Coalition of Services Industries (CSI)
Written Comments Concerning
Initiation of a Section 301 Investigation
of France's Digital Services Tax

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The United States enjoys a highly favorable position with Europe in services trade, and maintaining a strong and productive bilateral trade relationship with the EU is a high priority for Coalition of Services Industries members.

In 2017 the U.S. boasted a $65 billion services trade surplus with the European Union on exports valued at $297 billion. We want to ensure we continue to expand that surplus. American services companies have leading positions in the EU in ICT, financial services, logistics, distribution and other key sectors. Increasingly, the delivery of many of these services is online, which benefits consumers and businesses across sectors of the economy.

That is why the Coalition of Services Industries believes it is critically important that the US and its trading partners foster a global trade environment that promotes and does not undermine the growth of digitally enabled services across all services sectors, as US services trade and investment supports 10 million US jobs.

USTR has requested comment on recent French government tax measures discriminating against the delivery of certain online services. Indeed, the U.S. government in its National Trade Estimates (NTE) report lists digital services taxes of this type as a barrier to digital trade.

As a general matter, CSI believes that any foreign government measure affecting trade in services should be consistent with a country's commitments under international trade agreements, and in the case of tax measures, also consistent with international tax agreements and principles. Moreover, such measures should not prejudge or undermine multilateral efforts in the OECD to reach agreement on the challenges of taxation in an increasingly digital economy.

We urge caution in pursuing retaliatory measures, including tariffs, that could harm some U.S. companies without accomplishing the goal of eliminating the DST.

The French DST raises questions in terms of its consistency with international trade and tax agreements. The tax raises questions of discriminatory application as it seems to be aimed at a carefully defined group of foreign services companies supplying the narrowly targeted categories of digital interface, advertising, and online marketplace services that are supplied almost exclusively by foreign suppliers. All are services categories in which France has GATS market access commitments.

The French tax measure also raises questions about the character of the tax, in that it is being applied to revenue rather than income, potentially subjecting that same revenue to double taxation, with retroactive effect.

If the 301 investigation finds that France violated World Trade Organization (WTO) rules, then the United States could initiate a dispute settlement case against France. Such a path has yielded positive results for the United States in the past and, historically, the United States has used information gathered from 301 investigations to file complaints at the WTO.

It is also concerning that Hungary has imposed a similar tax measures and that a number of other EU member states are considering similar measures. Such contagion could result in the implementation of similar discriminatory proposals that pull even more U.S. industries into scope.

Recognizing the serious issues raised by the French DST itself and the adverse precedent it sets, it is critical to use this inquiry to stop unilateral departures from the multilateral OECD process, through which tax authorities worldwide are now debating how to adopt tax regimes to accommodate new types of global businesses. We believe that the most appropriate US response is to take steps to challenge unilateral and discriminatory measures such as the French DST and to intensify its leadership in the existing multilateral discussions at the OECD, while examining all options available to the administration, in addition to considering potential WTO dispute settlement should it conclude from the 301 review that WTO obligations have been violated.