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

COMMENTS OF
COMPUTER & COMMUNICATIONS INDUSTRY ASSOCIATION (CCIA)

Pursuant to the request for comments published by the Office of the United States Trade Representative in the Federal Register at 84 Fed. Reg. 66,956 (Dec. 6, 2019), the Computer & Communications Industry Association (CCIA) submits the following comments in relation to the Notice of Determination and Request for Comments Concerning Action Pursuant to Section 301: France's Digital Services Tax (DST). These comments complement CCIA's written comments filed in the earlier investigation phase of this process.[1]

CCIA strongly supports USTR's scrutiny of the French DST and welcomes the Section 301 Report's detailed analysis and conclusion that the French DST "intended to, and by its structure and operation does, discriminate against U.S. digital companies."[2] These comments discuss (1) the cost to U.S. Internet services associated with the French DST; (2) the need for a strong response by the United States in order to change France's course of action, as well as deter other countries from pursuing similar discriminatory taxation measures; and (3) recommended remedies as a result of the Section 301 investigation, including the use of targeted tariffs.

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[1] Submission of CCIA In Re Section 301 Investigation of French Digital Services Tax Docket No. USTR 2019-0009 (filed Aug. 19, 2019), *available at* https://www.ccianet.org/wp-content/uploads/2019/08/USTR-2019-0009-CCIA-Written-Comments-on-French-Digital-Tax.pdf [hereinafter "*CCIA Section 301 Comments*"].

[2] OFFICE OF THE U.S. TRADE REP., *Section 301 Investigation Report on France's Digital Services Tax* (2019), *available at* https://ustr.gov/sites/default/files/Report_On_France_Digital_Services_Tax.pdf at 1-2. CCIA also agrees with the Reports additional conclusions that (1) the DST is inconsistent with prevailing tax principles and renders the tax particularly burdensome for covered U.S. companies; (2) the application to revenue rather than income contravenes prevailing tax principles and is particularly burdensome for covered U.S. companies; (3) the French DST's application to revenues unconnected to a physical presence in France contravenes prevailing international tax principles and is particularly burdensome for covered U.S. companies; and (4) the French DST's application to a small group of digital companies contravenes international tax principles counseling against targeting the digital economy for special, unfavorable tax treatment.

I. The Economic Burden on U.S. Services as a Result of the French DST.

The Federal Register notice solicits comment on the "level of the burden or restriction on the U.S. economy resulting from the DST."[3] France started collecting taxes under the DST in October 2019. The French government expects to raise roughly € 400 million with the new tax.[4] CCIA has commented previously on the projected harms on compliance with the framework of the DST, in addition to the payments due to the French government under the new tax.[5] Concerns remain on the burdens associated with making the complex calculations under an unprecedented system to determine taxable revenues.[6]

French officials indicated that they would release sufficient guidance on compliance and reporting requirements under the new framework after the DST was published into national law. On October 17, France released draft guidance for firms on reporting and payment procedures under the DST.[7] However, first payments were due shortly after on October 25, 2019. Further adding to the uncertainty, French officials sought comment on the draft guidance up until November 25, 2019, after the first payments were due.[8] The French government effectively added to the uncertainty by finalizing guidelines after payments were due under the new tax.

Costs to U.S. firms will increase drastically if countries follow France's lead and move forward with their own digital services taxes. Proposals for these digital taxes, while modeled on the EU proposal and the French DST, all vary slightly in terms of covered digital services, rate of taxation, and revenue thresholds.[9] The cost burdens associated with compliance are exacerbated

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[3] 84 Fed. Reg. 66,957 (Dec. 6, 2019).

[4] *What is France's new digital tax?*, EURONEWS (July 11, 2019), https://www.euronews.com/2019/07/11/what-is-france-s-new-digital-tax.

[5] *See CCIA Section 301 Comments*, *supra* note 1 at 4-6, 10-11; *Big Tech Frets Over French Digital Tax Compliance*, BLOOMBERG TAX (Aug. 15, 2019), https://news.bloombergtax.com/daily-tax-report-international/big-tech-frets-over-french-digital-tax-compliance-headaches? ("The compliance burden adds to the cost of the tax itself—which will likely be in the millions of euros.").

[6] *See France's Digital Tax Guidelines Still Leaves Tech Industry Wanting*, BLOOMBERG TAX (Oct. 18, 2019), https://news.bloombergtax.com/daily-tax-report-international/frances-digital-tax-guidance-still-leaves-tech-industry-wanting.

[7] Taxe sur certains services fournis par les grandes enterprises du secteur numerique (TSN) https://bofip.impots.gouv.fr/bofip/12012-PGP (last visitied Jan. 6, 2019).

[8] *France Publishes Digital Services Tax Draft Guidelines* (Oct. 17, 2019), https://news.bloombergtax.com/daily-tax-report-international/france-publishes-draft-guidance-for-digital-services-tax ("The first payment is due Oct. 25. But the government is also consulting on the draft guidance, meaning the guidance could change up to Nov. 29.").

[9] *See generally* Comments of CCIA, In re Request for Comments to Compile the National Trade Estimate Report on Foreign Trade Barriers, Docket No. 2019-0012, filed Oct. 31, 2019, *available at* https://www.ccianet.org/wp-content/uploads/2019/10/USTR-2019-CCIA-Comments-for-NTE.pdf.

when a firm is now faced with a dozen of these complex taxation rules that depart from traditional norms of taxation, raising costs of serving customers outside the United States.

II. The Need for a Strong U.S. Response to Deter Proliferation of Digital Services Tax, and to Drive Engagement at the OECD.

In the past year, over a dozen countries have either introduced, or are in the process of finalizing, their own digital services taxes modeled after the French tax. These countries include Austria, Belgium, Canada, Czech Republic, Denmark, Egypt, the EU, Greece, Hungary, India, Italy, Poland, Russia, Spain, Turkey, and the United Kingdom.[10] In light of the number of these digital taxes, a strong response by the U.S. government in the Section 301 investigation on the French DST is critical. A number of these countries are looking at the U.S. response in their consideration of whether to move forward with a DST before a solution is reached at the international level at the OECD. It is encouraging that, in announcing the release of the Section 301 Report on the French DST, Ambassador Lighthizer indicated that USTR was also ready to launch additional investigations into any country that pursues a similar discriminatory tax.[11]

The French DST and other unilateral measures threaten to undermine the progress made at the global level on international tax reform taking place at the OECD. The OECD has warned about the risks associated with unilateral measures.[12] CCIA is encouraged by the OECD's significant strides toward addressing the tax challenges arising from the digitalization, using an inclusive and consensus-driven process.[13] CCIA supports an ambitious, comprehensive, and long-term solution by 2020 that does not ring-fence the digital economy. Industry is committed to this important process and remains optimistic that the end result will provide certainty needed to enhance investments, trade and growth globally. An OECD solution, not discriminatory national digital taxes that incite trade conflicts, remains the best path forward.

Absent a strong response to the French DST, there is a risk that at the time the OECD find consensus on global solution, there will be multiple national digital taxes to remove. U.S.

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[10] Failure to discourage other unilateral action will also have consequences for ongoing and proposed trade negotiations with a number of U.S. trading partners. For instance, the U.K. is considering a digital services tax, which threatens to undermine discussions for a U.S.-U.K. Free Trade Agreement upon the U.K.'s exit from the EU.

[11] Press Release, Conclusion of USTR's Investigation Under Section 301 into France's DST (Dec. 2, 2019), https://ustr.gov/about-us/policy-offices/press-office/press-releases/2019/december/conclusion-ustr%E2%80%99s-investigation.

[12] OECD, Tax Challenges Arising from Digitalisation – Interim Report 2018, *available at* http://www.oecd.org/tax/taxchallenges-arising-from-digitalisation-interim-report-9789264293083-en.htm at 178-9.

[13] The OECD Secretariat has proposed solutions under two pillars and recently concluded public consultations on these documents.

firms will have already been paying digital taxes in multiple countries and invested significantly in reporting mechanisms.

III. Recommendations on Remedies As A Result of the Section 301 Investigation.

CCIA continues to support efforts to negotiate with French officials in the context of the Section 301 process to remove the tax and instead reach a global solution to taxation of the digital economy at the OECD.

However, in light of the number of national taxes and the need for a timely response, CCIA also encourages USTR to use remedial tools at its disposal to deter France and send a strong message to other countries. As noted in its original written comments in this investigation, CCIA takes seriously the impact that tariffs can have.[14] Tariffs should only be used in limited circumstances, in a targeted manner, and where there is a clear strategy in place designed to change the behavior of a trading partner. USTR's proposed action appears to meet this standard. The French DST is, in design and effect, a tariff on U.S. technology imports. This should be countered with a commensurate measure to ensure that our trading partners maintain market access and refrain from targeting new taxes on foreign producers.

IV. Conclusion

CCIA welcomes USTR's conclusions in the Section 301 report that the French DST discriminates against U.S. Internet firms. France's action warrants a substantial, proportionate response from the United States.

January 6, 2020

Sincerely,

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[14] *CCIA Section 301 Comments, supra* note 1 at 15.