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

In re:
Initiation of Section 301 Investigations of
Digital Services Taxes, and request for comments.

Docket No. USTR-2020-0022-0001
FR: 2020-12216

COMMENTS OF
INTERNET ASSOCIATION

The internet industry applauds the Office of the United States Trade Representative's (USTR's) initiating investigations with respect to Digital Services Taxes (DSTs) adopted or under consideration by Austria, Brazil, the Czech Republic, the European Union (EU), India, Indonesia, Italy, Spain, Turkey, and the United Kingdom (UK), which specifically target 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 Section 301 investigation is an important step in exercising American leadership to stem the tide of new discriminatory taxes around the world, 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 $450 billion in exports annually, which helps account for the U.S.'s $178.3 billion trade surplus in digital services.[3]

An increasing number of foreign trading partners are proposing discriminatory 2 to 7.5 percent revenue taxes on digital services provided by U.S. technology firms. These digital services taxes are narrow in scope and are specifically designed to target U.S. digital companies while insulating foreign competitors from the scope of taxation. In many cases, these taxation measures contradict longstanding global consensus-based practices (e.g., by taxing gross revenues instead of income) and would result in double taxation on American businesses. Unfortunately, these tax regimes are on the rise globally. The majority of DSTs have three core problems from a trade perspective: they discriminate against U.S. companies by design; they undermine the competitiveness of the impacted U.S. companies relative to domestic suppliers of the same services; and, in some cases, they have retroactive application. In addition, by taxing gross revenue instead of profits, DSTs do not account for real costs of doing business, such as

[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/files/ia_securing-americas-digital-trade-leadership/

R&D or capital expenditures. This increases the cost of capital and discourages investment and innovation for all companies in scope and particularly for companies in loss positions or those with low margins. The DSTs are often arbitrary not just in their scope and rate but also their taxable base as many DSTs focus on user participation which results in taxation of activity that does not generate any actual realized or recognized income. Such a departure from fundamental concepts like taxing net profit or realized income is a concerning precedent that further supports the need for international consensus.

IA believes that global tax rules should be updated for the digital age, but discriminatory go-it-alone taxes targeted against U.S. firms are not the right approach. IA urges countries to withdraw discriminatory digital tax measures and to continue working within the Organisation for Economic Co-operation and Development (OECD) process, including re-engaging on Pillar I, as the OECD remains the best venue for resolving global taxation in the digital age.[4] It is positive that over 135 members of the OECD/G20 Inclusive Framework on Base Erosion and Profit Shifting agreed to a road map for resolving these tax challenges and committed to working toward a consensus-based long-term solution.[5] If re-engagement at the OECD is not currently feasible due to the global pandemic, it is important for countries to create an updated plan for when the Pillar I process can continue and not resort to creating or expanding unilateral measures during this time. Throughout the process, it is critical that the U.S. emphasizes the value of reaching a compromise that results in the taxation of net income, not gross revenue. The final product must be fair to the United States, the American digital industry, and the countless small businesses that depend on information flows and digital services to engage in commerce around the world.

USTR's Section 301 investigation into France's DST last year was an important step in exercising American leadership to stem the tide of new discriminatory taxes, and to push countries towards a multilateral OECD solution. That investigation correctly determined that the French DST discriminates against U.S. digital companies, contravenes prevailing tax principles (due to its retroactivity, its application to revenue rather than income, and its extraterritorial application), and unreasonably burdens U.S. commerce. Unfortunately, recent statements from the French government indicate an attempt to double down on discriminatory taxation towards U.S. companies, both nationally and at the European level. For example, the French junior economic minister stated on June 25 that an EU-wide digital services tax would be an important step to "restore Europe's digital sovereignty by charging for access to our single market."[6] Similarly, a June 17 letter from the UK, Spanish, French, and Italian governments framed the DST as a tool to address "digital giants" that currently "benefit from free access to the European market."[7]

In the meantime, countries beyond Europe—including Brazil, India, Indonesia, Kenya, and Turkey—have developed or implemented digital taxes on U.S. companies, often with the express purpose of using new tax revenue from U.S. companies to fund local economic recovery. These new digital taxes unfairly and unilaterally appropriate tax revenue that would otherwise be due to the United States.

Additional countries not named in this Federal Register notice are also developing DSTs, including Belgium, Hungary, Kenya, Nigeria, Pakistan, and Philippines. These countries' measures should also be investigated under 301, as they would be unreasonable and would discriminate against U.S. digital companies.

For these reasons, IA supports USTR's initiation of investigations with respect to DSTs adopted or

[4] http://www.oecd.org/tax/beps/
[5] 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
[6] http://www.senat.fr/cra/s20200624/s20200624_0.html
[7] Letter to Secretary Mnuchin from Bruno Le Maire, María Jesús Montero Cuadrado, Roberto Gualtieri, and Rishi Sunak, June 17, 2020.

under consideration in the foreign markets listed below. IA urges USTR to secure the rapid withdrawal of these and other discriminatory and unilateral digital taxes.

Austria

In October 2019, Austria adopted a DST that applies a 5 percent tax to revenues from online advertising services. The law went into force on January 1, 2020. The tax applies only to companies with at least €750 million in annual global revenues for all services and €25 million in in-country revenues for covered digital services. The structure of the tax expressly targets U.S. companies. IA believes that the Austria DST is unreasonable and discriminates against U.S. digital companies by creating a targeted burden on U.S. commerce.

Brazil

Brazil is considering a legislative proposal entitled the "Contribution for Intervention in the Economic Domain" or CIDE. If adopted, CIDE would apply to the gross revenue derived from digital services provided by large technology companies. IA believes that the Brazil DST proposal would be unreasonable and would discriminate against U.S. digital companies by creating a targeted burden on U.S. commerce.

The Czech Republic

The Parliament of the Czech Republic is considering a draft law that would apply a 7 percent DST to revenues from targeted advertising and digital interface services. Subsequently the Ministry of Finance announced its support for a lower, 5 percent rate, while shifting the effective date to the beginning of 2021. The tax, which has a similar structure to the French DST, would apply only to companies generating €750 million in annual global revenues for all services and CZK 50 million in in-country revenues for covered digital services. The structure of the tax will expressly target U.S. companies while insulating Czech competitors in the advertising and digital markets from scope of coverage. IA believes that the Czech Republic's DST draft law would be unreasonable and would discriminate against U.S. digital companies by creating a targeted burden on U.S. commerce.

The European Union

The European Commission is considering a DST as part of the financing package for its proposed COVID-19 recovery plan. The EU DST is likely based on a 2018 proposal that was not adopted due to opposition by a number of European nations. The 2018 EU proposal included a 3 percent tax on revenues from targeted advertising and digital interface services, and would have applied only to companies generating at least €750 million in global revenues from covered digital services and at least €50 million in EU-wide revenues for covered digital services. The structure of the tax expressly targeted U.S. companies and was the template for France's national DST. The EU should refocus its efforts on digital taxation models that guarantee fairness and avoid discrimination and double taxation. IA believes that the EU proposal that includes a new DST would be unreasonable and would discriminate against U.S. digital companies by creating a targeted burden on U.S. commerce.

India

In March 2020, India adopted a 2 percent equalization levy, expanding on an earlier equalization levy that targeted digital advertising revenue earned by non-resident providers. The tax applies only to non-resident companies and covers online sales of goods and services to, or aimed at, persons in India. The tax applies only to companies with annual revenues in excess of approximately Rs. 20 million (approximately U.S. $267,000). Although the tax went into effect on April 1, 2020, many key details remain undefined. Earlier this year, IA joined a multi-association letter to USTR urging attention on the new expansion of India's Equalization Levy.[8] IA appreciates USTR including India in this Section 301 investigation as the digital industry believes that the Indian Equalization Levy is unreasonable and discriminates against U.S. companies by creating a targeted burden on all U.S. exports to India through the internet.

Indonesia

Indonesia has taken steps on taxation that significantly deviate from global norms, bilateral tax treaties, and WTO commitments. Earlier this year, Indonesia adopted an electronic transaction tax ("ETT") that targets cross-border, digital transactions but implementing measures are still required to enable taxpayers to comply. The ETT applies to sales of goods and services over the internet by foreign companies to Indonesia consumers. This new tax law would require significant resources from online service providers, many of which are small companies that lack the necessary legal and technical resources to comply and could have significant tax consequences that conflict with OECD multilateral principles. Furthermore, this requirement would likely violate Indonesia's WTO commitments to allow computing and other digital services to be provided on a cross-border basis. IA believes that Indonesia's ETT is unreasonable and discriminates against U.S. companies by creating a targeted burden on all U.S. exports to Indonesia through the internet.

Italy

Italy has adopted a DST, with similar structure to the French DST that includes a 3 percent tax on revenues from targeted advertising and digital interface services. This tax applies only to companies generating at least €750 million in global revenues for all services and €5.5 million in in-country revenues for covered digital services. Key details are still to be defined but the government intends to begin collection in 2021. We expect the tax to predominantly affect U.S. firms, as senior government officials, including Former Deputy Prime Minister Luigi Di Maio, directed that prior iterations of the tax be scoped to impact large U.S. tech firms. IA believes that the Italy DST is unreasonable and discriminates against U.S. digital companies by creating a targeted burden on U.S. commerce.

Spain

Spain is considering a draft DST, with similar structure to the French DST, which would apply a 3 percent tax to revenues from targeted advertising and digital interface services. This tax would apply only to companies generating at least €750 million in global revenues for all services and €3 million in in-country revenues for covered digital services. The structure of the tax expressly targets U.S. companies. IA believes that the Spanish DST proposal is unreasonable and would discriminate against U.S. digital companies by creating a targeted burden on U.S. commerce.

Turkey

Turkey has adopted a DST that applies a 7.5 percent tax to revenues from targeted advertising, social media, and digital interface services. The tax applies only to companies generating €750 million in global revenues from covered digital services and TL20 million in in-country revenues from covered digital services. The structure of the tax expressly targets U.S. companies. The Turkish President has authority to increase the tax rate up to 15 percent. The law went into effect on March 1, 2020. IA believes that the Turkish DST is unreasonable and discriminates against U.S. digital companies by creating a targeted burden on U.S. commerce.

The United Kingdom

The UK has approved a DST as part of its Finance Bill 2020 that would apply a 2 percent tax on

[8] https://internetassociation.org/files/ia_india-el-multiassociation-letter-ustr_march-2020_trade/

revenues above £25 million to internet search engines, social media, and online marketplaces. The tax applies only to companies generating at least £500 million in global revenues from covered digital services and £25 million in in-country revenues from covered digital services. The structure of the tax will expressly target U.S. companies. Payments would be due from affected companies in 2021. IA believes that the UK DST proposal meets the full threshold set under Section 302(b)(1)(A) of the Trade Act of 1974. IA notes that the UK Government has said that it would drop this tax if progress can be achieved at the OECD, and IA continues to urge all countries to prioritize these negotiations.

Conclusion

The initiation of these new Section 301 investigations is an important step in exercising American leadership to stem the tide of new discriminatory taxes around the world, and IA looks forward to working with USTR throughout this process. Industry appreciates the prioritization of this issue by the U.S government. In order to fully stem the tide of new discriminatory taxes across Europe and the rest of the world, 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 and clear message to trading partners that targeted discriminatory taxes against U.S. firms are not an appropriate solution.