

Transatlantic digital tax trade war looms

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France has warned the US that the European Union (EU) will retaliate if Washington goes ahead with a plan to levy tariffs on French luxury products in response to its imposition of a digital tax on high-tech companies such as Google.

The warning came as a consultation period in the US on the proposed 100 percent tariffs on French products such as champagne, handbags and cheese, announced in early December, draws to a close.

In a letter to US Trade Representative (USTR) Robert Lighthizer on January 3, French Finance Minister Bruno Le Maire said that “if the US were to decide to impose trade sanctions against the EU over the French Digital Services Tax, it would deeply and durably affect the transatlantic relationship at a time when we need to stand united.”

The proposed sanctions were “highly disproportionate” and their impact on French companies and workers would “far exceed” that of the digital tax on US companies, he continued.

He noted that France was in contact with the European Commission and other EU member states on the issue, and that they were “contemplating the various options to defend our trade rights in a proportionate and determined manner, as we have in the past.”

France is not the only EU member state involved. The Italian parliament has passed legislation, effective from the beginning of this year, similar to the French measures. It imposes a 3 percent levy on revenue for companies with more than €750 million in global revenue. The UK government of Boris Johnson has also indicated it is looking to impose a similar tax, and Austria and Turkey are considering setting their own levies.

The conflict arises because digital companies such as Google and Facebook, while deriving considerable revenue from their international operations, pay very

little tax in those countries because their profits are recorded in the US.

The issue is the subject of negotiations, including the US, being conducted by the Organisation for Economic Cooperation and Development (OECD) on a new uniform international tax regime.

In the interim, the French government said it would impose a levy to capture some of the revenue generated in France in advance of the uniform scheme coming into effect. It added that if its tax collections were above what was finally agreed upon, it would refund the difference.

But the OECD process appears to have been effectively overturned by decisions made in Washington in early December. USTR Lighthizer issued a 93-page report on the French tax and said he was considering retaliation against what he said was the “growing protectionism” of European countries that “unfairly targets US companies.”

In his letter, Le Maire said the current French tax did not discriminate against US companies, was compliant with World Trade Organisation rules, and would be withdrawn once agreement was reached under the OECD on an international tax system.

However, in a letter to OECD Secretary-General José Ángel Gurría on December 3, US Treasury Secretary Steven Mnuchin cast considerable doubt on whether the US would continue to participate in any meaningful manner in the OECD process to devise a new tax agreement.

He said the United States firmly opposed digital services taxes because they had a “discriminatory impact” on US businesses and were inconsistent with current international tax rules, which tax net income rather than gross revenue.

The outlook of the administration was expressed more crudely by President Trump, who told a news conference in early December that he did not want

France taxing American companies. He declared, “People take advantage of American companies. If anyone is going to take advantage of our companies, it is us.”

In an interview on the US business channel CNBC on December 3, Commerce Secretary Wilbur Ross said the French tax move stemmed from its envy of the US grip on high-tech services and innovation.

“Europe doesn’t have the real high-tech champions and real e-commerce champions that we have,” he said. “There’s a tremendous amount of jealousy about that.”

Ross countered the claim by French President Emmanuel Macron that the tax was not an anti-US move. “It’s hard to say that it wasn’t designed as an anti-American move,” he said. “The criteria, whether designed deliberately or not, essentially include only American companies.”

In line with these more bellicose pronouncements, Mnuchin’s letter effectively undermined the whole OECD approach.

He said the US side had “serious concerns” about departures from long-standing pillars of the international taxation system upon which US taxpayers (that is, corporations) rely. However, these concerns could be addressed if the proposed OECD measures were made a “safe harbour regime.”

This would mean that US firms could choose the regime under which they are presently taxed, effectively spiking the OECD approach for a unified system.

Replying to Mnuchin on December 4, Gurría noted that to a “large degree” it was US tax reform that set the agenda within which the OECD had advanced, and that it was Mnuchin’s “personal involvement” and his interventions at G20 meetings that “steered the international community away from seeking a narrow digital solution” and moved us “beyond the tax rules as they currently stand.”

He emphasised that the OECD proposed a “unified approach,” without which “there would be no conditions for achieving a consensus.” While the letter was couched in diplomatic language, it made clear that, as set out in the Mnuchin letter, the US had changed the entire framework of the negotiations with its proposal for an opt-out tax regime.

Gurría wrote that “throughout the extensive consultation process...we had not come across the

notion” that the OECD system “could be a safe-harbour regime.” This concern was being raised, he continued, because it “may impact the ability of the 135 countries that are now participating in the process.”

The office of the USTR is set to hold a public meeting on the tariffs on French goods today, and it will continue to collect public comments until January 14, after which, if neither side backs down, the conflict over the digital tax is likely to become, in the words of the *Financial Times*, “a wider transatlantic trade war this year.”



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