



Office of the Vice President
Government and Regulatory Affairs

600 14th Street, NW Suite 300
Washington, DC 20005

August 19, 2019

The Honorable Robert Lighthizer
United States Trade Representative
600 17th Street, N.W.
Washington, DC 20006

Re: Initiation of a Section 301 Investigation of France's Digital Services Tax, Docket No. USTR-2019-0009

Dear Ambassador Lighthizer:

International Business Machines Corporation (“IBM”) respectfully submits this written response to the Trade Representative’s call for comments on the initiation of a Section 301 investigation with respect to the Digital Services Tax (DST) of the Government of France.

The question of how to appropriately tax digital services is of great importance, and IBM supports the ongoing process in the Organization for Economic Cooperation and Development (OECD) to identify an international consensus on this matter. While some other technology companies have supported an investigation into France’s DST under Section 301, IBM has very significant reservations about this approach. In particular, we believe that the use of unilateral, retaliatory measures following a Section 301 investigation would carry significant risk for the broader U.S. economy.

If the United States were to move forward with unilateral tariffs or other punitive trade or tax measures under Section 301, France (and perhaps other European Union Member States) would very likely apply counter-retaliatory measures quite broadly, resulting in negative effects on myriad U.S. sectors. Should the Administration conclude that action is warranted, we recommend that the Administration pursue remedies *only* through established institutions such as the OECD or the World Trade Organization (WTO).

The first and best choice for action is through negotiations already going on at the OECD. We note that at the G20 summit in Osaka in late June, President Trump joined other leaders in emphasizing their commitment to working toward a “globally fair, sustainable, and modern international tax system.” The Leaders’ Declaration, which “welcome[d] international cooperation to advance pro-growth tax policies,” went on to say:

We reaffirm the importance of the worldwide implementation of the G20/OECD Base Erosion and Profit Shifting (BEPS) package and enhanced tax certainty. We welcome the recent progress on addressing the tax challenges arising from digitalization and endorse

the ambitious work program that consists of a two-pillar approach, developed by the Inclusive Framework on BEPS. We will redouble our efforts for a consensus-based solution with a final report by 2020. We welcome the recent achievements on tax transparency, including the progress on automatic exchange of information for tax purposes.¹

It is notable that France and other countries considering DSTs are in fact engaged at the OECD. We therefore believe unilateral, retaliatory actions, such as tariffs, are not warranted and could lead to escalating tit-for-tat retaliation with negative consequences for the broader U.S. and global economies.

There are other options available to the Administration as well. For example, should the Section 301 investigation find clearly that France violated WTO rules in applying the DST, the United States could consider initiating a dispute settlement case. Such a path has yielded positive results for the United States in the past and, historically, the United States has used information gathered from Section 301 investigations to file complaints at the WTO.

IBM urges the United States to continue to lead in the OECD tax discussions to protect U.S. business interests and ensure the stability and certainty of international tax rules. Through its work in the OECD digitalization project, France continues to publicly pledge to remove its DST pending a final OECD solution. Given the U.S. Government's advocacy on behalf of all U.S. sectors at the OECD, and France's commitment to remove the DST, IBM believes that unilateral, retaliatory measures under Section 301 would be unwise and unwarranted in this case.

Thank you for your consideration.

Respectfully,



Christopher Padilla
Vice President, Government and Regulatory Affairs
IBM Corporation

¹ G20 Osaka Leaders' Declaration, June 29, 2019,
https://g20.org/pdf/documents/FINAL_G20_Osaka_Leaders_Declaration.pdf.