure preparations
3304.91.00	Beauty or make-up powders, whether or not compressed
3304.99.50	Beauty or make-up preparations & preparations for the care of the skin, excl. medicaments but incl. sunscreen or sun tan preparations, nesoi
3401.11.10	Castile soap in the form of bars, cakes or molded pieces or shapes
3401.11.50	Soap, nesoi; organic surface-active products used as soap, in bars, cakes, pieces, soap-impregnated paper, wadding, felt, for toilet use
3401.19.00	Soap; organic surface-active products used as soap, in bars, cakes, pieces; soap-impregnated paper, wadding, felt, not for toilet use
3401.20.00	Soap, not in the form of bars, cakes, molded pieces or shapes
3401.30.10	Organic surface-active products for wash skin, in liquid or cream, contain any aromatic/mod aromatic surface-active agent, put up for retail
3401.30.50	Organic surface-active products and preparations for washing the skin, in liquid or cream form, put up for retail sale, nesoi
4202.21.30	Handbags, with or without shoulder strap or without handle, with outer surface of reptile leather
4202.21.60	Handbags, with or without shoulder strap or without handle, with outer surface of leather, composition or patent leather, nesoi, n/o \$20 ea.
4202.21.90	Handbags, with or without shoulder strap or without handle, with outer surface of leather, composition or patent leather, nesoi, over \$20 ea.
4202.22.15	Handbags, with or without shoulder straps or without handle, with outer surface of sheeting of plastics
4202.22.40	Handbags with or without shoulder strap or without handle, with outer surface of textile materials, wholly or in part of braid, nesoi

HTS Subheading	Product Description
4202.22.45	Handbags with or without shoulder strap or without handle, with outer surface of cotton, not of pile or tufted construction or braid
4202.22.60	Handbags with or w/o shoulder strap or w/o handle, outer surface of veg. fibers, exc. cotton, not of pile or tufted construction or braid
4202.22.70	Handbags with or w/o shoulder strap or w/o handle, with outer surface containing 85% or more of silk, not braided
4202.22.81	Handbags with or without shoulder strap or without handle, with outer surface of MMF materials
4202.22.89	Handbags with or without shoulder strap or without handle, with outer surface of textile materials nesoi
6911.10.10	Porcelain or china hotel, restaurant & nonhousehold table and kitchenware
6911.10.15	Bone china household table & kitchenware valued n/o \$31.50/doz. pcs.
6911.10.25	Bone china household table & kitchenware valued o/\$31.50/doz. pcs.
6911.10.35	Porcelain or china (o/than bone china) household tabl. & kitch. ware in sets in which aggregate val. of arts./US note 6(b) n/o \$56
6911.10.37	Porcelain or china (o/than bone china) household tabl. & kitch. ware in sets in which aggregate val. of arts./US note 6(b) o/\$56 n/o \$200
6911.10.38	Porcelain or china (o/than bone china) household tabl. & kitch. ware in sets in which aggregate val. of arts./US note 6(b) o/\$200
6911.10.41	Porcelain or china (o/than bone china) hsehld steins w/pewter lids, decanters, punch bowls, spoons & rests, salt/pepper sets, etc.
6911.10.45	Porcelain or china (o/than bone china) household mugs and steins w/o attached pewter lids
6911.10.52	Porcelain or china (o/than bone china) hsehld tabl/kit. ware n/in specif. sets, cups o/\$8 but n/o \$29/dz, saucers o/\$5.25 but n/o \$18.75/dz, etc.
6911.10.58	Porcelain or china (o/than bone china) hsehld tabl/kit ware n/in specif. sets, cups o/\$29/dz, saucers o/\$18.75/dz, bowls o/\$33/dz, etc.
6911.10.60	Porcelain or china (o/than bone china) household serviette rings
6911.10.80	Porcelain or china (o/than bone china) household tableware & kitchenware, not in specified sets, nesoi
6911.90.00	Porcelain or china (o/than bone china) household and toilet articles (other than tableware or kitchenware), nesoi
7323.92.00	Cast iron, table, kitchen or o/household arts. and parts thereof, enameled