

116TH CONGRESS
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H. RES. 1097

Expressing strong opposition to the imposition of digital services taxes by other countries that discriminate against United States companies.

IN THE HOUSE OF REPRESENTATIVES

SEPTEMBER 1, 2020

Mr. ESTES (for himself and Mr. KILDEE) submitted the following resolution; which was referred to the Committee on Ways and Means, and in addition to the Committee on Foreign Affairs, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned

RESOLUTION

Expressing strong opposition to the imposition of digital services taxes by other countries that discriminate against United States companies.

Whereas a digital services tax (DST) is a tax levied by a government on a company that provides a digital service to a person or company of that country;

Whereas many companies that provide digital services are not physically located in the countries where the people that use the company's services reside;

Whereas, under current international income tax and trade agreements, multinational companies are subject to taxation in the country where production of the good or

service occurs rather than in the country where the good or service is sold or used;

Whereas certain countries have developed DSTs that deviate from this international income tax system that are discriminatory to United States-based companies and threatens the success of United States companies and workers and their competitiveness in these international markets;

Whereas many countries, including France and others, have already implemented a DST;

Whereas the Organisation for Economic Co-operation and Development (OECD) has hosted multilateral negotiations with 144 countries to propose a framework for updating global tax rules and address the concerns of some countries about digital economy taxation on a multilateral basis, and the United States is participating in these negotiations;

Whereas the international tax treaty network promotes American prosperity by facilitating international trade and allows United States businesses and consumers to avoid double taxation;

Whereas, on July 24, 2019, France passed legislation that retroactively levied a DST beginning January 1, 2019;

Whereas section 302(b)(1)(A) of the Trade Act of 1974 authorizes the United States Trade Representative to initiate an investigation to determine whether an act, policy, or practice of a foreign country is actionable under section 301 of the Trade Act of 1974;

Whereas actionable matters under section 301 of the Trade Act of 1974 include, inter alia, acts, policies, and practices of a foreign country that are unreasonable or dis-

criminary and burden or restrict United States commerce;

Whereas an act, policy, or practice is unreasonable if the act, policy, or practice, while not necessarily in violation of, or inconsistent with, the international legal rights of the United States, is otherwise unfair and inequitable;

Whereas in response to France's DST, the United States Trade Representative (USTR) published the "Report on France's Digital Services Tax Prepared in the Investigation under Section 301 of the Trade Act of 1974" on December 2, 2019;

Whereas the report made five main findings, including—

(1) that "the evidence collected in this investigation indicates that the French DST is intended to, and by its structure and operation does, discriminate against U.S. digital companies";

(2) that "the evidence collected in this investigation indicates that the French DST's retroactive application is unusual and inconsistent with prevailing tax principles and renders the tax particularly burdensome for covered U.S. companies, which will also affect their customers, including U.S. small businesses and consumers";

(3) that "the evidence collected in this investigation indicates that the French DST's application to gross revenue rather than income contravenes prevailing tax principles and imposes significant additional burdens on covered U.S. companies";

(4) that "the evidence collected in this investigation indicates that the French DST's application to revenues unconnected to a presence in France contravenes prevailing international tax principles and is particularly burdensome for covered U.S. companies"; and

(5) that “the evidence collected in this investigation indicates that the French DST’s application to a small group of digital companies contravenes international tax principles counseling against targeting the digital economy for special, unfavorable tax treatment”;

Whereas, in light of concerns with the DSTs adopted or under consideration by foreign countries, on June 2, 2020, the United States Trade Representative initiated section 301 investigations with respect to DSTs adopted or under consideration by Austria, Brazil, the Czech Republic, the European Union, India, Indonesia, Italy, Spain, Turkey, and the United Kingdom;

Whereas, pursuant to section 303(a) of the Trade Act of 1974, the United States Trade Representative has requested consultations with the governments of these jurisdictions; and

Whereas the United States Government has many options to oppose DSTs, including intensive bilateral engagement, withdrawal of trade preference programs, World Trade Organization dispute settlement, or imposing duties, fees, import restrictions, or taxes on the goods or services of countries that unfairly target United States companies: Now, therefore, be it

1 *Resolved*, That the House of Representatives—

2 (1) is committed to free and fair trade between
3 the United States and other countries;

4 (2) agrees with the findings of the report issued
5 by the United States Trade Representative on De-
6 cember 2, 2019, that concludes that the French dig-
7 ital services tax (DST) discriminates against United

1 States companies and is in violation of existing
2 international income tax and trade agreements;

3 (3) supports the Office of the United States
4 Trade Representative for continuing its investiga-
5 tions into discriminatory DSTs through its notice of
6 investigations issued on June 2, 2020;

7 (4) calls on all other countries to cease and de-
8 sist from implementing any DST, and to imme-
9 diately stop unfairly targeting United States compa-
10 nies;

11 (5) calls on all countries to continue to work to-
12 wards consensus with the Organisation for Economic
13 Co-operation and Development (OECD) to address
14 the tax challenges of a global, digitalized economy;
15 and

16 (6) calls on the relevant United States Govern-
17 ment agencies to use all available methods and re-
18 sources to protect United States companies from the
19 discriminatory effects of DSTs.

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