

USTR Proposes Additional Duties on \$2.4 Billion in French Imports

December 4, 2019

Key Points

- USTR has proposed to impose additional duties of up to 100 percent ad valorem on \$2.4 billion in imports of French products in response to France's Digital Services Tax.
- The proposed duties would apply to products classified in 63 subheadings of the Harmonized Tariff Schedule of the United States, including (among other items) various dairy products, handbags, kitchenware and houseware items, sparkling wine, and cosmetic and skincare products.
- USTR seeks comment and testimony on the proposed imposition of duties on \$2.4 billion in imports, and has indicated that it may take account of the level of harm to the U.S. economy caused by France's DST to determine the appropriate action.
- USTR will accept public comments on the proposal until January 6, 2020, will convene a public hearing on January 7, 2020, and will accept post-hearing rebuttal comments until January 14, 2020.

Introduction and Background

On December 2, 2019, the Office of the U.S. Trade Representative (USTR) **proposed an action** under Section 301 of the Trade Act of 1974 to impose additional duties of up to 100 percent ad valorem on \$2.4 billion of French imports. If enacted, the duties would apply to products of France that are classified in 63 subheadings of the Harmonized Tariff Schedule of the United States (HTSUS). The USTR will also consider imposing fees or restrictions on services of France as part of the action. The USTR's proposal follows its determination that France's Digital Services Tax (DST) discriminates against U.S. companies, is inconsistent with prevailing principles of international tax policy and is unusually burdensome for affected U.S. companies.

By way of background, the French DST imposes a 3 percent tax on gross revenues that accrue to certain companies from their provision of certain digital services—specifically “digital interface” and “targeted advertising” services—in France. The tax applies to companies whose annual revenues from the covered services total at least

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€750 million globally and €25 million in France. Signed into law on July 24, 2019, the tax applies retroactively to revenues generated since January 1, 2019.

Concerned that the tax unfairly targeted certain U.S.-based technology companies, the USTR initiated an investigation on July 16, 2019, to determine whether the DST discriminated against U.S. companies or was unreasonable as a tax policy. After completing the first segment of its investigation, the USTR has concluded that both were the case. In particular, the USTR has found that the French DST discriminates against Google, Apple, Facebook, Amazon and other U.S. digital companies, and that the tax is inconsistent with prevailing tax principles due to its retroactivity, its application to revenue rather than income, its extraterritorial application and its purpose of penalizing particular U.S. technology companies. The USTR's findings are available in a [report](#) on the USTR's website.

Products and Services Potentially Affected by the Proposed Action

The 63 HTSUS subheadings that the USTR has preliminarily selected for additional duties cover the following products of France (among others):

- Certain yogurts, cheeses, butter and other dairy products—including, for example, certain Roquefort cheeses, Swiss cheeses, and yogurts with fruit or cocoa.
- Sparkling wine made from grapes.
- Certain cosmetic and skincare products—including, for example, lipstick, make-up, manicure or pedicure preparations, and certain soaps.
- Handbags of various materials.
- Porcelain or china tableware, kitchenware, and houseware items—including, for example, mugs, punch bowls, spoons and rests, tumblers, serviette rings, salt and pepper shakers, and certain cups, saucers and plates.
- Certain enameled cast iron cookware, tableware, kitchenware and houseware items.

Based on the terms of the USTR's proposal, the duties would apply to products of French origin—rather than simply to products exported from France. The action may include fees or restrictions on services of France, although the USTR has not specified what these would entail.

Key Dates in the Timeline

December 30, 2019: Deadline for Requests to Appear at Public Hearing

Interested parties who wish to appear at the January 7, 2020, public hearing must submit a request to appear via the Federal eRulemaking Portal at <http://www.regulations.gov> (docket number USTR-2019-0009); and via an email message submitted to 301DST@ustr.eop.gov. Requests must include a summary of testimony, and may include a pre-hearing submission.

January 6, 2020: Deadline for Written Comments

Interested parties may submit comments through the Federal eRulemaking Portal at <http://www.regulations.gov> (docket number USTR-2019-0009). However, the USTR requests that commenters submit any comments containing business confidential

information (BCI) by email to 301DST@ustr.eop.gov (in addition to a public version submitted through the portal). USTR specifically invites comments on:

- The specific products targeted by the proposed additional duties, including whether these 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 the proposed additional duties.
- Any adverse effects the additional duties may have on U.S. stakeholders, including small businesses and consumers.

January 7, 2020: Public Hearing

The hearing will take place at the U.S. International Trade Commission, which is located at 500 E Street SW, Washington, D.C. 20436. The hearing will begin at 9:30 a.m. ET. Remarks at the hearing are limited to five minutes to allow for possible questions.

January 14, 2020: Deadline for Post-Hearing Rebuttal Comments

Interested parties may also submit comments concerning the testimony presented at the January 7, 2020, hearing. As with the written comments due January 6, interested parties may submit post-rebuttal hearing comments through the Federal eRulemaking Portal at <https://www.regulations.gov/> (docket number USTR-2019-0009), but should submit comments containing BCI by email to 301DST@ustr.eop.gov.

Recommendations and Next Steps

- Importers should carefully review the HTSUS provisions included in the Annex of the prepublication Federal Register notice to determine whether they import any goods that could potentially be subject to the additional duties. To obtain certainty, importers can validate their product classifications by requesting a binding tariff classification ruling from U.S. Customs and Border Protection (CBP). Akin Gump can advise on tariff classification and can assist in preparing a ruling request.
- Importers should consider filing comments on the proposed action by the January 6, 2020, deadline and/or appearing at the January 7, 2020, public hearing. Akin Gump can assist in drafting and submitting comments and testimony.
- For imports covered by the proposed additional duties, importers should ascertain whether alternative sources are available. Importers may, in some circumstances, wish to confirm country of origin by obtaining a binding ruling from CBP. Akin Gump can advise on how to proceed in confirming, declaring or marking the country of origin of imported goods.
- Importers should consider reaching out to their elected municipal, state and congressional representatives to express their position on the additional duties.

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