Before the
Office of the United States Trade Representative
Washington, D.C.

In re:
Initiation of a Section 301 Investigation
of France's Digital Services Tax

Docket No. USTR–2019–0009

COMMENTS OF
INTERNET ASSOCIATION

The internet industry applauds the Office of the United States Trade Representative's (USTR's) prompt action in response to France's Digital Services Tax (DST), which specifically targets the U.S. digital sector. The internet creates unprecedented benefits for society, and the internet industry is a great American export, supporting millions of jobs and businesses of all sizes. The initiation of the 301 investigation is an important step in exercising American leadership to stem the tide of new discriminatory taxes across Europe, and we look forward to working with USTR throughout this process.

Internet Association (IA) represents over 40 of the world's leading internet companies.[1] IA is the only trade association that exclusively represents leading global internet companies on matters of public policy. IA supports policies that promote and enable internet innovation, ensuring that information flows freely and safely across national borders, uninhibited by restrictions that are fundamentally inconsistent with the open and decentralized nature of the internet.

American-based internet companies are a significant driver of the U.S. economy and U.S. exports. Small businesses and entrepreneurs in every state and every community use the internet to sell and export across the globe. Digital trade now accounts for more than 50 percent of all U.S. services exports. Internet-connected small businesses are three times as likely to export and create jobs, grow four times more quickly, and earn twice as much revenue per employee.[2] Digital trade and digital trade-enabled businesses contribute more than $440 billion in exports annually, which helps account for the U.S.'s $172.6 billion trade surplus in digital services.[3]

Internet services are increasingly relevant for French users. Firms promote and advertise their products on various social media platforms and directly interact with consumers through content and recommendations. In France, the number of monthly visitors in 2017 to Facebook was 40.8 million people, to YouTube was 37.3 million people, to Instagram was 19.3 million people, to LinkedIn was 16 million people, to Twitter was 13.9 million people, to WhatsApp was 13.3 million people, and to Snapchat was 12.2 million people.[4] These services help underpin over $8.7 billion in annual digital services exports from the U.S. to France.[5]

Yet across Europe, countries are proposing discriminatory 2 to 7 percent revenue taxes on digital services that U.S. technology firms provide. These DSTs are narrow in scope and are specifically designed to target U.S. digital companies that offer services in these countries. The French DST is

[1] https://internetassociation.org/our-members/
[2] https://www2.deloitte.com/content/dam/Deloitte/us/Documents/technology-media-telecommunications/us-tmt-connected-small-businesses-Jan2018.pdf
[3] https://internetassociation.org/new-report-reveals-digital-trade-contributes-more-than-1-5-million-jobs-and-460-billion-in-exports-to-american-economy/
[4] https://2016.export.gov/france/doingbusinessinfrance/index.asp
[5] https://apps.bea.gov/iTable/iTable.cfm?reqid=62&step=6&isuri=1&tablelist=359&product=4

expected to hit 29 non-French companies and potentially zero French companies, generating some €500 million per year, with significant increases over time.[6]

The French DST will be applicable to gross revenues derived from certain digital services provided in France in which there is user involvement.[7] The rate is set at 3 percent of "qualifying" revenues and will concern companies with worldwide revenues of at least €750 million and French "qualifying" revenues of at least €25 million.[8] Efforts by the French and others contradict longstanding global consensus-based practices and would result in double taxation on American businesses.

IA believes that global tax rules should be updated for the digital age, but discriminatory taxes against U.S. firms are not the right approach. In proceeding with their DST, France took a unilateral approach even as a worldwide solution at the Organisation for Economic Co-operation and Development (OECD) is being developed.

IA encourages the U.S. government to continue to engage in the OECD process.[9] It is positive that the 129 members of the OECD/G20 Inclusive Framework on Base Erosion and Profit Shifting agreed on a road map for resolving these tax challenges and committed to work toward a consensus-based long-term solution by the end of 2020.[10]

By choosing to go-it-alone, France sets the stage for a country-by-country approach toward taxation of tech companies in Europe. The French DST comes after the European Finance Ministers decision in December 2018 to reject new revenue taxes narrowly targeted at U.S. digital companies. After the Finance Ministers' vote, similar DST's have been either announced or published in Austria, Belgium, Czechia, Italy, Poland, Slovenia, Spain, and the United Kingdom.[11] As these individual countries consider these discriminatory actions, individual countries throughout Asia and Latin America are tracking and preparing to follow their lead in specifically targeting U.S. tech companies.

France should refocus its efforts on reaching consensus with other leading economies within the OECD on any new digital taxation models to guarantee fairness and avoid discrimination and double taxation.[12]

This is especially true as the French online economy is one of the largest markets in the world, ranking second in Europe and fifth in the world in terms of online consumption in 2017. The market grew by 14.3 percent between 2016 and 2017.[13]

IA believes that the DST sends a strong signal to internet companies of all sizes – from small businesses to major organizations – that France is no longer a welcoming environment for business investment and exports. Due to previous forward-thinking policies from successive governments and a reasonable and stable business, legal, and regulatory environment, France has earned a reputation as a strong place for U.S. firms to invest and export to, especially internet companies aiming to export to not only France but also European markets.[14]

The DST puts this position at risk. Companies are likely to either reduce their exports to and investment

[6] https://www.dentons.com/en/insights/articles/2019/july/15/french-digital-services-tax-dst
[7] https://www.ey.com/gl/en/services/tax/international-tax/alert--frances-parliamentary-commission-agrees-on-digital-services-tax
[8] https://www.gouvernement.fr/en/gafa-tax-a-major-step-towards-a-fairer-and-more-efficient-tax-system
[9] http://www.oecd.org/tax/beps/
[10] https://www.oecd.org/tax/beps/programme-of-work-to-develop-a-consensus-solution-to-the-tax-challenges-arising-from-the-digitalisation-of-the-economy.pdf
[11] https://taxfoundation.org/digital-taxes-europe-2019/
[12] https://www.gouvernement.fr/en/tax-on-digital-services-an-efficacious-fiscal-justice-measure
[13] https://2016.export.gov/france/doingbusinessinfrance/index.asp
[14] France Country Commercial Guide (CCG 2018), U.S. Commercial Service. https://2016.export.gov/france/doingbusinessinfrance/index.asp

in France, or divert their focus to more welcoming jurisdictions. Consideration must also be given to who ultimately bears the burden of the DST. Although it is branded as a tax on large digital companies, there is a high likelihood that the cost of the tax will be passed down the supply chain to small- and medium-sized enterprises (SMEs) and end consumers, and it is those SMEs and consumers in France who will suffer the incidence of the tax. A recent study found only 5 percent of the digital tax's burden will fall on the large internet companies it aims to target. Instead, the study said consumers will absorb 55 percent of the cost and 40 percent will be borne by businesses that use digital platforms.[15]

The design of the DST also creates complexity in the French tax system and creates uncertainty for U.S. SMEs looking to export that will now have to determine if they will be captured by the tax, either directly or indirectly. Consequently, it places a new compliance burden on SMEs, even if they are exempt from the tax, as significant work would be required to produce bespoke financial information purely to identify whether they are within the scope of the DST. The DST further makes France a less attractive place to operate an internet business. In addition, the thresholds will also create a disincentive to grow for firms that are at the margin for exemption.

The initiation of the 301 investigation is an important step in exercising American leadership to stem the tide of new discriminatory taxes across Europe, and we look forward to working with USTR throughout this process. Industry appreciates the prioritization of this issue in the U.S government, and notes the bipartisan support in Congress for U.S. engagement on the French DST. In order to fully stem the tide of new discriminatory taxes across Europe, the U.S. will need to continue to exercise leadership. The U.S. is key to ensuring a global consensus around a modern, global tax reform and in going forward it must continue sending a strong message to trading partners that targeted discriminatory taxes against U.S. firms are not an appropriate solution.

[15] https://taj-strategie.fr/content/uploads/2020/03/dst-impact-assessment-march-2019.pdf