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ECIPE PRESS RELEASE — NEW OCCASIONAL PAPER

The Cost of Fiscal Unilateralism: Potential Retaliation Against the EU Digital Services Tax (DST)

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Brussels, Belgium, 29th November 2018 - The EU is proposing a digital services tax (DST) to tax certain so-called ‘digital companies’, which it alleges access the Single Market while paying ‘minimal amounts of tax to our treasuries’. But like all exporters, these firms pay the majority of their taxes where their product development takes place, and services are designed and implemented.

The EU has singled out certain revenue streams, as it claims they have a high reliance on intangibles and user-generated value. Also, the proposal arbitrarily sets the thresholds in such a manner that it effectively singles out exporters from two countries – the United States and China.

The DST would be based on gross revenue and would thereby be deprived of deducting operational expenditure and write-offs unlike the rest of the economy who are only subject to tax on net profits, resulting in inevitable double taxation. They are also deemed to have a taxable nexus inside the EU, even when they are actually exporting their services from abroad.

This paper argues that reciprocal treatment by the US and China against the EU based on the same selection principles against EU services exports and subsidiaries could subject up to EUR 1,018.4 bn in gross turnover to taxation. A turnover tax of 3% could amount to EUR 31 bn – by far exceeding the EUR 4.7 bn the European Commission claims to collect from the DST. Also, nothing precludes the United States and China from a tax against Europe that is higher than 3%.

From the perspective of trade law, the DST is also an indirect tax on services imports and is effectively a customs duty. The EU is committed to market access and national treatment on digital services and must prove that the DST (and particularly its quantitative thresholds) are not arbitrarily set to discriminate imported online services. The WTO e-commerce moratorium also prohibits such customs duties.

In conclusion, any changes in international tax principles must be universally agreed on mutually acceptable terms at a global level with those countries whose exporters the EU are aiming to tax.

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