OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

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SECTION 301 FRANCE DIGITAL
SERVICES TAX (DST) PUBLIC HEARING

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MONDAY
AUGUST 19, 2019

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The Hearing was convened in Conference Rooms I and II of the USTR Annex Building, 1724 F Street, NW, Washington, D.C. at 9:30 a.m., Kate Hadley, Chair, presiding.

COMMITTEE MEMBERS
KATE HADLEY, Chair
WON CHANG, U.S. Department of the Treasury
CLAUDIA CHLEBEK, U.S. Department of Homeland Security
ANDREW FLAVIN, U.S. Department of Commerce
MIREA LINTON-GROTZ, U.S. Department of the Treasury
JESSICA MAZZONE, U.S. Department of State
MIKE ROGERS, Office of the U.S. Trade Representative
JULIA SCHUBLE, U.S. Department of Agriculture
ANDREW STEPHENS, U.S. Department of Agriculture
ROBERT TANNER, Office of the U.S. Trade Representative

WITNESSES

NICHOLAS BRAMBLE, Trade Policy Counsel, Google
DANIEL BUNN, The Tax Foundation
PETER HILTZ, Director, International Tax and Policy Planning, Amazon
STEFANIE HOLLAND, Computing Technology Industry Association (CompTIA)
JOE KENNEDY, Senior Fellow, Information Technology & Innovation Foundation
ALAN LEE, Head of Global Tax Policy, Facebook
JENNIFER McCLOSKEY, Information Technology Industry Council
MATTHEW SCHRUERS, Chief Operation Officer, Computer & Communications Industry Association
GARY SPRAGUE, Baker & McKenzie, LLP
RUFUS YERXA, President, National Foreign Trade Council

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P-R-O-C-E-E-D-I-N-G-S

(9:30 a.m.)

CHAIR HADLEY: Good morning, and welcome to this very hot hearing room. We are sorry about that. I know people are still going to be walking in but we are going to get started because we have a lot of questions for our panelists.

The Office of the U.S. Trade Representative in conjunction with the Interagency Section 301 Committee is holding this public hearing in connection with Section -- the Section 301 investigation of France's Digital Services Tax initiated on July 10th, 2019.

Detailed information about this investigation is set out in the Federal Register notice published July 16th, 2019, at 84 FR 34042.

The purpose of today's hearing is to receive public testimony on the French DST. The Section 301 Committee will carefully consider the testimony and the written comments, including post-hearing comments.

The 301 Committee will then make a recommendation to the Trade Representative regarding a determination whether the DST is actionable under Section 301 of the Trade Act of 1974.

Before we proceed with testimony, I will provide some procedural and administrative instructions. I will then ask the agency representatives participating in the hearing today to introduce themselves.

The hearing is scheduled for one day and will conclude by lunch. We have three panelists of three or four witnesses with 10 individuals scheduled to testify.

The provisional schedule has been posted on the USTR website. We will have a five-minute break between panels. Each organization appearing at the hearing is limited to five minutes oral testimony.

After the testimony from each panel of witnesses, the Section 301 Committee will have an opportunity to ask questions. Committee representatives will direct their questions to one or more specific witnesses.

Post-hearing comments, including any written responses to questions from the Section 301 Committee, are due by Monday, August 26th, 2019.

The rules and procedures for written submissions are set out in the July 16th Federal Register notice. In responding to questions, witnesses should recall that they have an opportunity to provide more detailed or extensive responses in their post-hearing submissions.

No cameras, video, or audio recording will be allowed during the hearing. A written transcript of this hearing will be posted on USTR's website and on the Federal Register docket as soon as possible after the conclusion of the hearing.

We are pleased to have international trade, tax, and economic experts from a range of U.S. government agencies.

If you could introduce yourselves,

please, starting at that end.

MS. LINTON-GROTZ: Mirea Linton-Grotz, Treasury, trade and investment policy.

MS. MAZZONE: Good morning. Jessica Mazzone from the U.S. Department of State and multilateral trade affairs.

MR. TANNER: Robert Tanner, USTR, Office of Services and Investment.

MR. FLAVIN: Andrew Flavin, U.S. Department of Commerce, International Trade Administration.

MR. ROGERS: Mike Rogers, USTR's Europe and Middle East Office.

MR. STEPHENS: Andrew Stephens, U.S. Department of Agriculture.

MS. CHLEBEK: Claudia Chlebek, U.S. Department of Homeland Security, Customs and Border Protection.

CHAIR HADLEY: Thank you very much.

We'd now like to hear from the witnesses. Mr. Yerxa, if you would begin.

MR. YERXA: Thank you very much, Madam

Chairman, and to members of the committee -- Interagency Committee. I want to thank you for all your hard work on this issue. It is a hot room but, hopefully, where there's heat there's light and we will try to bring some light on these issues.

As you know, I am here representing the National Foreign Trade Council, which is an industry association representing many of the country's largest manufacturers, exporters, service providers.

My companies include most of the companies in the digital economy that are being hit by this measure.

I want to express the NFTC's deep concern that France's new Digital Services Tax -- DST -- is an inappropriate unilateral instrument to solve what is admittedly a global challenge in terms of how we -- how we evolve tax policy to cover new issues.

France's DST threatens to undermine the stability of the international tax system, which for decades has provided predictability to tax administrators and tax payers.

This is a third level of tax that is imposed on gross revenue alongside an income tax and the French VAT. It has no relationship to net income or profits, which are the only proper basis for corporate income tax.

We have a very real concern that once established other jurisdictions could emulate the concept and impose similar taxes on U.S. and, ultimately, on French exports from select sectors.

We are also concerned that the DST did not undergo a thorough impact assessment and will be complex to administer an audit, and we are concerned about the potential of the DST to result in double taxation.

This unilateral measure would undermine the work of the OECD, which intends to issue analysis and recommendations in 2020 on the tax challenges of the digitalization of the economy.

Any derivation or evolution from the currently agreed international tax framework must be driven by a consensus-based and durable rebalancing of taxing rights.

Future rules must be clear, predictable, and applied neutrally across industries and business models.

By taking this step unilaterally at this time, France's effort undermines the ability of countries to achieve consensus on global standards to guide policy making with respect to tax in the digital economy.

The design and legislative intent of France's DST suggests it was tailored to discriminate against U.S. firms while avoiding harm to nearly all French companies.

Specifically, the high revenue thresholds in choice of covered services have the effect of carving out most if not all French companies.

The actions and rhetoric of the French government further suggest the DST was meant to discriminate against foreign companies.

For example, in March the National Assembly adopted an amendment that exempted a narrowly tailored category of advertising intermediaries and exchanges from the new tax and this appears to correspond directly to the business model of Criteo, a Paris-based display advertising platform.

French government officials also emphasize repeatedly that a DST is intended to target foreign technology companies.

These high-revenue thresholds in choice of covered services may be inconsistent with France's national treatment obligations under the GATS, given EU commitments in data processing services, database services, and advertising services.

The high global revenue thresholds and subset of revenue models covered by the tax will cause the tax to be applied primarily to U.S. and to some other foreign firms while excluding like services provided by French or other European firms.

Neither criteria appear to support the underlying policy objective to tax digital activities where French users or customers are deemed to play a major role in value creation.

Questions have also been raised about the compatibility of the DST with a bilateral U.S.-French tax treaty.

This DST essentially makes U.S. firms that are subject to the tax 3 percent less competitive than their rivals. The DST puts the broader U.S. technology sector at risk by discriminating against a platform-based business model common to many U.S. firms.

France's DST also jeopardizes tax certainty for many more U.S. firms as other jurisdictions are inspired to adopt similar and potentially even broader measures.

This poses a risk to the entire global tax system and escalates the potential of double or multiple taxation, which ultimately would slow cross-border investment and economic growth.

In addition, the retroactive application of the new law to January 2019 does not provide companies adequate time to plan or implement new systems to audit users, calculate tax liability in a reliable manner, or determine pricing in light of these higher costs.

Ideally, a Section 301 investigation will lead to constructive consultations between the U.S. and France, and to a settlement agreement whereby France agrees to remove the measure.

The United States should encourage France to focus on achieving a multilateral consensus to reform global tax rules for the digital age through the process that is underway at the OECD and make clear that their unilateral DST undermines that effort.

As the administration seeks to resolve this issue --

CHAIR HADLEY: Sir, that's five minutes.

MR. YERXA: -- it should not create

conditions that would lead to higher costs for input products or raise the taxes on U.S. companies.

Thank you.

CHAIR HADLEY: Thank you.

I was three seconds too early, I guess.

[Laughter.]

CHAIR HADLEY: Mr. Sprague?

MR. SPRAGUE: Gary Sprague of Baker & McKenzie in Palo Alto, California.

I appreciate the opportunity to offer the shared views today of Airbnb, Amazon, Expedia, Facebook, Google, Microsoft, Salesforce, Stripe, and Twitter on the French DST, which imposes retroactively a 3 percent tax on gross revenue derived from the provision of certain digital services by companies with in-scope global revenue above 750 million euro.

The French tax is unjustifiable in that it infringes international agreements and unreasonable in that it is discriminatory, retroactive, and inconsistent with international tax policy principles.

Critically, France's unilateral action undermines development of a common approach to the tax challenges of digitalization and negotiation of international tax rights, which is currently underway at the OECD with the full support and active participation of U.S. Treasury.

Very importantly, if the French DST goes unchallenged, it will provide political cover for a dozen or so other countries considering similar measures.

The French DST unjustifiably violates France's trade, investment and tax agreements. It infringes the general agreement on trade and services commitments to provide market access and national treatment for computer-related and advertising services and violates the U.S.-French convention of establishment commitments not to impose more burdensome taxation on U.S. companies than on French companies in the same situation.

The DST scope and turnover thresholds are crafted to capture principally high-profile U.S. companies. If there were any doubt, statements of French officials confirm the discriminatory intent. For example, French Finance Minister Bruno Le Maire declared, "We dream of having a multiplicity of European digital champions with the turnover of more than 750 million euros, which is, unfortunately, not the case."

Indeed, the DST is commonly referred to in France as the GAFA tax -- Google, Apple, Facebook, and Amazon -- and Mr. Le Maire often uses the #GAFA in his tweets.

Second, the DST violates U.S.-France convention of establishment commitments not to impose extraterritorial taxes and U.S.-France tax treaty commitments not to impose taxes on income or elements of income absent a permanent establishment in France.

Statements by French officials confirm that a main purpose of the DST is to avoid

France's tax treaty obligations with the United States while extracting additional revenues for France from the U.S. tax base.

As a French National Assembly Committee report noted in April 2019, "The real problem is, therefore, not the under taxation of the GAFAs but the place where these companies pay the corporate income tax.

The fundamental question is, therefore, how the corporate income tax base could be brought back to Europe."

The French DST is unreasonable, unfair, and inequitable in that it is inconsistent with international tax principles and undermines a global approach to taxation of the digitalized global economy.

The French DST will impose a tax on gross revenue rather than net income, which will be distortive, and is inconsistent with accepted international practice.

The DST's retroactivity to January 1, 2019, is extraordinary, particularly given the recent commitment to global tax certainty by G20 heads of state in the Osaka Leaders Declaration and the systems changes needed for the intensive user location tracking and data storage that compliance and audit readiness requires.

Further, the French measure -- the first DST to be implemented -- undercuts a global solution -- countries are negotiating the global allocation of income tax rights at the OECD. It is unfortunate that France, a leader in the OECD process and the home of the OECD, is now pursuing this unilateral approach.

While originally cast as a stop-gap measure to an ultimate OECD solution, the DST's sunset language was removed during the legislative process, making this tax permanent.

We believe the OECD is the appropriate forum for developing a common solution. We ask that USTR encourage France to abstain from unilateral action and redouble efforts aimed at a consensus solution from the OECD.

We also ask that you urge other

countries like Austria, Czech Republic, Italy, and Spain and the U.K. to refrain from similar measures.

Thank you for your -- the opportunity to testify.

CHAIR HADLEY: Thank you.

And we have been asked by those sitting in the back for everyone to speak up. So I am going to try to take the lead.

Ms. McCloskey?

MS. MCCLOSKEY: I will try and speak up.

Good morning. Thank you for the opportunity to testify today. My name is Jennifer McCloskey and I am vice president for policy at the Information Technology Industry Council -- ITI.

ITI represents the world's leading information and communications technology -- ICT -- companies. We are the global voice of the tech sector and the premier advocate and thought leader for the ICT industry.

The recent enactment of France's unilateral Digital Service Tax, or DST, represents a troubling precedent, unnecessarily departs from progress towards stable international tax reform and will disproportionately impact U.S.-headquartered companies.

While we support USTR's effort to investigate France's unilateral action, our ultimate goal is a multilateral solution on appropriate international tax reform and we offer our comments in that spirit.

France is the first jurisdiction to enact a DST, which for these purposes refers to a retroactive gross revenue-based tax on a narrowly-defined set of digital services.

However, similar policies have been in discussion, particularly in the European Union where numerous countries have proposed or are considering similar measures.

In response to the questions contained in the Federal Register notice, we would flag several key concerns with the French measure.

First, the limited range of business activities and scope raises questions around both selectivity and policy rationale. France argues that its DST is consistent with the principle that tax should be applied where value is created because customers of digital companies participate in the creation of value.

Even if one were to accept this premise, the narrow focus on a subset of digital companies appears to be designed to single out a small number of companies and a fraction of business models, despite the fact that businesses all derive value from their customers.

The distinctions drawn by the DST do not have any bearing on the extent to which a company derives value from user participation.

In short, there does not appear to be a legitimate principled basis for drawing these distinctions.

Second, as suggested earlier, the French tax includes two revenue thresholds that limit the scope to a small subset of companies.

Indeed, analysis underpinning the European Commission's proposed DST which served as a template for the French measure suggests that revenue thresholds set by the law minimize impact on European firms while limiting government exposure to claims of selectivity.

Language used by French policy makers in advancing this measure puts a finer point on their political intent. The tax has been widely referred to as the GAFA tax, which stands for Google, Apple, Facebook, and Amazon.

Key officials have remarked, and I quote, "It's time for these companies to pay the taxes they owe and, further, that the tax should not sanction any European actors."

A key assertion underpinning the rationale for DSTs is that certain companies are not paying their fair share in taxes. We recognize that international tax rules need updating to address widespread digitalization.

However, there are significant issues

with these assertions. All companies, including French companies, currently operate under a framework where taxes applied using an established set of rules dictating where value is created.

The predictability afforded by this system has supported the ability of all companies to conduct business globally.

Beyond the fact that the DST challenges longstanding income tax tax rules, it could also disproportionately target low-margin high-investment business models.

Given its design, there is a high likelihood that the cost of the tax will be passed down the supply chain. The business models targeted which provide key digital services have enabled significant growth for thousands of small and medium sized businesses.

In this regard, the French tax could greatly impact many businesses beyond the 30 companies in scope. Further, the propagation of DSTs raises broader concerns around global tax fragmentation.

The imposition of taxes targeting different subsets of the digital economy will give rise to a patchwork approach to international taxation.

Such taxes will also set a problematic precedent for the ability of governments to single out specific actors and even specific business models whether they be digital or nondigital for the purposes of taxation.

These features in particular raise significant concerns in the context of global trade relations and existing international agreements.

For those businesses directly in-scope there are also substantial administrative burdens. Companies will need to engage in significant reengineering of their internal business and financial reporting systems in addition to creating new filing and audit components on French accounts.

We estimate these costs to be in the

millions of dollars. Further, there will be very high audit uncertainty, which will lead to additional disputes and subsequent costs.

Throughout our engagement on this issue, which has been extensive, policy makers have largely conceded that DSTs are imperfect solutions to address outdated rules governing our tax system.

We agree that these issues must be identified and countries need to work together to negotiate agreeable changes that are income tax based, treaty compliant, foster economic growth and investment, minimize double taxation and, most importantly, do not discriminate against any particular industry or business.

Fortunately, that effort is underway at the OECD where more than 130 nations are working to reach consensus on reform of the international tax system.

This is the proper forum to address these issues and ITI supports this multilateral approach.

Today's hearing is about more than the French Digital Service Tax. It's about preventing widespread application of unilateral taxes. The United States should continue to lead on a consensus-based approach to address tax and trade angles to increasing digitalization of the global economy.

Thank you for your time. We appreciate your efforts in identifying these trends early and reviewing through a more critical lens.

I look forward to answering your questions.

CHAIR HADLEY: Thank you. Thank you for keeping it to exactly five minutes.

MS. MCCLOSKEY: Wow.

[Laughter.]

CHAIR HADLEY: I thought you did that on purpose.

Great. I will now invite my colleagues to ask questions. You may, of course, provide additional answers in post-hearing comments.

Thank you.

MS. LINTON-GROTZ: Thank you.

My question is to Ambassador Yerxa and Mr. Sprague.

Both of you mentioned the DST's retroactivity in your testimony. In your experience, how unusual is it for a country to impose a substantively new tax with a retroactive application, and can you elaborate on the burden that the retroactive nature of the DST imposes?

MR. SPRAGUE: I can't think of a single instance where a tax of this significance and magnitude has been imposed retroactively. Obviously, U.S. business has mentioned this to the French finance ministry.

An informal communication back was, essentially, you should have known it was coming.

So there were two issues. One is just the tax policy point that it is simply inappropriate to enact tax legislation retroactively.

On the administration side that you mentioned, this is a unique tax. There's never been a tax like this in the history of the world.

Taxpayers are used to paying tax on net income, and we all know what net income is. There are certain types of cross-border flows where tax is imposed on gross revenue -- interest, dividends, rents, royalties, those sorts of things, and we all know what the gross revenue is.

But this tax is different. This tax has three different types of in-scope revenue: digital advertising, platform intermediation and transmitting of data.

Picking just the digital advertising one, it's actually a global formulary apportionment that takes global advertising revenue, multiplied by a fraction that is essentially impressions in France over global impressions.

So in order to comply with this tax, it's not even clicks in France. I mean, most advertising companies get paid when a user clicks.

This tax says we don't care about the actual revenue-generating activity. We care when a person, not necessarily even a French citizen, views an impression in France.

So in order to comply, a company has to keep track of every user that observed an impression on a device while in France and every user that observed an impression on a device everywhere in the world back to January 1, 2019.

So I think it's fair to say that it's essentially impossible to comply with precision, going forward. It's certainly impossible to comply with any sort of precision for the past.

MR. YERXA: So I want to answer your question but, on the other hand, I wouldn't want to say anything to suggest that if France simply applied it prospectively that that would be any less objectionable to us.

So the retroactive application, obviously, significantly increases the damage to

U.S. interests. It's literally impossible to plan and implement new systems and to audit your users and calculate tax liability in a reliable manner well, also having to do that retroactively. It's going to be difficult enough to do it prospectively.

But I think the broader point, all the points that Gary just made about why this is such a radical departure from conventional tax principles and policy that had been accepted by the major economies of the world for so long and what kind of impact that's going to have, taking something that bears no relationship whatsoever to net income or profits, and then doing it in a way which is intentionally discriminatory and designed to carve out your own interests, this kind of, you know, self-interested taxation principles really will undermine any confidence in taxation systems.

And if other countries start following it, we are, essentially, in a new era of, you know, tax policy wars just like tariff wars, which I don't think are the answer for our problems.

MR. FLAVIN: My question is for Ms. McCloskey.

You mentioned in your testimony that you estimate the costs associated with compliance to be in the millions.

I am wondering if you can provide either now or in post-hearing comments the details of how you arrived at that estimate.

MS. MCCLOSKEY: I'll have to provide them in subsequent comments. But thank you for the question and we will definitely make sure to get you some more information. Thanks.

MR. TANNER: Thanks. This question is for Mr. Yerxa and Mr. Sprague.

So, Mr. Yerxa, you stated that the DST excludes revenue models that some of Europe's largest digital service providers rely on and I think, Mr. Sprague, you mentioned that the scope was crafted to exclude European and French companies.

So I wanted to ask both of you if you can provide some more detail on these points. I think there was also specifically a mention of one company -- I believe by Mr. Yerxa -- that had been excluded. So I would appreciate sort of comments specifically on that as well.

MR. YERXA: Like Jennifer, I am going to have to provide you some follow-up information on that in writing. I'll certainly have my VP, Cathy Schultz, who's been working on that specific aspect of it, try to give you some more -- some more detail.

But, you know, we think it's very clear the way this was tailored was definitely to avoid certain kinds of categories of digital transactions that benefitted French companies and we will provide you that information in writing.

MR. SPRAGUE: Yes. It's useful to also take into account the legislative history, if you will, of the EU-proposed directive on the Digital Services Tax because the French tax is basically based on that.

So some of the elements of proof about the discriminatory intent, first, you just go through the legislative history and the French parliament. You know, they mention many companies. Every single company mentioned is an American company.

While the EC process was developing a proposed directive, German car manufacturers said, well, wait a minute -- our cars gather user data as well.

So if the justification for this tax is that businesses that commercialize user data will be subject to the tax, we think that's wrong.

And so during the EC process, and this was copied in the French law, there is an exception for any data collected by sensors -- car sensors, Internet of Things sensors.

So if your policy foundation is commercializing user data, then there's no principled justification for taxing one commercialization of user data and not another commercialization of user data. But that's a pretty clear example where a whole category of user data commercialization was taken off the table because it would bite particularly with European enterprises.

But I think the best probative evidence is just looking at the legislative history in the French parliament where they mention a large number of U.S. companies as the intended targets of the tax.

MS. MAZZONE: Thank you.

My question is for Ms. McCloskey and Mr. Sprague.

In your testimony, you both state that the DST's revenue thresholds were crafted to capture successful U.S. companies and exclude like European companies.

Can you provide either here or in the post-hearing comment evidence supporting this statement and examples of any like companies that are excluded by the revenue thresholds?

MS. MCCLOSKEY: We are preparing a

longer analysis that will have some of that information. So look out for our comments afterwards.

Thank you.

MR. SPRAGUE: Yes. It's very hard to identify, you know, what smaller companies are in-scope in terms of services but not in-scope in terms of revenue.

But we will develop the information that's available and present it in the post-hearing comments.

MS. CHLEBEK: Good morning.

My question is for Mr. Sprague. Are the advertisers who purchase advertising services from the companies that you represent able to reach French consumers via other advertising channels that will not have to pay the DST?

If yes, what are some of those channels? Do you have any information on their nationality?

Thank you.

MR. SPRAGUE: Yeah. That's a superb

question, and I think that goes to, you know, the question of like services that are not subject to tax.

So if I am -- if I am, say, you know, a U.S. seller of something that I think would be attractive to the French market, I can put an ad in a Paris newspaper or I can advertise on French TV or I can advertise on Sky TV in the U.K. because French consumers will watch Sky TV, especially if they are interested in, you know, American-produced goods, or I can buy a digital ad on an American digital services provider.

So that -- so that ad is now going to be subject to tax but the newspaper ad, the radio ad, other forms of advertising -- a billboard -- all those other ways of providing exactly the same message to French consumers are not subject to tax.

Or if it's a small French platform that's below the -- below the threshold. That's not subject to tax either. So there are plenty of channels of advertising into the French market. It's only those provided by the big American platforms that are subject to tax.

CHAIR HADLEY: And if I could ask a follow-up. Your sense is that those other channels -- the nationality breakdown is going to look different than it does in the digital advertising space. Is that right?

MR. SPRAGUE: Yes, because if you are, indeed, as was put out as the hypothetical, wanting to advertise towards French users you are going to put your ad on French TV or French radio or French newspapers. My Sky TV example was maybe a little off base.

So your choice is how do I reach the French market? I can do it through traditional advertising channels, none of which are subject to this tax, or I can use a digital ad and if I use one of the, you know, high-profile targeted companies there will be -- there will be a tax when it's exactly the same ad, exactly the same marketing message.

MR. STEPHENS: This is Andrew Stephens

at USDA. I have a related question for Rufus Yerxa.

In your testimony you state that French broadcasters and newspapers and U.S. firms covered by the DST directly compete for advertising revenue.

Do you have any further information or evidentiary support for that statement?

MR. YERXA: I am going to have to provide that to you. I think we -- I think we do -- we did gather some publicly available information on it but we haven't done any separate research.

But we gathered some publicly available information and I'll give you those sources.

MR. STEPHENS: That would be great, and if any of the witnesses have, like, as Mr. Sprague mentioned, the same ad in different channels it would be interesting to see as well.

MR. ROGERS: Good morning. I am Michael Rogers from USTR's Europe office.

My question is for Mr. Sprague. In your testimony you referred to the U.S.-France convention of establishment.

Are you specifically referring to the U.S.-France Navigation and Commerce Treaty and could you specify the particular provision you are referencing with respect to the commitment?

MR. SPRAGUE: Sure. You know, there are two elements of that. One is a prohibition on extraterritorial taxes.

You know, this tax is -- sorry -- so the treaty prohibits French taxes imposed extraterritorially. This tax is imposed on providers of the service, even if they have no physical presence in France at all -- no office, no personnel, no assets.

There's also an element of that treaty that prohibits taxation -- differential taxation of like kind services.

So we think that the same arguments that prove up a violation of the obligations under GATS prove up an obligation under the treaty of establishment.

The extraterritoriality of tax is something that's different, something that is in the treaty on establishment and not in the other treaties.

And the tax treaty is an independent international obligation that we also believe this tax violates.

CHAIR HADLEY: If I can follow up on that last point.

So you think that this tax is a covered tax for purpose of the U.S.-France tax treaty and could I ask you to explain that further?

MR. SPRAGUE: Sure. The U.S.-France treaty does follow with -- not precision but in all the important elements the U.S. model treaty, which defines as covered taxes all income on -- all taxes on income including taxes on elements of income.

This is a tax on gross revenue. It's not a tax just on a transaction basis. It's intended to bring the U.S. tax base -- part of the U.S. tax base into France.

If you go back into the development of the OECD model treaty, back when the OECD was first coming up with the language of Article 2, Article 2.2, there was a clear intention to make the income or elements of income language broad enough to cover gross base taxes -- what they called in those days indirect taxes.

Today, we think of indirect taxes more as VAT type taxes. But in those days, the concept of indirect tax was applied to gross base taxes on cross-border payments for services, rents, royalties, other things like that.

And that is the origin of the language tax on income or elements of income. So we do believe that this tax, which was intended to bring part of the U.S. tax base into France, is subject to the prescriptions of the treaty as a tax on either income or elements of income.

CHAIR HADLEY: Thank you.

Are there any further questions from

my colleagues? Well, thank you very much to the witnesses. We will now have a five-minute break before our second panel.

Thank you.

(Whereupon, the above-entitled matter went off the record at 10:07 a.m. and resumed at 10:12 a.m.)

CHAIR HADLEY: Thank you very much.

We will start with the second panel. Mr. Hiltz, am I pronouncing your name correctly?

MR. HILTZ: Yes.

CHAIR HADLEY: Hiltz? Okay, great. Thank you.

MR. HILTZ: Hiltz, yes.

Hello. I'm Peter Hiltz, and I'm Amazon's Director of International Tax Policy and Planning.

Thank you for the opportunity to provide comments on behalf of Amazon as part of USTR's Section 301 investigation into France's DST.

Amazon has two overreaching concerns

with the French law. First, the DST will negatively affect Amazon and the hundreds of thousands of small and medium-sized businesses, that are referred to as SMBs, that use Amazon's services to reach customers in France.

Second, unilateral digital tax laws like the French DST are inconsistent with existing international tax policies and are discriminatory, particularly against U.S.-based multinational companies.

Amazon believes the international community should, instead, focus on addressing tax challenges resulting from the digitalization of the economy at the OECD. It is the most appropriate venue for reaching consensus on a new international tax framework that broadly addresses concerns with current international tax rules.

Amazon is a U.S.-based, global company that employs over 650,000 employees worldwide, more than 275,000 full-time employees in the United States, and nearly 10,000 full-time employees in France.

We've opened up Amazon's website to selling partners and made significant investments in tools and services that help them grow their businesses. Fifty-eight percent of the sales on the Amazon websites are made by our selling partners, not by Amazon itself. Most of them are small and medium-sized businesses.

We are concerned with the French government's decision to impose a new 3 percent tax on the gross revenue from certain types of digital services that target French customers. The tax is discriminatory for several reasons.

First, because its in-scope digital services were carefully defined and revenue thresholds set high, it only applies to a small number of almost entirely non-French companies, but will tax numerous U.S. companies.

Second, the DST is a tax on gross revenue and not profit. Therefore, it creates an additional layer of tax on top of already-existing corporate income taxes and French VAT, thereby creating double taxation.

The DST also disproportionately harms Amazon's selling partners and potentially our customers. We operate in the fiercely-competitive and very low-margin global retail market, which means that the DST represents an incremental and significant cost to Amazon's consumer business. Due to the highly-competitive nature of the consumer business, we cannot absorb this expense if we're to continue making the significant investments in tools and infrastructure to help fuel our selling partners' successes. We have already informed our selling partners that certain of their fees will increase by 3 percent for sales made on Amazon France starting on October 1st.

As a result, the tax has the potential to impede the efforts of U.S. small and medium-sized businesses to grow and sell into France because it increases their cost of doing business, forcing them to choose between increasing their prices, reducing their other costs, or ceasing to sell to French customers, undermining U.S. SMBs' competitiveness in France.

The tax also undermines the ongoing work of the OECD to address broader concerns with the current international tax framework. Amazon is a strong and engaged supporter of the OECD's efforts and we believe that an internationally-agreed solution at the OECD is achievable.

Unilateral tax measures such as France's DST and other similar digital services tax currently being considered by many other countries harm the chances of reaching consensus. Other countries may now be encouraged to establish similar laws which will likely create a domino effect, leaving businesses with multi-layer taxation on the same stream of income. Business and governments will have to decipher a complex patchwork of tax measures which will inhibit international trade and harm the growth of the global economy.

Amazon encourages the U.S. Government and the international community, through the

OECD, to continue to focus their efforts on developing global solutions to the international tax challenges. We believe the OECD can achieve a consensus-based solution that addresses concerns with the current international tax framework, is based on sound principles, and is in the best interest of governments, the business community, and our selling partners and customers. We are confident that a globally-agreed approach will benefit all countries and support economic growth.

And I thank you for the opportunity to speak to you today. I'm happy to address questions.

CHAIR HADLEY: Thank you.

Mr. Bramble?

MR. BRAMBLE: Thank you to members of the Section 301 Committee for convening today's hearing. We appreciate this opportunity to testify regarding the investigation into France's Digital Services Tax.

My name is Nicholas Bramble, and I

serve as Trade Policy Counsel for Google.

At Google, we are focused on making sure all Americans can use the power of the internet to find new opportunities, including through trade. Through longstanding products like Google Search and Google Ads, and new services like Google Market Finder, we strive to make it simpler for businesses of all sizes to grow and reach customers around the world.

International trade requires a consistent and predictable international tax system. No matter whether trade is conducted over air, sea, or the internet, businesses depend upon clear rules of the road on tax and consistency across jurisdictions.

Corporate income tax is an important way the businesses contribute to the countries and communities where they operate. Google's overall global tax rate has been over 23 percent for the past 10 years, in line with the 23.7 percent average statutory rate across the member countries of the OECD. Most of these taxes are due in the U.S., where most of our products and services are developed.

This allocation of corporate tax payments is not unique to Google. American companies pay most of their taxes in the U.S., just as German, British, French, and Japanese firms pay the majority of their corporate taxes in their home markets. That state of affairs reflects longstanding rules about how corporate profits should be allocated among various countries, based on international consensus and an OECD model treaty that creates the framework for an interlocking system of bilateral tax treaties.

This international tax system provides predictability that enables companies, both large and small, to export and to do business in multiple countries without having the same profits taxed twice or being subjected to discriminatory taxation. As our economy evolves, it is very important to modernize this system. At Google, we support international tax reform driven by the OECD process, which can help guide how profits should be allocated among countries. Countries such as the U.S. and Germany have put forward constructive proposals at the OECD to modernize tax rules and require more taxes to be paid in countries where products and services are consumed. In fact, over 130 governments are engaged in talks as part of the Inclusive Framework aimed at modernizing the international tax system.

It is important that all countries maintain this multilateral momentum. Efforts by one country to unilaterally change the rules on how profits are allocated among countries can generate new barriers to trade and hamper economic growth.

Unfortunately, the enactment of France's Digital Services Tax threatens to undermine the OECD process. It's a sharp departure from long-established rules and uniquely targets a subset of businesses. French government officials have emphasized repeatedly that the DST is intended to target foreign technology companies.

Under the DST, the value attributable to risks taken and decisions made in one country is being claimed by another country without sufficient justification and outside the long-established framework of international tax policy. The new French law would tax revenue from only a handful of e-commerce and internet businesses on the theory that the digital economy presents new challenges and that only a handful of companies rely on digital business models. However, both the OECD and the European Commission Expert Group on Taxation of the Digital Economy have found that every sector of the economy, ranging from manufacturing to agriculture, to health care, is becoming digital and confirmed that unique tax rules targeted at digital practices simply do not make sense.

While the DST purports to target two subsections of the digital economy, its impact will extend beyond those sectors. The DST is likely to harm a wide range of American and other global businesses that use digital services and ads to reach French consumers. This further underscores the need to pursue international tax reform through the OECD process.

The DST departs from prevailing standards in other ways. It unreasonably applies retroactively to January 1st, 2019, which does not allow companies to plan and requires the implementation of new systems to calculate the tax. The DST applies to taxation of revenue rather than income, which increases the risk of double taxation. And more fundamentally, it's out of alignment with prevailing tax principles. The DST will result in unpredictable extraterritorial impact and is likely to generate disputes on whether specific digital activities were supplied in France or in another region.

In contrast, other governments, including Sweden, Ireland, and others in the EU, have stated that a consensus-based approach to international tax policy is preferable to a unilateral DST model. It is worth noting that the French DST may spread to other regions. The UK has legislated its own DST, while Spain, Italy, Austria, Czechia, New Zealand, and other countries are considering similar unilateral taxes. These countries are watching the French experience and considering whether a unilateral approach might be easier or more advantageous than pursuing a multilateral agreement at the OECD.

Ultimately, a series of cascading unilateral measures would have dangerous repercussions for the OECD's multilateral process and for a wide range of U.S. export sectors. This is a concern for international trade and the wider economy if countries follow the DST model and select specific sectors and groups of foreign companies for targeted tax policies.

We support USTR's investigation into these issues. We hope governments can avoid taking unilateral tax actions targeted at specific sectors and, instead, work together to develop a consensus at the OECD around a new and modern framework for coordinated taxation.

Thank you.

CHAIR HADLEY: Thank you.

Mr. Lee?

MR. LEE: Good morning. My name is Alan Lee. I am head of Global Tax Policy for Facebook.

I want to thank the Committee for this opportunity to appear before you today to discuss the 301 investigation of the French Digital Services Tax. Facebook appreciates and strongly supports the Administration's decision to investigate the French DST under Section 301.

In the following testimony, I will explain how the DST is based on false assumptions about the taxes paid by Facebook. Next, I will explain why unilateral measures like the DST are harmful to Facebook and the digital economy and why tax reform requires devising consensus-based, multilateral solutions in forums such as the OECD. Finally, I will explain how the DST's design and structure poses difficulties for Facebook's business model and will hinder growth and innovation in the digital economy.

France has sought to justify the DST by arguing that Facebook and other U.S. companies subject to the tax pay 14 percentage points less taxes than European small and medium-sized European companies. The apparent source of this figure is a study on taxes in the digital era that PwC Germany issued in 2017. Notably, when the European Commission cited this same 14 percent figure in the impact assessment for its proposed EU-wide DST, the author of the study explicitly stated that the Commission's conclusion was wrong. Like all companies, our effective tax rates change over time based on a number of factors, such as the success of the company at the time, as well as investment, expenses, capital expenditures, employee growth, and R&D costs.

Facebook pays all taxes as required by law. Our average effective tax rate for the last five full years has been greater than 26 percent. As a U.S. company headquartered in Menlo Park, California, Facebook pays a significant portion of its taxes in the United States, where our primary functions, leadership, engineering, and product roadmaps, are managed and developed.

Under existing international tax norms, these rules apply the same to similarly-situated French companies who pay the majority of their taxes in France. Ultimately, the result of this targeted tax will result in fewer resources available to build and invest.

Without question, business models around the world are changing, and international tax rules should adapt to address new challenges that are raised by the digitalization occurring across all sectors of the economy. We believe that ideal policy results from consensus-based processes like that currently being undertaken at the OECD. This need for global agreement becomes even more acute as governments are seeking to modify well-established, fundamental tax principles like profit allocation.

As you know, and as others have stated, more than 130 countries, through the OECD and the Inclusive Framework, are discussing how to improve international tax rules with specific regard to the taxation of the digital economy. Unilateral measures like the DST directly undermine these efforts.

I'll now address the specifics of how the French DST will affect Facebook's business. Facebook is a free service to more than 2 billion people that regularly use our service. One of our top priorities is to build useful and engaging products that enable people to connect and share through their mobile devices, personal computers, and other surfaces. Facebook also helps people discover and learn what is going on in the world around them and enables them to share their opinions, to share their ideas, their photos and videos, and other activities with audiences ranging from their close friends to the public at large, and to stay connected everywhere by accessing our products.

This service is supported in large part by revenue generated from the sale of advertising on our platform. Creating and maintaining a useful and engaging environment for people requires ongoing R&D, capital expenditures -- i.e., data centers -- and a growing employee base. To support this, Facebook generates more than 98 percent of its global revenue by providing relevant advertising to our users. Advertising could reach a customer based on a number of factors besides location, such as age, interests, hobbies, and relevant advertising can be viewed in France by a visitor, but is being served by such an advertisement for other reasons beyond location. So, you could have a non-French user in France that is receiving an advertising, but is not receiving it based on a location preference, for instance.

As you are aware, the French DST imposes a 3 percent tax on gross revenues instead of profits of the following activities: targeted advertising, intermediary services, digital interfaces, and the sale of personal data to users. Facebook is subject to the French DST only under the advertising provision, which calculates the tax based on the "advertising revenues" -- within quotes -- generated by French users or users in France.

In addition to the actual tax liability, under the French DST, the law will require new methodologies for calculating the tax. The French and other DSTs apply the tax to a new tax base focused on user location. For a company like Facebook, this presents issues such as Facebook's revenue is generated directly from advertisers, not users.

While we may have the necessary data to calculate the tax, it would require additional time and resources to capture this data and maintain for these new tax and audit purposes. Under the existing language, with or without further guidance from the French authorities, we expect additional tax compliance, audit, engineering, and maintenance costs.

Furthermore, because of the law's revenue thresholds, the revenues we derive from advertising under the French DST will be taxed. The revenue thresholds serve to limit the scope of companies impacted by the DST even further.

In addition, the French DST will apply retroactively to January 1st, 2019. Again, this will impose a significant burden on Facebook, as there is little guidance on calculating this new type of tax, and our current systems would require re-engineering of our internal systems to capture this data in a way that fully complies with the law as written.

CHAIR HADLEY: Sir, it has been five minutes. If you would conclude?

MR. LEE: Sure. In conclusion -- (laughter) -- Facebook supports the Administration's initiation of this investigation and we look forward to its outcome as well as a consensus-based solution to international taxation at the OECD.

Thank you.

CHAIR HADLEY: Thank you.

I'll now invite my colleagues to ask questions of the witnesses.

MS. CHLEBEK: Thank you.

Thank you for your testimonies.

My question is to Mr. Lee and to Mr. Bramble. Both of you mentioned the burden imposed by the tax's retroactive application. In your experience, how unusual is it for a country to impose a substantially new tax with retroactive application? Could you provide further explanation of the nature and extent of those burdens? Thank you.

MR. LEE: In my experience at Facebook, we have not seen a retroactive tax, and certainly not one that is retroactive that shifts fundamentally the way a company would calculate the tax. So, without further guidance or even with further guidance, it would be a significant burden on us to make sure that we're in full compliance with the law, which is what we would need to do.

MR. BRAMBLE: I would agree with that. We have not seen a substantial tax that's been retroactive to this extent in the past. We're obviously facing sort of a pretty serious challenge of re-engineering our systems to figure out which data is most helpful to calculating our liability under the tax. Going forward, that's very difficult. Going backwards, that's even more challenging. I'm not sure we have data available at this point. So, we are taking a pretty serious effort to figure out how we can come into compliance. But because this is such a departure from those international norms, our tax system and other companies' tax systems are not built to make that kind of calculation.

MS. MAZZONE: Thank you.

I also have a question for Mr. Lee and Mr. Bramble. You both mentioned taxing revenue rather than income is out of alignment with international principles. In your experience, how rare is a national-level tax that applies to revenue, not income? How many other countries currently have such a tax?

MR. LEE: So, there are taxes that are based on gross revenue, but that's based on transactions. So, think of that as like a sales tax. Where it's based on income -- so, income, income tax, consumption, consumption tax -- the general principles of income tax require the tax be applied on profit. And the reason for that I think is discussed by some of our other colleagues, that you have companies that could be in a loss position that could be growing, borrowing in order to grow at present, and still be subject to a tax, if it's a gross revenue income tax where you generate actually no profit and you still owe a tax under the law.

MR. BRAMBLE: I would agree with that, too. I'm not a tax expert, but I defer to these folks here. But it does seem unexpected. At least the OECD process is targeted towards taxation of income rather than revenues, and we support that process.

MR. LEE: It's also unclear where the 3 percent comes from as well and what rational basis that has to the underlying policy they're trying to effectuate.

CHAIR HADLEY: Could you explain, on the advertising side, how different is this from a tax that is based on a transaction? Why is it different? I mean, to the extent that the tax is based on a French user seeing an ad, why is that kind of different from a normal transaction-based tax that normally does apply to revenue?

MR. LEE: So, for us, there's no commerciality between the user and the platform. So, the commercial transaction for Facebook is we sell advertising to the advertiser. That's where there's an agreement and a contract and a negotiation and a payment, ultimately, right? That's sort of the typical step of a commercial transaction. As between the user and the platform, there's no commercial transaction; there's no money changing hands. And so, that I think would be the most fundamental difference here. And you're generating, essentially, an entirely new base where there is no commerciality or revenue.

MR. BRAMBLE: And from what I understand, the theory driving is focused on the user. It's being applied in a way that isn't necessarily consistent across the industry. There are plenty of businesses that are in the same way dependent upon user data and user value as in-scope businesses, but they are not in scope under the DST.

MR. ROGERS: My question is for Mr. Lee, and it relates to the scope of the tax. How does the scope of the companies covered by this tax compare to the scope of the usual corporate taxes? And to the extent of your knowledge, how many countries currently have a tax that applies to such a small subset of companies?

MR. LEE: To the first, I'm not aware of any other tax that is primarily for revenue raising that has a narrow scope like this. So, if you were to create a tax that had a narrow scope, typically, it's to stop a specific behavior. In this case, that would be helping small businesses grow and selling digital advertising and allowing them to access markets that they wouldn't otherwise be able to access. This is not the type of sort of excise tax that you would impose on a specific set of companies. So, I have not seen any sort of similar tax in this vein.

And your second question?

MR. ROGERS: If you were aware of other countries that have scopes of similar scope -- I'm sorry -- taxes of similar scope.

MR. LEE: I'm not, but I am aware that there are countries that are considering it, which is why this investigation and the work that you all are doing is very important.

MS. LINTON-GROTZ: My question is for Mr. Hiltz and Mr. Bramble. In your testimony, you both mentioned the risk of double taxation. If you believe that your companies will, in fact, face double taxation once the DST goes into effect, could you provide some more detail as to how this will happen, including the revenue on which this would occur?

MR. HILTZ: So, if we think about how the French DST applies to electronic marketplaces, they apply if -- or this particular one applies if there is a French customer or if there is a French seller. So, if you are a small U.S. business who is trying to export and you are selling on the French marketplace, then you'll be subject to that. If you are a U.S. business selling on Amazon U.S., and a French person goes on the internet and goes to the U.S. website, because the inventory is different at the different websites, then that transaction will be subject to tax, as well as being subject to tax in the United States.

Because it is an "or" test, if Spain takes this transaction or takes this tax, for example, as they are considering it, and you've got a French customer and a Spanish seller on the U.S. website, both of those countries will then apply the 3 percent tax.

Now, if you look at Amazon's 10-K statement, our profit margin on retail is less than the 3 percent tax. So, the tax would, you know, in each country by themselves would exceed our profit margin.

MR. BRAMBLE: I guess I would just add that, given the complex nature of cross-border transactions on the internet, and given the novel theory of value underlying this law, it does lead to a situation where multiple countries may want to be able to claim the value associated with a given transaction and subject that to their own domestic tax regimes.

CHAIR HADLEY: So, if I can ask a followup, it seemed to me as though both of your answers were focused on the possibility of a country other than France also adopting a Digital Services Tax. So, if you see a possibility for double taxation, absent that outcome, could we have a little further explanation of that?

MR. HILTZ: Sure. Because our

business is subject to corporate income taxes where it's based. So, the French website is subject to French corporate income tax or wherever -- the other countries that would tax the French website. The United States taxes the U.S. website as well as -- there are other U.S. rules that pick up our income generated by our foreign subsidiaries. And those provisions have crediting provisions and other things that would help alleviate the double taxation. But, unless the U.S. Treasury comes out and says, oh, we're going to tell you that this French DST is creditable against U.S. tax, you know, a gift from the U.S. Treasury to France, then we're subject to, already subject to corporate income tax plus this.

MR. BRAMBLE: I have the same basic response. We're paying a 23 percent effective tax rate. Most of that is going to the U.S. under corporate income tax. It is very likely that many of the same underlying transactions would now be taxed by the U.S. and by France.

CHAIR HADLEY: Thank you.

MR. FLAVIN: My question is also for Mr. Hiltz. I'm wondering, the businesses that sell products to French consumers using Amazon's eMarketplace, will they be able to reach those French consumers via other channels, including but not limited to other online marketplaces? And if so, could you name -- give some examples of those channels? And do you have any information on their nationality?

MR. HILTZ: So, if we look at retail websites, you know, what you normally think of as the Amazon sorts of things, and you look at the top 10, three of those are U.S.: Amazon, eBay, and Wish. The rest of the top 10 are French. So, there are French marketplaces.

Now one thing that people need to understand about the thresholds, it's 25 million euros of French revenue and 750 million of global revenue. So, you can be a French domestic website with 600 million euros worth of in-scope revenue, and you haven't hit that 750 million number, so you're out of scope, even though you dwarf everything else.

So, if you were a U.S. small or medium-sized business, okay, instead of just going to Amazon or eBay and having them help you through the process of selling to France, now you've got to do some investigation. Okay, how do I go to Fnac or CDiscount or some of the other French websites, sign up there, deal with those policies, which, of course, adds -- okay, now I'm dealing with another supplier instead of just one global Amazon or eBay.

The other thing that Amazon thinks is important is we do think that electronic marketplace sales and physical sales are substitutes. You can drive to Target and Walmart or you can order off of Target or Walmart or Amazon's website. The Amazon sales in France compared to the physical sales in France of Carrefour or some of the other French majors, you know, the electronic commerce gets dwarfed by the physical. But that would be another avenue for a

U.S. business to call up Carrefour and say, "I've got a fantastic product. Let me fly over to France and I will try to sell it to you, so you can sell it to your customers."

MS. SCHUBLE: Julia Schuble with the U.S. Department of Agriculture.

Sirs, my question is to all three of you. Are the advertisers who use your advertising services to reach French consumers able to reach those consumers via other advertising channels that will not have to pay the DST? If yes, what are some of those channels? And do you have any information on their nationality?

MR. LEE: Yes, we consider ourselves a part of the broader advertising ecosystem. More than 92 percent of advertising occurs off of Facebook's platforms. So, any French company that allows for advertising in the French market would not be subject to this DST if they do not qualify under the revenue thresholds or are not in scope.

MR. BRAMBLE: I agree. We face very robust competition in the French advertising markets. There are a number of digital and non-digital services that compete with us that are not in scope under this law, including outdoor advertising, radio, TV, print. If you're a large advertiser and you're trying to figure out where to invest your ad spend, you are going to face a choice now of whether to invest in the company that is now facing a 3 percent loss of efficiency or competitiveness or the French competitor who is not facing that same penalty.

MR. HILTZ: I don't have any more specific information. We could try to provide something in writing for you.

MR. TANNER: Thanks.

I wanted to ask a question for all three folks on the panel. I wanted to see if we could spend some time walking us through how you're going to calculate the revenue that is in-scope, essentially covered by this tax. To the best of your understanding right now, I wanted to see if I could ask each of you, in turn. I think probably for Mr. Bramble and Mr. Lee, we're talking mostly about advertising. Mr. Hiltz, you're certainly welcome to comment on that as well, but, obviously, we would be interested in the marketplace issues. So, how you're going to calculate the revenue?

I think we've also heard, and certainly read in the comments filed so far, this idea that the French officials apparently are focused on some sort of global divisible by French impressions. So, to the extent you can sort of give us your thoughts on how you would calculate that, it would be very helpful. Thank you.

MR. BRAMBLE: Sure. I can start with advertising. So, we're still working on an overall assessment under the law and don't have a number to share at this point about the specific impact. But it does seem likely that our advertising services are in scope. There are some ambiguities under the law in terms of definitions of different forms of advertising. So, I think we're working out some of those definitions. We expect to hear more from French tax authorities in September on some of those issues. Yes, but I will just say that, yes, it does seem clear that advertising services, at a minimum, are in scope.

MR. LEE: We're still trying to figure out as well, and we hope that there will be guidance moving forward. But the way we calculate it, or we think we have to calculate it, is you take the total number of, the total amount of global revenue. You divide it by the amount of French revenue. That French revenue is determined by the amount of impressions from French users over the global number of users. So, there's a fraction there that you multiply by the global revenue amount.

The difficulty with that is we are supposed to track based on IP address or some other measure of geolocation or other reasonable measure. And we don't know what that means.

When you file a tax return, you want to be pretty specific about it; otherwise, you end up with years of audit. And so, it's important for us to get it right. So, there are many times, and very often for good reasons, why companies, for instance, may VPN out of France. And so, from our perspective, we can't always tell if you have a French user or someone in France that's on Facebook viewing an advertisement in France. There could be another situation where you have someone VPNing in and, essentially, generating revenue who may not actually be using one of our products that actually has advertising, but you would be counted as a user in France.

So, there are a number of confusing sort of very, very highly detailed questions that we have actually for the French authorities as to how we might calculate this. And we're trying our best efforts, but, again, we don't track users based on their location for audit and tax preparation purposes. And we do it for business purposes, if, say, you wanted to show an advertisement to someone in a specific region, but to actually prepare a return or to prepare a financial statement, that's an entirely different question. And so, we need to pull all of the data that we have available and see exactly what we need to do to comply.

MR. BRAMBLE: And just to clarify, that is one of the compliance costs that we are all going to face. To clarify, VPN is virtual private networks. This allows a user to essentially anonymize their geographic location associated with their IP address.

We don't really have clear guidance from French authorities on how to process that kind of thing under the law. So, we are still trying to figure out that, among many other things, how we will come to compliance when the location of a user is the key factor under the law.

MR. TANNER: Mr. Hiltz, let me just interrupt for one second and ask a followup question, and then, turn to you.

So, thank you for those answers. I think one of the questions I want to follow up with is, if there was anything more you could explain in terms of the problematic nature of looking at impressions or IP or other proxies for French users and the actual way you obtain revenues from the advertising model. In other words, is there anything you can explain about the potential discrepancy between associating however you calculate French individuals and the way your business model for advertising actually works?

MR. LEE: Yes, I think we can provide you something, just some more detail on paper.

The reason why we think basing it on advertiser location is because we actually know that that advertiser has paid us. Like we know that they have a credit card. We know that they have a bank account. There are other ways for us to identify where the location of the advertiser is, because that's where our customer is. And so, for that, that's a real sort of, that's a real world that we can actually identify.

But when you have users that are viewing Facebook and they're VPNed in, and we have to assume maybe a certain number are in France but maybe aren't, and they aren't actually generating revenue, direct revenue, from us; they're not paying us in dollars and we're not calculating the location of the user based on their bank account, you know, that gets really tricky fast.

And we can give you a little bit more detail on that on a separate piece of paper, to maybe break that out for you as to what the specific differences would be, if that's helpful.

MR. BRAMBLE: And, of course, that gets even more complicated on a retroactive basis where the signals that you would try to use to assess the location just aren't available.

CHAIR HADLEY: I think we would also be interested in further information, either later or now, on potential differences between using percentage of impressions viewed in France over global advertising revenue, the difference between that versus attempting to kind of precisely quantify the amount of advertising dollars that kind of are attributable to those impressions seen in France. Because, as we understand it, the value of the ad market can potentially create a difference between those two things, and we would be interested in understanding how, if at all, that happens in the French market.

MR. LEE: That's right, and it would have an impact. And I can give you more detail on that later. But not all impressions generate revenue. Sometimes you have to click through an advertisement, and sometimes you actually have to click through it and buy something. And so, just viewing an advertisement doesn't necessarily create a revenue-generating event as they describe it for these French DST purposes. So, there are differences.

MR. BRAMBLE: I also believe there's a more detailed discussion of challenges with the algorithm that France was using here in the Silicon Valley Tax Directors' filing into the docket. So, I would direct you to those comments.

MR. HILTZ: To sort of start with the advertising and to give you some context, Amazon does not track impressions. We track click-throughs, but we don't track impressions.

If I go to France on a business trip and it's over the birthday of one of my children, and I go on the Amazon U.S. website and order something for them, any ad that I see is potentially subject to this French tax because I was going in from -- you know, I was sitting in a French hotel. So, the IP address is showing up as France, even though I'm going to the U.S. website, and it's being delivered to, and what I'm buying is being delivered to the United States.

So, this particular transaction picks me up twice, once on the advertising side because I saw an advertisement on the U.S. website while I was in France, and second, I was deemed to be a

U.S. customer. And therefore, whoever sold me the toy, or whatever it was on the U.S. website, was now under the DST dealing with a French customer. And therefore, that transaction would be picked up on the marketplace side.

We haven't had any reason to try to track those sorts of things. And so, we don't have the data to start with. And, yes, this will cost us millions of dollars to write the systems to collect the data in the first place. I mean, ignoring the -- oh, if I was actually on the Amazon network when I went onto the website, then it just shows up as a Seattle IP address instead of a Paris hotel IP address.

Looking at the French marketplace standalone, you would think that might be easier, except for the fact that there's lots of people who buy off of the French marketplace who aren't necessarily French, French-speaking Swiss, for example; French-speaking Belgians. And there are a lot of people who sell on the French marketplace who aren't French.

And so, we need to try to, instead of taking all the transactions that happen on the French marketplace, now we need to figure out, okay, where did those customers come from? Were they French or not? And where did the sellers come from? Were they French or not?

Again, we haven't been collecting a lot of this information. So, we have to build the tools to do it. Retrospective tax legislation like this, you know, we'll do our best to guess, but it's not going to be something that you're happy about signing your name to.

MR. BRAMBLE: And we haven't been collecting this kind of location data because no other law has required it. Both for internal financial monitoring purposes and tax compliance reasons, we've had no reason to have this data in place in the past. Hence, the massive re-engineering effort required to start trying to gather it.

MR. FLAVIN: I have another question for Mr. Hiltz. In your testimony, you mentioned that the Digital Services Tax is going to impact the small and medium-sized businesses that sell on Amazon's site to customers in France. I'm wondering if you can elaborate on the nationality of those small or medium-sized businesses, and do you know what share are, for example, U.S. companies, French companies, or located elsewhere?

MR. HILTZ: We're trying to figure that out because it's not -- we know there are thousands of U.S. small and medium-sized businesses who sell on the French website. We know a lot of them also sell on the German and UK and Italian and Spanish, Japanese websites, that might also end up picking up French customers. There are hundreds and hundreds of thousands of U.S. businesses who sell on the U.S. website, and there's a lot of French customers who buy on the U.S. website because, as I said, the inventory on the different websites is different. And right now, we don't have a good handle on how many in the U.S., you know, businesses selling on the

U.S. website will be caught because there's a French customer in one or more of their transactions. We're trying to find that out.

MS. SCHUBLE: Sirs, to all three of you again, can you elaborate on the types of businesses that use your advertising services to connect with consumers in France, in particular? Do you have information about the nationality of these businesses and the share that are U.S.-based?

MR. BRAMBLE: I'll follow up from Peter's comments. We don't have those numbers offhand. I'm happy to try to follow up and get them to you.

We do know that there are hundreds of thousands of U.S. businesses, nonprofits, website publishers, and others that use our services out of the U.S. And part of our objective from the trade side is to make it simpler for those small businesses to export, to reach the market in France and elsewhere. Part of our goal is helping them build export plans to tap into those new markets. So, we're happy to figure out exactly sort of what that scope is and follow up with you there.

MR. LEE: Yes, we don't have those numbers offhand, but I can get those for you.

MR. HILTZ: And we don't have those numbers. You know, we'll give you what we've got available in written submission.

MR. TANNER: Hi. Just one more followup question from me for all three of you. And to the extent you can answer that, and certainly if you can address it in followup comments, that would be appreciated.

We're also trying to understand, in terms of how this tax might be calculated by companies such as yourselves, whether there's any information on how to characterize the French markets versus, let's say, like looking at the global totals and sort of imagining an average. Is there a way to characterize, for example, the French advertising market as close to that average, or is it smaller or larger?

And so, this would go to things like, do you make the same amount of money clicking through or other metrics with, for example, a U.S. user versus a French user? And similarly in the marketplace, is there any way you can characterize the types of transactions, the types of revenues in terms of these types of transactions in the French market versus looking globally at some kind of average? So, anything you can provide on that today would be welcome, and certainly if you can follow up, that would be appreciated. Thank you.

MR. LEE: Sure, I can get more detail for you on that specific question, because we do have information on that. I can tell you, as a general rule, more sophisticated economies tend to have higher, what we call, average revenue per user, which is just a basic take the number of users and divide it by the amount of revenue we have in a country. And that just tells people the relative health of a market.

So, you could be a small country with

a very large population, but a very sort of not robust economy or not robust consumerist economy. Very few people will be advertising into that market. You can have one advertisement for a shoe that's going to cost a lot less than advertising in another market, just simply because of the nature of the market. That has nothing to do with our business or has nothing to do with sort of advertising in general, but are metrics that advertisers are interested in, just to have a better understanding of sort of how their advertisements are doing in a market.

So, we do have some data that I think is on point to your question, and I can submit that as a separate comment. And then, you can let us know whether or not it's what you're looking for.

MR. BRAMBLE: We also don't have those numbers offhand. I'm happy to follow up to try to see if we can those to you.

MR. HILTZ: I would try to answer your question, but I'm not sure that what I've got here is entirely precisely to your point. Certainly, France is the second largest e-commerce country in Europe. It's not the largest by average in Europe, which is the UK. UK actually is the largest per population average in the world. I need to find out where France sits in that. So, I'll follow up on that.

CHAIR HADLEY: Thank you all very much.

Are there any further questions?

Thank you.

We will take a five-minute recess before the third panel.

(Whereupon, the above-entitled matter went off the record at 11:00 a.m. and resumed at 11:07 a.m.)

CHAIR HADLEY: Good morning. We'll start back with our third panel of witnesses. Mr. Kennedy?

MR. KENNEDY: Thank you. I'm Joe Kennedy with ITI. The Information Technology and Innovation Foundation is pleased to provide testimony regarding the Office of the United

States Trade Representatives investigation of France's new digital service tax.

This tax, which other nations are actively considering, represents a radical departure from current practice. And would greatly complicate ongoing efforts by the Organization for Economic Cooperation and Development to negotiate changes to the international tax regime by 2020.

The OECD has already made progress in reducing their ability to shift profits to lower tax jurisdictions. And to generate artificial credits and deductions.

Yet some nations remain deeply worried about base erosion, especially with the growth in trade and services. In particular, they claim that large internet companies generate significant revenues from their citizens, but pay little, if any, tax.

DSTs are best seen as a unilateral move to generate tax revenue from these companies regardless of existing tax treaties or trade agreements.

The distribution of taxable profits between countries normally reflects where value is created. The sale of a product usually does not create additional value.

The key argument DST supporters make is that their citizens create a large amount of value for certain internet businesses, which company read in the form of profits. These countries claim that they should be allowed to tax the profits from this value.

Although this may sound plausible, in the absence of a permanent establishment and the creation of significant value, countries cannot tax the profits associated with import, whether or not -- whether these are goods or services.

An IFTI report which came out earlier this year explains why both the premise and the structure of DSTs are mistaken for several reasons. First, in order to get around international treaties, DSTs tax revenues rather than profits.

But this end run creates significant economic inequalities. Revenue taxes are especially burdensome for firms with low or negative profit margins, making it harder for new companies to gain scale.

Although the tax rate is set at only 3 percent, it can also pose a large burden to profitable companies.

Second, DSTs clearly discriminate against large foreign companies. France's -- French authorities have been very clear that the tax is not expected to affect many French companies.

It is true that France could accomplish the same result with a value-added tax on the sales of foreign firms. But only if it also applied the tax equally to sales of domestic companies.

Indeed the fact that DSTs tax a proportion of the sales price from foreign services, it's likely a violation of international tax agreements.

The argument of user-created value is also misguided. In every respect, the real value of an internet service such as Google search, Uber, or Amazon Marketplace, there's a software and business model created by the company.

Consumers use these services because they derive great value from them. This in turn attracts other users.

But the source of the value remains the company, not the users. The vast majority of users create little of value to the company, yet they are allowed to use the service for free.

Fourth, internet companies are not unique. DSTs target three narrow sources of revenue, the sale of information provided by users, the sale of advertising, and fees for operating a multi-sited platform.

Yet the application of the law makes several false distinctions. The internet of things is rapidly expanding the number of industries that benefit by collecting data from their users.

Yet the DST would only apply if this information is used by other, not the firm collecting it. The law would apply to internet marketplaces that give buyers a choice of sellers, but not to websites with only one seller.

The law would apply -- would not apply to subscriptions revenues even though the current practice of free use is more popular and more egalitarian.

For all these reasons, DSTs represent a dangerous trend in international law. The United States should strongly oppose them, even if as it works within OECD to update current tax law to changing the world.

Thank you.

CHAIR HADLEY: Thank you. Ms. Holland?

MS. HOLLAND: Good morning. Thank you for this opportunity to provide comments on USTR Section 301 investigation of France's digital services tax.

I'm Stefanie Holland, I'm Vice

President of Federal and Global Policy for the Computing Technology Industry Association, CompTIA.

CompTIA's member companies have several concerns with the DST. First our members are highly concerned with the discriminatory nature of the French government's DST specifically against successful American digital companies.

As the minimum thresholds are high enough so that only the largest, most successful, multinational firms will be subject to the tax, the tax requirements will disproportionately harm some of the most successful global enterprises based in the United States.

Second, we are concerned with the DST as it is set out in the Joint Committee Bill and subsequently modified by the government of France as it would distort the global marketplace.

Although the French Prime Minister has stated that these taxes would be temporary as the government awaits a solution from the OECD, there is no certainty of that given that the original legislation proposed to the French legislator, legislators, had a provision that stated that the DST would apply from 2019 to 2020.

The final version that was signed into law, removed the stipulation. The DST would undermine the broader ongoing efforts of the OECD as well as facilitate market distortions.

Short term distortions on the global digital marketplace would amount to changes in prices of the affected products. And therefore changes in the products of affected firms impacting consumers.

If the tax is left in place for a longer period of time, as the expiration provision was removed, long term ramifications could include discrimination between different types of distributors, between different categories of marketplaces, and between exports from different countries.

Third, our members are also concerned with the unreasonable nature of the tax policy that will result in unclear, cumbersome, and expensive implementation processes. It will be difficult to calculate tax obligations given the DST's taxable base would be calculated based on non-public data.

Further, it will be difficult to pinpoint exactly which companies meet the criteria to be taxed by the DST.

The calculation of French-based revenue being over 25 million Euros, could be imprecise in terms of what revenue will qualify to be included within the constraints of the new law. This will also be difficult to calculate for multinational conglomerates with several taxable entities in different countries.

Also, the DST would tax revenues instead of profits. This leaves open the possibility that the tax would negatively affect companies who are in deficit or whose profit margins are narrowing.

The tax will also cause companies to be taxed twice, hindering innovation, economic growth, and protecting the bottom line for tax payers.

Further, our members are concerned with the fact that the DST is retroactive to January 1, 2019.

This retroactivity is a burden and could result in noncompliance. And therefore, it is further uncertainty of the other requirements.

Fourth, the French DST is inconsistent with the country's obligations to international agreements, including in the OECD and the WTO.

As the OECD has been engaged in a broader, multilateral negotiation on an overarching solution to international taxation, the body has previously found that it is nearly impossible to separate out taxation of the digital economy from the economy at large.

This separation is exactly what the DST is seeking to do. And this will prove to be extremely harmful to the global economy.

Also, it has been argued that the DST is in violations of provisions of commitments made under the WTO's General Agreement on Trade and Services, the GATS, specifically the national treatment principal, which stipulates that WTO members cannot discriminate against other foreign service providers and consequently favor service suppliers in their own country.

CompTIA supports and endorses the ongoing negotiations at the OECD and the United States continued leadership in support of the OECD's work towards a multilateral solution that would reform international tax rules.

Further, we urge the U.S. to secure a firm obligation from France that they will abstain from unilateral action and work constructively to reach a multilateral agreement in the OECD.

As USTR considers retaliatory measures against the French government, we ask that the U.S. resolve the issues with France in a way that is consistent with international commitments.

All and all, the DST is an attempt to target U.S. technology companies. And we encourage the U.S. government to continue working against the DST in favor of finding a more equitable, holistic, and fair taxation solution.

Thank you for the opportunity to provide comments.

CHAIR HADLEY: Thank you. Mr. Bunn?

MR. BUNN: Good morning. My name is Daniel Bunn. I'm Director of Global Projects at the Tax Foundation.

Thank you for the opportunity to provide comments on this Section 301 investigation.

These comments cover four areas, the structure of the French digital services tax, how that structure interacts with domestic and foreign firms, the way that the tax could undermine current multilateral negotiations on international tax, and the cost of potentially escalating the current trade war and alter -- and an alternative response.

The French digital services tax is a 3 percent tax on certain revenues of large companies. Those certain revenues include revenues from digital interfaces, like online marketplaces and online advertising services.

Large companies include firms with global revenues of at least 750 million Euros and revenues from France of at least 25 million Euros.

The tax is deductible against French corporate income tax. And the policy is retroactive to the beginning of 2019.

As a tax on gross revenue rather than income, the tax will function very much like a tariff, and discriminate between domestic and foreign firms.

Foreign firms will face the tax on gross revenues at the point which their services cross the French border, or rather when they hit a French IP address.

Companies faced with the digital tax will likely pass this tax onto French consumers in the form of higher prices, as we have already seen in some instances.

The retroactivity of the tax adds an additional layer to the already narrow and distortionary design of the tax. Businesses impacted by the tax are having to commit resources to the complex effort of complying with the policy for a time period when they were not previously required to track revenues for a similar purpose.

The tax comes at a time when countries are working toward a multilateral solution on international taxation at the OECD. France, rather than waiting for the OECD process to play out, has preempted the process with this policy.

French policy makers have at different times suggested that the OECD process is important. And that the French policy is just a temporary measure.

However, a provision in an earlier version of the proposal, which would have allowed the tax to expire, was not included in the final legislation.

Unilateral action of this kind could

undermine the OECD process by showing that countries might not need to adhere to whatever policy will be agreed upon in the coming months.

In this way, the French policy is not only harming the targeted companies, it is also creating additional uncertainty around the process at the OECD. Such uncertainty can lead to delayed investment decisions and be a drag on economic growth.

Unfortunately the harm of the French digital services tax could be compounded if the United States chooses to respond with retaliatory tariffs. The current trade war has already been costly for Americans and could become even more so.

The Tax Foundation estimates that the total impact of imposed and announced tariffs will reduce long-run GDP in the U.S. by 0.6 percent. Simply put, this means lower wages and fewer jobs.

Additional tariffs in retaliation to the French DST would mean even more harm to U.S.

businesses and consumers.

Alternatively, the U.S. could use its negotiating position at the OECD to put pressure on France and other countries considering similar policies.

At the very least, the U.S. should negotiate to have the OECD explicitly require removal of DSTs and similar unilateral policies as a condition of agreement on new international tax rules.

Putting pressure on OECD countries to agree to such a condition in the context of the broader work plan, could help to forestall similar unilateral actions from other countries.

In summary, this French policy effectively functions as a tariff on foreign firms. And the U.S. should consider a response to the tax which would increase stability rather than uncertainty for international tax and trade policy.

Thank you and I look forward to your questions.

CHAIR HADLEY: Thank you. Mr. Schruers?

MR. SCHRUERS: Schruers, yes.

CHAIR HADLEY: Schruers, thank you.

MR. SCHRUERS: Thanks. Good morning. My name is Matt Schruers. I'm COO with the Computer and Communications Industry Association.

I appreciate the opportunity to convey CCI's views today on the Section 301 investigation.

CCI is a trade association of internet and technology firms, many of whom export goods and services around the world. And would be affected by this tax in France and other potential taxes in other jurisdictions.

CCI welcomes the review of the DST. In the United States officials and lawmakers across the spectrum have already made clear their disapproval of this new tax.

CCI believes that this action warrants a substantial and proportionate response from the United States.

My testimony focuses on three concerns

which I think will repeat many common themes you've heard this morning. First, the discriminatory nature of the tax.

Second, the fact that it's a significant departure from international taxation norms. And third, the threat that this tax is going to pose to ongoing multilateral efforts to reach a consensus to an international tax solution.

So, first the DST unquestionably targets predominantly United States firms. As you've heard all morning, it's frequently referred to as the GAFA tax. It's been made for U.S. firms.

The thresholds have been set at arbitrary levels precisely for the objective of gerrymandering or ring-fencing a basis around U.S. exporters.

At most, perhaps one French firm maybe swept up into the scope of the tax out of an estimated 30, based on the reports we've seen.

This discriminatory nature of the tax

leaves little question about France being out of compliance with international commitments. And certainly its WTO commitments and arguably the law.

So second, the DST departs from international norms on tax policy as well as the EU's own decision not to follow this approach earlier this year. Historically, taxes have been levied based on where value is created, not where it's consumed.

If we are going to depart from this framework, we should do so on a consensus basis where the methodology and degree by which we're shifting taxation rates, is a universally shared approach.

As you know, the DST is a 3 percent tax on revenue, not profits, generated from specific activities carried out in France. This is going to require firms to make complex, retroactive determinations on whether covered activities were supplied in France given ambiguous guidelines in the law.

This is likely to lead to differing interpretations. And the retroactive nature of the tax simply compounds this problem.

These concerns were part of what motivated the European Union not to follow this approach earlier this year. And leading to France's go it a lone effort.

Finally, the French DST and other unilateral measures threaten to undermine the multilateral progress that we've seen at the OECD.

CCI has been encouraged by events up until now at the OECD, which has made significant strides toward addressing the problems related to the digitalization of the economy and the shift towards the international trade and services.

We think countries should stick to this inclusive and consensus driven approach. So, for those reasons, CCI supports an aggressive response to this problem.

We also support an ambitious, multilateral, consensus driven solution to the overall questions around taxation that countries are currently facing. Not this unilateral approach that we've seen France and other countries now considering.

In conclusion, we welcome the scrutiny of the French DST. And I'm happy to answer any questions you have.

CHAIR HADLEY: Thank you very much, Mr. Schruers. I'll now turn to my colleagues to pose any questions to the witnesses.

MR. CHANG: Hello. My name is Won Chang, Department of the Treasury, Trade Office. My question is for Mr. Joe Kennedy, ITIF.

In the report accompanying your testimony, you described the focus on revenue rather than income as little more than an end run around international standards and bilateral treaties governing the corporate income tax.

In your experience, how unusual are international level taxes on corporate revenues?

How long have revenue-based taxes been disfavored and what are the main reasons countries have declined to adopt or maintain them?

MR. KENNEDY: Well, I think it -- explicit taxes on corporate revenues I think are relatively rare. I'm not aware of any other examples.

It's, you know, revenues are similar to, you know, a sales price times quantity. So, it -- functionally it's similar to a VAT.

But, -- and VATs are allowed. But, if you're going to do a VAT, you're required to do it evenhandedly. And not create artificial distinctions based on nationality or size.

I think the rational against a revenue tax is usually that it treats companies differently depending upon what their profit margin is.

And countries -- or companies in retail industries where they traditionally have very small profit margins, or companies that are growing, and so incurring losses while they're reinvesting revenue into growth, both are disproportionately hit hard.

And so, and also international tax treaties specifically apply to taxes on profits. And so the purpose of making this a revenue tax, I think, is pretty clearly to get around -- to make the claim that you're not violating international tax treaties.

Because, you know, if -- clearly if they were to put this same tax rate on profits, they would be, I think without question, violating tax treaties.

MR. CHANG: Thank you.

MR. FLAVIN: I have a question for Mr. Schruers. In your testimony you note that the DST's retroactivity will add to the administrative burden since companies don't regularly collect data associated with location for purposes of tax compliance.

Can you give us some examples of the additional administrative burdens that companies will face, specifically due to the retroactivity of the tax?

MR. SCHRUERS: Certainly. I think as you've heard previously this morning, firms very based on or on the extent to which they collect this kind of information, some may, some may not, the volume of information though is considerable.

And to have records that can substantiate the location of users for what were in most cases going to be non-financial transactions going back to the beginning of the calendar year, is you know, potentially an extraordinary undertaking.

It's important to think about what's happening in, particularly in the advertising context. Where this is a multi-sided market that -- or I guess I should say a multi-sided service that links advertisers with viewers.

The financial transaction that's happening there is the advertiser pays for the privilege to get in front of viewers' eyeballs.

And so the users are, in most cases, receiving services for free. It's an attention market, not a paid service.

And so you needn't track that information in the same way, except to optimize the relevance of the advertising.

And so, there are, you know, untold numbers of transactions going back to the beginning of the year, where information was provided, services were provided to a user.

And now, there's an obligation to quantify those in ways that services didn't know they would need to do when they were furnishing the service earlier this year.

MS. SCHUBLE: This question is for Ms. Holland. In your testimony you describe the costs of implementing the DST including calculating tax liability, especially on a retroactive basis and administrate -- administering the tax.

Do you have any estimates of the costs attributable to implementing the tax?

MS. HOLLAND: Thank you for the question. I do not have estimates with regard to specifics on the costs.

But I think as we've heard this morning that our members have highlighted, it would be extremely expensive. And further highlight the discriminatory nature of the DST.

I can look into it and see if our research entity can track down any specific in terms of numbers you're looking for. Thanks.

MR. ROGERS: Good morning. My question is for Mr. Schruers. In your testimony you said that you believed that the DST may violate EU law.

And I'm wondering if you could please provide the Committee, now or even -- or in a post-hearing submission what specific provisions of EU law you believe the DST may violate?

MR. SCHRUERS: Yeah. I'm happy to follow -- thanks for the question. I'm happy to follow up on that at greater length.

But, there have been questions raised as to whether or not this could form, or could constitute a form of state aid that's permitted under -- prohibited, excuse me, under EU law by effectively advantaging domestic firms over non-domestic, non-French firms.

I'd be happy to provide additional details on that.

MS. CHLEBEK: Good morning. My question is for Mr. Kennedy. In your testimony and the report accompanying it, you argued that the two rationales, user-created value, and low effective corporate tax rates that have been advanced for the EU DST proposal, and the French DST proposal, do not explain the selection of services covered.

What do you think does explain the selection of covered services? Thank you.

MR. KENNEDY: Well, I think it's pretty clearly if you look at statements, a feeling that these companies create -- generate tremendous profits in European countries.

And because of the way that the international tax laws are currently structured, don't pay very many, very much in corporate tax. And there's a feeling one, that this is part of a broader threat.

That it would be more and more difficult to tax global services because you can source them from any country and look for the, you know, the lowest corporate rate or the best corporate environment, and sell them worldwide without having any local, or very little local presence.

And there's a feeling that, I think, that these companies are on the forefront of doing that. And you know, if they generate -- you know, they're incurring, or they're making a lot of profit on French, you know, dealing with French citizens, then somehow that's wrong that they're not paying tax.

And rather than, you know, approaching the OECD and trying to renegotiate the rules, or change their application, the countries have just gone ahead unilaterally and changed it.

MR. CHANG: My question is for Daniel Bunn of Tax Foundation. In your testimony, you state that the tax will function very much like a tariff and discriminate between domestic and foreign firms.

Can you explain -- can you expand on this idea? In what way is the tax like a tariff?

MR. BUNN: Thank you for the question. So, on the first point, whether it functions like a tariff.

As a tax based on gross revenues, tariffs are taxes on gross revenues. And it applies when services hit the French market, French IP addresses, or however you define those geo-location metrics.

Also, because the tax is deductible as like any other cost, against French corporate income tax, companies, foreign companies that may not pay French corporate income tax, would not be able to be in -- would not be in the same position as French companies.

So, for the companies that are technically in scope that are French companies, they're in a different situation then foreign companies.

MR. CHANG: Thanks.

CHAIR HADLEY: Could I ask a follow up about that? You mentioned that French companies maybe in a somewhat different position by virtue of the tax being deductible against the French corporate income tax.

Can you explain further, to what extent that would reduce the effect of the DST on a French company?

MR. BUNN: So, the value of your deduction is the, simply the DST cost, whatever you tax is there, times your marginal tax rate. And for France, currently the top corporate income tax rate is about 34 percent.

But that includes a surtax. So, it could be in the 30 percent times whatever that basis for that deduction is.

MR. TANNER: A question for Ms. Holland. You said that some of -- you stated in your comments that some of the harms of the French DST include discrimination between different types of distributors and potential between exports between different countries.

I wanted to see if you could explain further how these different types of discrimination would make it more difficult for U.S. companies to compete in France?

MS. HOLLAND: Thank you for that question. Absolutely. That is based on comments provided by, from our member companies as we developed these comments.

And that is exactly what they believe could certainly happen. I think what's interesting is that there is kind of the short term opportunity for that to happen, given if the DST goes into effect.

And then the OECD comes to an agreement, will the French Prime Minister remove the DST as he's verbally agreed to? Although that's not in writing.

So, our members' concern then goes into, what are the long term ramifications if indeed they decide not to then remove the DST, if there's a broader OECD solution reached.

MR. TANNER: Let me just ask a quick follow up on that. Just in terms of the point about the long term effects.

Do you expect the discrimination between distributors or between -- no, let me rephrase that.

Is there anything more you sort of can explain your company's concerns on the longer term effects of this potential discrimination between types of distributors?

MS. HOLLAND: Given that this is something we have not seen before, this is an analysis at the forefront here.

We can certainly look to see if there are more specifics with regard to those types of discriminatory market selection processes that may happen.

But, it is, like I said, a new process. And so, this is what our members have provided so far.

MS. MAZZONE: I have a question for Mr. Schruers and Mr. Bunn. You both stated that the French DST threatens to undermine progress at the OECD towards international reform at the global level.

Can you explain further how the French DST undermines this progress?

MR. SCHRUERS: Certainly. Thanks for the question. So, at present I think there's a global consensus that updates to the international approach taxation could benefit everyone.

Reduce some uncertainty, and address some concerns perceived or real about inefficiencies resulting from the increased delivery of services. Particularly digitally.

Right now, there appears to be a consensus that a multilateral approach to that is being led by OECD with support from all the other intergovernmental institutions. That that's the way to do it.

CCI agrees that that's the way to do it. If indeed France can, without consequence, depart from the global consensus and pursue a unilateral approach to increase its tax collections, there is very little disincentive for other countries to follow that path.

And then we have the risk of a domino effect, where other countries say, well, if the French can do this with impunity, we're going to do it too.

And again, perhaps making some gestures towards rolling those taxes back if and when there's an international solution. Which will have less urgency if everyone starts adopting a unilateral approach.

And, of course, it's going to be difficult to get countries to repeal these, assuming that, you know, we do arrive at a consensus driven multilateral solution.

MR. BUNN: So, I would echo that. And add that the OECD process has been focused on trying to create stability in international tax.

And in renegotiating international tax rules, still pay attention to minimizing or eliminating instances of double taxation.

So, for France to, on the one hand, say that the OECD process is important, and it will be, you know, great to have a good outcome from that process.

And then on the other hand immediately move forward with this proposal that does create uncertainty, does create double taxation, and it does depart from even the outlines of what we might expect out of the OECD, effectively says that well, regardless of what happens at the OECD, we would like this type of taxation.

Which again, is very distortionary and it departs from international tax norms.

CHAIR HADLEY: Thank you. Are there any further questions?

(No response)

CHAIR HADLEY: Then this concludes our public hearing. Thanks to all the witnesses for their testimony.

(Whereupon, the above-entitled matter went off the record at 11:41 a.m.)

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C E R T I F I C A T E

This is to certify that the foregoing transcript

In the matter of: Section 301 France Digital Services Tax Public Hearing

Before: USTR

Date: 08-19-19

Place: Washington, DC

was duly recorded and accurately transcribed under my direction; further, that said transcript is a true and accurate record of the proceedings.

Neal R Gross

Court Reporter