



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

In re:  
Proposed Action in Section 301  
Investigation of India's Digital Services Tax

Docket No. USTR-2021-0003

**COMMENTS OF  
INTERNET ASSOCIATION**

The internet industry applauds the Office of the United States Trade Representative's (USTR's) prompt and decisive finding in response to India's Digital Services Tax (DST), which specifically targets the U.S. digital sector. With this finding, USTR underscored the importance of an American industry that creates unprecedented benefits for society, generated the largest trade surplus of any industry, and supports millions of jobs and businesses of all sizes. USTR's determination that India's DST is unreasonable, discriminatory, and restricts U.S. commerce is an important step in exercising American leadership to stem the tide of new discriminatory taxes around the world.

Internet Association (IA) represents over 40 of the world's leading internet companies.<sup>1</sup> 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 across the country use the internet to sell goods and services 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.<sup>2</sup> American digital services exports are \$517 billion per year, generating a U.S. digital trade surplus of \$220 billion that is shared by small and large firms and workers far outside the traditional 'digital sector.'<sup>3</sup>

In March 2020, India adopted a 2 percent tax, expanding on an earlier tax 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 Indian tax's scope is significantly broader than that of other DSTs. Unlike other DSTs, India's new tax applies to all services as well as all goods supplied over the internet. In addition, its exemption threshold is set at approximately Rs. 20 million (approximately U.S. \$267,000), substantially lower than thresholds included in other DSTs, some of which are hundreds of millions of dollars. Although the tax went into effect on April 1, 2020, many key details remained undefined. In March 2020, IA joined a multi-association letter to USTR urging attention on the expansion of India's Equalization Levy.<sup>4</sup> As part of its 2021 Budget, the India government passed measures that continue to expand the scope of the tax, including several with retroactive effect back to April 1, 2020.

IA filed comments to USTR's investigation (85 FR 34709), expressing the industry's belief that the structure of the Indian tax expressly targets U.S. companies, is unreasonable, and discriminates against U.S. digital companies by creating a targeted burden on U.S. commerce.<sup>5</sup> In January 2021, USTR agreed with the internet industry's filing and determined that the Indian tax is unreasonable or discriminatory and burdens or restricts U.S. commerce, and

<sup>1</sup><https://internetassociation.org/our-members/>

<sup>2</sup><https://www2.deloitte.com/content/dam/Deloitte/us/Documents/technology-media-telecommunications/us-tmt-connected-small-businesses-Jan2018.pdf>

<sup>3</sup> <https://apps.bea.gov/iTable/iTable.cfm?reqid=62&step=6&isuri=1&tablelist=357&product=4>

<sup>4</sup> [https://internetassociation.org/files/ia\\_india-el-multiassociation-letter-ustr\\_march-2020\\_trade/](https://internetassociation.org/files/ia_india-el-multiassociation-letter-ustr_march-2020_trade/)

<sup>5</sup>[https://internetassociation.org/files/ia\\_comments-on-ustr-301-investigation-of-dst\\_ustr-2020-0022-0001\\_july-2020\\_trade-2](https://internetassociation.org/files/ia_comments-on-ustr-301-investigation-of-dst_ustr-2020-0022-0001_july-2020_trade-2)



therefore is actionable under sections 301(b) and 304(a) of the Trade Act (19 U.S.C. 2411(b) and 2414(a)).<sup>6</sup>

While IA applauds USTR for the strong response, it does not take a position on the impact of the proposed action in the form of additional duties of up to 25 percent on products of India, with initial estimates indicating that the value of the DST payable by U.S.-based company groups to India will be up to approximately \$55 million per year.

IA does not have an opinion about any of the individual items found in the preliminary list in the Annex. It is the goal of the digital industry for India to end its discriminatory tax before any additional duties would enter into force, thus the proposed duties will not have to be put into place.

IA believes that global tax rules should be updated for the digital age, but imposing discriminatory taxes against U.S. firms is not the right approach. In proceeding with their targeted tax, India took a unilateral approach, even as a worldwide solution at the Organisation for Economic Co-operation and Development (OECD) is being developed. IA continues to encourage the U.S. government to keep engaging in the OECD process, and to work with India and other nations to get a deal as soon as possible.<sup>7</sup>

The finding by USTR against the Indian tax was an important step in protecting U.S. companies and workers while also helping to stem the tide of new discriminatory taxes around the world. The digital industry now hopes the Indian government will roll back this discriminatory tax before any escalation occurs. In order to prevent the imposition of new taxes like the Indian tax, the U.S. must help build a global consensus around developing a modern, fair, and global approach to taxing digital services while continuing to send a strong message to trading partners that targeted, discriminatory taxes against U.S. firms are not an appropriate solution.

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<sup>6</sup><https://ustr.gov/issue-areas/enforcement/section-301-investigations/section-301-digital-services-taxes>

<sup>7</sup> <http://www.oecd.org/tax/beps/>