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

In re Notice of Determination and Request for Comments Concerning Action Pursuant to Section 301: France's Digital Services Tax	Docket No. USTR-2019-0009

POST-HEARING COMMENTS OF THE COMPUTER & COMMUNICATIONS INDUSTRY ASSOCIATION (CCIA)

Further to CCIA's January 6 comments responding to the Office of the United States Trade Representative's initial Federal Register notice at 84 Fed. Reg. 66,956 (Dec. 6, 2019), the Computer & Communications Industry Association (CCIA) submits the following post-hearing comments regarding the Section 301 Investigation of France's Digital Services Tax (DST).[1]

I. Introduction

At the hearing, CCIA was asked to expand upon the various pending digital services taxes around the world. The following comments supplement testimony given at the January 7 hearing. CCIA notes that in addition to digital services taxes that closely align with the French digital tax, industry also is tracking similar attempts to target foreign Internet services for additional taxation outside global norms.[2]

II. The Status of Pending and Recently-Enacted Digital Services Taxes

A. Austria

In April 2019, Austria published a draft bill introducing a 5% tax on digital advertising revenues (an increase from the 3% in previous proposals).[3] Then-Chancellor Kurz announced that "Austria will now introduce a national tax on digital giants like Google or Facebook to ensure that they also pay their fair share of taxes."[4] The tax applies to targeted and non-targeted

[1] A list of CCIA members is available at https://www.ccianet.org/members.

[2] For example, CCIA members are concerned about Mexico's recently-enacted amendments to its VAT rules. *See Digital Levies Edging Latin America Away from Multilateral Approach*, BNAMERICAS (Dec. 19, 2019), https://www.bnamericas.com/en/features/digital-levies-edging-latam-away-from-multilateral-approach.

[3] Alison Bevege, *Austria Increases Size of Planned Digital Tax to 5 Percent of Ad Revenue*, REUTERS (Apr. 3, 2019), https://www.reuters.com/article/austria-economy-digital-tax/update-1-austria-increases-size-of-planned-digital-tax-to-5-pct-of-ad-revenue-idUSL8N21L0KL.

[4] Sebastian Kurz (@sebastiankurz), Twitter (Apr. 3, 2019, 1:44 AM), https://twitter.com/sebastiankurz/status/1113361541938778112.

online advertising services, which include advertisements on a digital interface, banner advertising, search engine advertising, and similar advertising services.[5] The revenue threshold applies to services with a global revenue of at least €750 million, and taxable revenue in Austria of at least €25 million. The tax received a favorable vote[6] from Austria's Federal Council on October 10, 2019, was published on October 22, 2019, and became effective January 1, 2020.[7] Industry is still waiting for official guidance pursuant to the new law to be released.

B. Canada

Ahead of the 2019 Canadian election cycle, Prime Minister Justin Trudeau's Liberal Party released its full policy platform outlining priorities for the next government.[8] The platform includes a promise to pursue a digital tax on foreign tech companies. With the Liberal Party's success in the 2019 elections, industry is monitoring whether the government will act on these plans.[9] The proposal for a national digital tax appears to depart from Canada's previous position on support for the OECD multilateral process. According to Canada's Office of the Parliamentary Budget Officer, the tax would "replicate" the French Digital Services Tax and impose a 3% DST on advertising services and digital intermediation services that meet similar revenue thresholds.

C. Czech Republic

In 2019, Prime Minister Andrej Babis announced a 7% digital tax. The scope is similar to the EU Digital Services Tax and includes (1) targeted advertising on a digital interface; (2) the

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5 LIBRARY OF CONGRESS, Global Legal Monitor, *Austria: Digital Tax for Large Internet Companies Introduced* (Nov. 6, 2019), https://www.loc.gov/law/foreign-news/article/austria-digital-tax-for-large-internet-companies-introduced/.

6 Digital Tax Law 2020 [Austria], *available at* https://www.ris.bka.gv.at/GeltendeFassung.wxe?Abfrage=Bundesnormen&Gesetzesnummer=20010780. *See also* Hamza Ali, *Austria's Federal Council Approves 5 Percent Tax on Digital Ad Revenue*, BLOOMBERG TAX (Oct. 10, 2019), https://news.bloombergtax.com/daily-tax-report-international/austrias-federal-council-approves-5-tax-on-digital-ad-revenue.

7 Hamza Ali, *Austria Pushes Forward With 5% Digital Tax Bill*, BLOOMBERG TAX (July 8, 2019), https://news.bloombergtax.com/daily-tax-report-international/austria-pushes-forward-with-5-digital-tax-bill.

8 Liberal Party, Forward A Real Plan for the Middle Class, *available at* https://2019.liberal.ca/our-platform/ ("We will . . . make sure that multinational tech giants pay corporate tax on the revenue they generate in Canada. We will also work to achieve the standard set by the Organisation for Economic Co-operation and Development (OECD) to ensure that international digital corporations whose products are consumed in Canada collect and remit the same level of sales taxation as Canadian digital corporations.").

9 Stephanie Soong Johnston, *Canadian Digital Tax Likely as Trudeau Hangs On to Power*, TAX NOTES (Oct. 22, 2019), https://www.taxnotes.com/featured-news/canadian-digital-tax-likely-trudeau-hangs-power/2019/10/22/2b20t; Michael Geist, *What Comes Next for Canadian Digital Policy Under a Liberal Minority Government?* (Oct. 23, 2019), http://www.michaelgeist.ca/2019/10/what-comes-next-for-canadian-digital-policy-under-a-liberal-minority-government/.

use of multilateral digital interfaces that allow users to search for and interact with other users, and which can facilitate supply of goods and services between users; and (3) the sale of data collected about users and user generated activities on digital interfaces. The relevant thresholds are worldwide revenues of €750 million and national revenues of 100M Czk (just under €4 million) in taxable turnover.[10] The Czech government approved the tax on November 18, 2019, and the tax is currently under consideration at the Czech Parliament. Industry expects that the tax will become effective in 2020, and the tax would apply until 2024.

D. European Union

Despite abandoning plans for an EU-wide digital tax in 2019, the European Commission has stated that it will pursue a digital tax if the OECD does not reach an agreement by 2020.[11]

E. Italy

Italy's 2020 budget, approved on December 23, 2019, included a 3% digital services tax applicable to revenues from (1) digital advertising; (2) intermediary services including social networks and online marketplaces; and (3) transmission of data collected from users.[12] The tax will apply beginning January 1, 2020.[13] The revenue threshold is €750 million worldwide, and at least €5.5 million taxable revenue within Italy. The tax is expected 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 gerrymandered around large U.S. tech firms.[14]

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[10] *Czech Republic: Digital Services Tax, Update*, KPMG (Nov. 21, 2019), https://home.kpmg/us/en/home/insights/2019/11/tnf-czech-republic-digital-services-tax-update.html.

[11] Bjarke Smith-Meyer, *Digital Tax Back-Up Plan in the Works for 2020, Antiloni Says*, POLITICO (Oct. 3, 2019), https://www.politico.eu/pro/digital-tax-back-up-plan-in-the-works-for-2020-gentiloni-says/; Francesco Guarascio, *In Blow to U.S., EU Pledges Quick Move on Tax for Polluting Firms*, REUTERS (Oct. 3, 2019), https://www.reuters.com/article/us-eu-commission-gentiloni/in-blow-to-u-s-eu-pledges-quick-move-on-tax-for-polluting-firms-idUSKBN1WI0K1 ("[European Economy Commissioner-designate Gentiloni] reiterated the EU should move alone on an EU-wide tax on digital corporations if no deal was reached at global level in 2020. He said he was confident, although "not fully optimistic", about an international agreement by that deadline.").

[12] *See Italy: Digital Services Tax Proposed to Apply Beginning 1 January 2020*, KPMG (Oct. 17, 2019), https://home.kpmg/us/en/home/insights/2019/10/tnf-italy-digital-services-tax-apply-beginning-1-january-2020.html; *Italy Web Tax Marches On*, TAX FOUNDATION (Nov. 18, 2019), https://taxfoundation.org/italy-digital-services-tax/.

[13] Unlike previous proposals for a digital tax in Italy, the entry into force "is not contingent" on further legislative action by the government. *Italy Draft 2020 Budget Calls for Unilateral Digital Services Tax*, PwC (Nov. 2019), https://www.pwc.com/us/en/services/tax/library/insights/italy-draft-2020-budget-calls-for-unilateral-digital-services-ta.html.

[14] *Web Tax in Arrivo*, ADNKRONOS (Dec. 19, 2018), https://www.adnkronos.com/soldi/economia/2018/12/19/web-tax-arrivodi-maio-rassicura-solo-per-giganti-rete_JEfFksy3wkwzPPJaG7vxuI.html.

F. Spain

A digital services tax of 3%, closely modeled after the abandoned EU proposal, was included in Spain's budget bill for 2019. Following the G7 Finance Ministers meeting in July 2019, Spanish officials indicated the intention to start deliberations on the digital tax bill "as soon as there is a government."[15] The newly-formed Spanish government has included the introduction of a digital tax in its 2020 priorities.[16]

G. Turkey

Turkey's parliament adopted a digital services tax of 7.5% in 2019.[17] The scope of digital activities include: digital advertising services, sale of digital content, and intermediation services including marketplaces for the sale of goods.[18] The revenue thresholds are worldwide revenue of at least €750 million, and domestic revenue of approximately €3.137 million. The tax is expected to apply to the revenue of a wide range of digital services. Industry reports that there is still uncertainty on the specific scope of the digital tax and covered services due to the current lack of sufficient administrative guidelines. The tax will enter into force on March 1, 2020.

H. United Kingdom

The UK government announced it would introduce a new DST, following a public consultation launched in November 2018.[19] The tax was included in the Finance Bill 2019-20 presented on July 11, 2019.[20] The UK's DST would be a 2% tax on the UK revenues of digital businesses that are considered to derive significant value from user participation. Activities in scope include social media platforms, Internet search engines, and online marketplaces. With the

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[15] *Spain to Push Ahead with Tax on American Tech Giants*, THE LOCAL ES (July 18, 2019), https://www.thelocal.es/20190718/spain-to-push-ahead-with-tax-on-american-tech-giants.

[16] Coalición Progresista, Un nuevo acuerdo para España (2020) at 10.3, *available at* https://ep00.epimg.net/descargables/2019/12/30/87348523b35b92d92f5702e3cc84d950.pdf ("Aprobaremos el Impuesto sobre determinados servicios digitales con el fin de gravar aquellas operaciones de la Economía digital que actualmente no tributan, en línea con las recomendaciones de la Unión Europea."). [Translation: We will approve the Tax on certain digital services in order to tax those operations of the digital economy that currently do not pay taxes, in line with the recommendations of the European Union.]

[17] Text available at https://perma.cc/WZR5-C2F3. *See also* LIBRARY OF CONGRESS, *Global Legal Monitor: Turkey: Digital Services, Accommodations, and Valuable Real Estate Taxes Introduced* (Jan. 14, 2020), http://www.loc.gov/law/foreign-news/article/turkey-digital-services-accommodations-and-valuable-real-estate-taxes-introduced/?loclr=twlaw.

[18] *Id*. *See also* Turkey: Legislative Proposal for a Digital Services Tax, KPMG (Nov. 5, 2019), https://home.kpmg/us/en/home/insights/2019/11/tnf-turkey-legislative-proposal-for-digital-services-tax.html.

[19] HM REVENUE & CUSTOMS, Introduction of the New Digital Services Tax, July 11, 2019, https://www.gov.uk/government/publications/introduction-of-the-new-digital-services-tax.

[20] HM TREASURY, HM REVENUE & CUSTOMS, Finance Bill 2019-20, https://www.gov.uk/government/collections/finance-bill-2019-20.

revenue threshold set at £500 million for global revenue, the scope is effectively limited to only a few leading U.S. firms offering these designated services. The 2019 draft legislation does not include a sunset provision, contrary to claims made by UK officials in 2018.[21] The new UK government has indicated that they will move forward with the tax in 2020, and the upcoming budget bill is expected to include the new tax. The digital tax could become effective April 1, 2020.

III. Conclusion

Unilateral measures such as the French DST and other DSTs outlined in these comments threaten the ability to achieve consensus on a long-standing, multilateral solution at the OECD to address tax challenges. CCIA encourages the U.S. to engage with these countries, and encourage them not to move forward with these taxes, and instead prioritize work at the OECD level.

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Sincerely,

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[21] *EU, UK Officials Emphasize Sunset Provisions in Digital Tax Proposals*, WORLD TRADE ONLINE (Nov. 8, 2019), https://insidetrade.com/daily-news/eu-uk-officials-emphasize-sunset-provisions-digital-tax-proposals.