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

In re Initiation of Section 301 Investigations of Digital Services Taxes	Docket No. USTR-2020-0022

COMMENTS OF
THE 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 85 Fed. Reg. 34,709 (June 5, 2020), the Computer & Communications Industry Association (CCIA) submits the following comments regarding the Section 301 Investigations of Digital Services Taxes (DSTs).[1]

I. INTRODUCTION

CCIA welcomes the Administration's scrutiny on the targeting of U.S. technology firms for discriminatory taxation, and supports USTR's decision to pursue Section 301 investigations of the enacted or proposed digital tax measures of Austria, Brazil, the Czech Republic, the European Union, India, Indonesia, Italy, Spain, Turkey, and the United Kingdom. Absent a strong message from the United States, more countries are posed to follow this trend and enact their own national measures. To this point, industry is also tracking additional digital taxes in countries not named by USTR for purposes of the Section 301 investigations in this consultation.[2]

In the United States, officials and lawmakers across the spectrum have made clear their disapproval of countries pursuing unilateral digital taxes that discriminate against U.S. firms.[3] In

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

[2] The following countries have proposed or enacted direct taxes on digital services: Austria, Belgium, Brazil, Canada, Costa Rica, Czech Republic, France, Greece Hungary, India, Indonesia, Israel, Italy, Kenya, Latvia, Malaysia, Mexico, Nigeria, Pakistan, Paraguay, Poland, Slovakia, Spain, Taiwan, Thailand, Tunisia, Turkey, United Kingdom, Uruguay, Vietnam, and Zimbabwe. *See* KPMG, Taxation of the Digitalized Economy Developments Summary (July 10, 2020) https://tax.kpmg.us/content/dam/tax/en/pdfs/2020/digitalized-economy-taxation-developments-summary.pdf [hereinafter "*KPMG Digital Taxation Report*"]. Further, while not subject to the scope of this investigation, and structurally different from a DST or other direct taxes, industry is also aware of a rise in indirect taxes on digital services including VATs. *See* TAXAMO, Global VAT/GST Rules on Cross-Border Digital Sales, https://blog.taxamo.com/insights/vat-gst-rules-on-digital-sales.

[3] *See, e.g.*, Press Release, Grassley, Wyden Joint Statement, June 18, 2020, *available at* https://www.finance.senate.gov/chairmans-news/grassley-wyden-joint-statement-on-oecd-digital-economy-tax-negotiations; LaHood, DelBene Letter to White House, June 19, 2019, *available at* https://lahood.house.gov/sites/lahood.house.gov/files/6.19.19_Digital%20Tax%20Letter_Signed.pdf; Press Release,

the Section 301 investigation against the French DST, which a number of the taxes cited in this investigation largely mirror, USTR concluded that DSTs discriminate against U.S. firms and impose unreasonable burdens on U.S. exporters.[4] DSTs also represent a significant departure from international taxation norms, and undermine the ongoing process to reach an international tax solution to the challenges associated with the digitalization of the global economy. These taxes, wherever imposed, warrant a substantial, proportionate response from the United States.

Changes to international taxation may be warranted in the increasingly digitized global economy. To this end, CCIA supports the efforts of the Organization for Economic Cooperation and Development (OECD) and the Group of 20 (G20) to negotiate a consensus-based solution to the tax challenges arising from the digitalization of the economy. A long-term, multilateral solution that does not discriminate against U.S. services remains the only path forward to provide certainty, and reduce trade tensions caused by countries' decisions to enact unilateral measures.

CCIA's comments address the following: (i) concerns with DSTs relevant to a Section 301 investigation; (ii) concerns with each tax measure cited in USTR's Federal Register notice; (iii) the burden of discriminatory taxation on U.S. commerce; (iv) DSTs' potential conflicts with international commitments; (v) the threat DSTs pose to international negotiations; and (vi) recommended action as a result of the Section 301 investigations.

II. CONCERNS WITH THE DIGITAL SERVICES TAXES

This section responds to USTR's request to comment on concerns related to the three major problematic aspects of the DSTs listed in the Federal Register notice: "discrimination,"

Portland Questions Treasury Nominees About France Digital Services Tax, https://www.portman.senate.gov/newsroom/press-releases/hearing-portman-questions-treasury-nominees-about-frances-digital-services; *Pompeo Urges France Not to Approve Digital Services Tax*, REUTERS (April 4, 2019), https://www.reuters.com/article/us-usa-france-tax/pompeo-urges-france-not-to-approve-digital-services-tax-idUSKCN1RG1TZ; OFFICE OF U.S. TRADE REP., Digital Trade Fact Sheet 2020, https://ustr.gov/index.php/about-us/policy-offices/press-office/fact-sheets/2020/march/fact-sheet-2020-national-trade-estimate-strong-binding-rules-advance-digital-trade; U.S. DEP. OF TREASURY, Press Release, Secretary Mnuchin Statement on Digital Economy Taxation Efforts, Oct. 25, 2018, https://home.treasury.gov/news/press-releases/sm534; Press Release, House Ways and Means, Senate Finance Leaders' Statement on Unilateral Digital Services Taxes, OECD Negotiations to Address the Tax Challenges of the Digitalization of the Economy (April 10, 2019), https://gop-waysandmeans.house.gov/house-ways-and-means-senate-finance-leaders-statement-on-unilateral-digital-services-taxes-oecd-negotiations-to-address-the-tax-challenges-of-the-digitalization-of-the-economy/; Letter to White House, House Ways & Means Committee Republicans, April 3, 2019, https://lahood.house.gov/sites/lahood.house.gov/files/LaHood%20DST%20Letter%20-%20Final.pdf.

[4] OFFICE OF U.S. TRADE REP., Section 301 Investigation Report on France's Digital Services Tax (Dec. 2019), *available at* https://ustr.gov/sites/default/files/Report_On_France%27s_Digital_Services_Tax.pdf [hereinafter "USTR French DST Section 301 Report"].

"retroactivity," and "unreasonable tax policy."[5] As many of the DSTs are structured in a similar, if not identical manner, these concerns are relevant across the measures in this consultation. CCIA notes that other sections of this submission detailing specific DSTs may also speak to these three specific concerns. CCIA argues that DSTs, by unduly targeting leading U.S. internet firms for specialized taxation, generally appear to meet the standard for unreasonable and discriminatory.

A. Discrimination

The DSTs predominately apply to U.S. firms. Foreign policymakers make clear their target of these new taxes, singling out other American "tech giants". Some follow French policymakers and refer to the tax as a 'GAFA' tax (a moniker to describe Google, Amazon, Facebook, and Apple), or cite only U.S. companies as the basis for introducing the tax. While non-U.S. companies are expected to also fall into the scope of the new tax, the majority of payments derived from the tax are expected to be paid by U.S. firms.[6] The discriminatory nature of DSTs is motivated at least in part by inaccurate characterizations of current tax payments of digital firms.[7]

B. Retroactivity

Many of the mentioned DSTs are retroactive. The retroactive nature will make compliance extremely difficult for companies affected, as well as for tax authorities around the world. To calculate the tax base, firms will have to calculate the portion of revenue that was generated "in country" which means they will have to determine user location and location of certain user activities to know whether there was a taxable event that occurred at that time. While firms have access to limited data provided by users, firms do not collect and/or retain this data for the purpose of tax compliance and the current data held is likely insufficient to make

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[5] "Discriminatory" is defined under Section 301 to include "any act, policy, and practice which denies national or most-favored nation treatment to United States goods, services, or investment." Trade Act of 1974, 19 U.S.C. § (d)(5). An "unreasonable" measure that is actionable under Section 301 is one that is "unfair and inequitable", even if not necessarily in violation of or inconsistent with the legal rights of the United States. 19 U.S.C. § 2411(d)(3)(A).

[6] An analysis looked at the French DST, which is largely similar to other DSTs in Europe and determined that predominately U.S. firms will be burdened with the tax payments. *See* Deloitte & Taj, *The French Digital Services Tax: An Economic Impact Assessment* (2019), *available at* https://taj-strategie.fr/content/uploads/2020/03/dst-impact-assessment-march-2019.pdf [hereinafter "*Taj French DST Impact Study*"].

[7] European Center for International Political Economy, *Digital Companies and their Fair Share of Taxes: Myths and Misconceptions* (Feb. 2018), *available at* http://ecipe.org/publications/digital-companies-and-their-fair-share-of-taxes [hereinafter "*ECIPE Digital Companies Tax Share Study*"].

accurate calculations under the law. This analysis is difficult when users use virtual private networks (VPNs) to mask location, as legislation imposing DSTs often cites IP addresses as a tool to identify location of the provision of service.

C. Unreasonable tax policy

DSTs cited in these investigations represent an unreasonable tax policy for a number of reasons. First, the thresholds that were created were set at arbitrary levels, with the apparent goal of ensuring that foreign companies shouldered the vast majority of the tax burden. The global thresholds closely follow the once-abandoned EU proposal, while in-country thresholds either follow the EU approach or are crafted in a manner to exclude leading domestic companies that would be within scope. Domestic companies that provide identical intermediary and ad-supported services will not be taxed. The upper threshold for worldwide revenue, often set at 750 million euro, is so high that only the largest technology firms will be impacted and penalized for commercial success.

Second, the taxation of revenue rather than profits departs from international norms. Historically, corporate taxes have been levied where value is created, not where it is consumed. If this were to change, governments should seek consensus on the methodology and degree to which taxation rights should shift. With narrow definitions and targeted policy instruments, the risk is that every country could seek to impose new taxes on whatever products and services they import, while maintaining direct taxes on those that they export.

Third, the administrative burdens associated with compliance and auditing will likely offset any relative gains to be made by foreign tax collection authorities.[8] Firms are required to make complex determinations on whether covered digital activities were "supplied in country", a determination that varies across different DST legislation and implementing guidelines. The lack of clarity could lead to different interpretations of the law between firms in the scope of the tax and foreign tax authorities.[9]

Finally, some of these taxes are being implemented without sufficient opportunity for stakeholders to contribute to consultations. This is especially true with taxes that are

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[8] The *Taj French DST Impact Study* also makes the observation that the total additional tax burden on consumers and companies will be roughly 570 million euro, almost 50 percent more than the tax revenue raised by the French DST.

[9] *See Taj French DST Impact Study* at section 5.1, *supra* note 6 (specifically identifying three points of difficulty in administering the tax: the difficulties to identify all taxpayers, the difficulties to calculate the taxable base, and the risks of multiple taxation).

incorporated into emergency economic relief measures such as in Indonesia and India.[10] Further, some stakeholders have reported delays or inconsistencies with implementation guidelines in countries where a DST is in effect. This guidance is critical for industry to assess compliance as legislation imposing DSTs lacks sufficient clarity on novel concepts.

III. CONCERNS WITH TAXES CITED IN FEDERAL REGISTER NOTICE

A. Austria

Austria implemented a 5 percent digital tax on revenues from digital advertising services provided domestically.[11] The global revenue threshold is 750 million euro, and domestic revenue threshold is 25 million euro. The tax, implemented in the Digital Tax Act 2020 (*Digitalsteuergesetz* 2020), became effective on January 1, 2020. "Online advertisement services" include advertisements placed on a digital interface, in particular in the form of banner advertising, search engine advertising and comparable advertising services.[12] Per officials, a covered service is deemed to have been provided domestically "if it is received on a user's device having a domestic IP address and is addressed (also) to domestic users in terms of its content and design."[13] The tax also provides for the use of an IP address or other geolocation technologies to determine the location of the service.

The discriminatory motivations underlying this tax are clear, with U.S. companies being singled out as targets of this online advertising tax. Upon introduction, 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."[14] Further Parliamentary documentation notes:

- "Internetgiganten wie Facebook oder Google müssen künftig Online-Werbeumsetze abführen. Um mehr Steuergerechtigkeit zu erreichen, soll nun auch die seit längerem in der Öffentlichkeit diskutierte Digitalsteuer umgesetzt werden; das dazu von ÖVP und FPÖ vorgelegte Abgabenänderungsgesetz 2020 hatte die nötige Stimmenmehrheit. Nunmehr müssen Internetgiganten wie Facebook, Google oder Amazon ab dem Jahr 2020 eine fünfprozentige Steuer auf Online-Werbeumsätze abführen haben. Konkret sind

[10] *Global Lobbying Groups Call for Delay To India's New Digital Tax*, REUTERS (Apr. 29, 2020), https://www.reuters.com/article/us-india-tax-digital/global-lobbying-groups-call-for-delay-to-indias-new-digital-tax-idUSKCN22B0EL.

[11] *Austria: Legislation Introducing Digital Services Tax*, KPMG (Oct. 29, 2019), https://home.kpmg/us/en/home/insights/2019/10/tnf-austria-legislation-introducing-digital-services-tax.html.

[12] Federal Ministry Republic of Austria, Digital Tax Act 2020, https://www.bmf.gv.at/en/topics/taxation/digital-tax-act.html (last visited July 14, 2020).

[13] *Id*.

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

jene Unternehmen betroffen, die einen weltweiten Umsatz von 750 Mio. € bzw. einen jährlichen Umsatz aus Onlinewerbeleistungen von mindestens 25 Mio. € erzielen, soweit diese in Österreich gegen Entgelt erbracht werden. Aus den aus der Digitalsteuer resultierenden Einnahmen sollen jährlich 15 Mio. € an österreichische Medienunternehmen gehen."[15] [*Internet giants like Facebook or Google will have to pay for online advertising sales in the future. In order to achieve more tax justice, the digital tax that has long been discussed in public should now be implemented; the Tax Amendment Act 2020 presented by the ÖVP and FPÖ had the necessary majority of votes. Internet giants like Facebook, Google or Amazon must now pay a five percent tax on online advertising sales from 2020. Specifically, those companies are affected that achieve a worldwide turnover of € 750 million or an annual turnover from online advertising services of at least € 25 million, as far as these are rendered in Austria for a fee. From the income resulting from the digital tax, € 15 million should go to Austrian media companies every year.*][16]

Further, the legislature specifically earmarked € 15 million of the anticipated revenue from this tax to support domestic Austrian constituencies.[17] While effective taxation policy is an important tool for economic growth, it is poor policy to subsidize local firms by taxing foreign companies.

B. Brazil

Brazil is currently considering various digital tax initiatives, including the introduction of a DST through an expansion of its existing CIDE (*contribuição de intervenção no domínio econômico*) regime. The CIDE-Digital tax (PL 2,358/2020) would apply progressively from 1 percent to 5 percent on gross revenues derived from (1) digital advertising; (2) operating a digital service that permits users to interact with each other for the sale of goods and services; and (3) collection of user generated data in the operation of a digital platform.[18] There is also pending legislation (PL 131/2020) to raise payments under the existing COFINS regime (*contribuição*

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[15] Parliamentary Correspondence No. 914, National Council: digital tax on online advertising sales decided, Aug. 20, 2019, *available at* https://www.parlament.gv.at/PAKT/PR/JAHR_2019/PK0914/.

[16] Rough translations provided.

[17] Parliamentary Correspondence No. 834, New in budget Committee, Aug. 1, 2019, https://www.parlament.gv.at/PAKT/PR/JAHR_2019/PK0834/ ("Aus den aus der Digitalsteuer resultierenden Mitteln sollen jährlich 15 Mio. € an österreichische Medienunternehmen gehen. Damit soll der digitale Transformationsprozess und der Ausbau digitaler Angebote gefördert werden. Geplant ist außerdem eine Evaluierung der ersten Erfahrungen mit der Besteuerung von Onlinewerbeleistungen.") ["*From the funds resulting from the digital tax, € 15 million should go to Austrian media companies every year. This is intended to promote the digital transformation process and the expansion of digital offerings. An evaluation of the first experiences with the taxation of online advertising services is also planned*."]

[18] *Brazil Congressman Proposed Digital Services Tax*, EY (May 8, 2020), https://taxnews.ey.com/news/2020-1246-brazilian-congressman-proposes-digital-services-tax?uAlertID=Sd%2FG8rua1oj6%2Fl58EZ2AiA%3D%3D; *KPMG Digital Taxation Report*, *supra* note 2.

para o financiamento da seguridade social) for companies in the digital sector.[19] Brazil should be discouraged from introducing new taxes that discriminate against a specific class of digital companies for specialized taxation.

C. Czech Republic

Announced by the Ministry of Finance in July 2019,[20] the Czech Republic is currently finalizing its digital tax which was presented to Parliament in November 2019.[21] The tax would apply to revenues from (1) targeted advertising on digital interface, (2) the transmission of data about users and generated from users' activities on digital interfaces, and (3) making available to users a multi-sided digital interface to facilitate the provision of supplies of goods and services.[22] The proposed tax rate was 7 percent but there was recently an agreement to reduce it to 5 percent, in order to be consistent with other EU member measures.[23] The effective date is expected to be January 2021. Policymakers have cited the need to tax U.S. companies despite support for an OECD solution. The Minister of Finance, Alena Schillerová, has said the following:

- Preferuji společné řešení digitální ekonomiky na platformě OECD. Jde o jedinou dlouhodobě udržitelnou variantu, jak se vypořádat s problémem zdanění společností Google nebo Facebook, které by za služby poskytované v České republice měly odvádět mnohem vyšší daně.[24] [*I prefer a common solution to the digital economy on the OECD platform. This is the only long-term sustainable option to deal with the problem of taxation by Google or Facebook, which should pay much higher taxes for services provided in the Czech Republic*.]

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[19] *Brazil: Proposed COFINS Regime for Digital Sector Taxpayers*, KPMG (July 7, 2020), https://home.kpmg/us/en/home/insights/2020/07/tnf-brazil-proposed-cofins-regime-digital-sector-taxpayers.html ("The proposal (COFINS-Digital) would, if enacted, affect companies that operate in the digital sector and would focus on the gross monthly revenue earned in relation to digital services from: [1] Electronic communications and digital interface that allows interaction between users with regard to the delivery of goods or provision of services [and 2] Marketing to advertisers or agents for placing targeted advertising messages on a digital interface based on user data.").

[20] Press Release, The Ministry of Finance Sends Draft Law in Digital Tax to Comment Procedure (July 4, 2019), https://www.mfcr.cz/cs/aktualne/tiskove-zpravy/2019/mf-posila-do-pripominkoveho-rizeni-navrh-35609.

[21] *Czech Republic to Delay Proposed Digital Tax, Cut Rate to 5%,* BLOOMBERG TAX (June 10, 2020), https://news.bloombergtax.com/daily-tax-report-international/czech-republic-to-delay-proposed-digital-tax-cut-rate-to-5?context=search&index=4.

[22] *KPMG Digital Taxation Report*, *supra* note 2, at 7.

[23] *Coalition Agrees on Lower Rate for Forthcoming Digital Tax*, CESKE NOVINY (June 10, 2020), https://www.ceskenoviny.cz/zpravy/koalice-se-shodla-na-nizsi-sazbe-pro-chystanou-digitalni-dan/1900867; *Czech Republic Agrees to Lower "GAFA Tax" on Digital Giants*, KAFKADESK (June 13, 2020), https://kafkadesk.org/2020/06/13/czech-republic-agrees-to-lower-gafa-tax-on-digital-giants/.

[24] Tweet of Alena Schillerová, May 17, 2019, https://twitter.com/alenaschillerov/status/1129354510105829376.

- Přicházíme s vlastním řešením pro velké společnosti, které u nás generují zisky z podnikání, ale téměř žádné daně z toho neplatí. „Digitální daň“ pro Google nebo Facebook chceme jako "vyrovnání" využívat do chvíle, než se OECD nebo EU dohodnou na vhodném globálním řešení.[25] [*We will come up with our own solution for large companies that generate business profits in our country, but pay almost no taxes on it. We want to use the "digital tax" for Google or Facebook as a "balancing act" until the OECD or the EU agrees on an appropriate global solution.*]

The tax has also been criticized by the Czech Chamber of Commerce.[26]

D. European Union

The EU first proposed a DST in 2018, but due to opposition from some Member States the EU chose not to move forward with the tax and instead commit to achieving a solution at the OECD. The 2018 proposal would require each EU Member State to impose a tax of 3 percent on gross revenues obtained in that Member State resulting from the provision of any one of the following services: (1) placing advertising on a digital interface, where the advertising appears on a user's device in the EU; (2) making available a multi-sided digital interface that allows users to find and interact with other users, and which may facilitate the provision of underlying supplies of goods or services directly between users where a user is located or based in the EU; and (3) the transmission of data collected about users and generated from users' activities on digital interfaces where the user is in the EU.

The EU's original proposed DST discriminates against U.S. digital firms in the following ways: (a) the DST thresholds are designed to capture U.S. companies but few EU firms; (b) the revenues subject to the proposed DST are defined to capture business models of U.S. firms but not EU digital firms; and (c) the proposal allows value added taxes and similar taxes to be subtracted from "taxable revenue" in calculating the base from the impost which would increase the tax base since the United States does not have value added taxes.[27]

As noted, this plan was abandoned in favor of reaching a solution at the OECD. However on May 27, 2020, the EU Commission indicated that it may reintroduce a EU-wide

[25] Tweet of Alena Schillerová, Apr. 14, 2019, https://twitter.com/alenaschillerov/status/1117414640231899136.

[26] *Coalition Agrees on Lower Rate for Forthcoming Digital Tax*, CESKE NOVINY (June 10, 2020), https://www.ceskenoviny.cz/zpravy/koalice-se-shodla-na-nizsi-sazbe-pro-chystanou-digitalni-dan/1900867.

[27] *See* Peterson Institute for International Economics, *The European Union's Proposed Digital Services Tax: A De Facto Tariff* (2018), *available at* https://www.piie.com/publications/policy-briefs/european-unions-proposed-digital-services-tax-de-facto-tariff at 7.

digital tax.[28] It is not clear whether this would be identical to the DST proposal introduced in 2018. Further, a French-German proposal on the EU Recovery Fund specifically mentioned digital taxation referenced in the context of the fund.[29]

E. India

In March 2020, the Indian Parliament expanded the scope of India's existing "equalization levy" in its amended national 2020 Budget.[30] This included a new 2 percent tax on the sale of goods and services by non-Indian companies over the internet into India. Without any public consultation, the tax was set to apply beginning April 1, 2020.

While structurally different from DSTs from European countries, the tax is similarly concerning insofar as it discriminates against U.S. firms and exempting local businesses. Under the tax, "e-commerce operators" are defined as "*non-residents* who own, operate or manage a digital or electronic facility or platform for online sale of goods, online provision of services, or both" (emphasis added). Pursuant to this definition, the scope is far broader than DSTs such as those in Europe. Further the threshold is set at approximately $267,000 compared to the 750 million euro global threshold.

As a number of industry groups observed (including CCIA), the Indian tax represents the broadest framing of a unilateral tax on e-commerce firms, and runs directly counter to the Indian Government's commitment to reaching a multilateral solution in ongoing negotiations at the OECD on the taxation challenges of digitalization to the global economy.[31]

F. Indonesia

In March, Indonesia introduced tax measures targeting digital services as part of an emergency economic response package. One of these taxes applies to e-commerce transactions

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[28] EUROPEAN COMMISSION, The EU Budget Powering the Recovery Plan for Europe (May 27, 2020), https://ec.europa.eu/info/sites/info/files/about_the_european_commission/eu_budget/1_en_act_part1_v9.pdf ("A digital tax would build on OECD work on corporate taxation of a significant digital presence; the Commission actively supports the discussions led by the OECD and the G20 and stands ready to act if no global agreement is reached. A digital tax applied on companies with a turnover above EUR 750 million could generate up to EUR 1.3 billion per year for the EU budget.").

[29] A French-German Initiative for the European Recovery from the Coronavirus Crisis (May 18, 2020), https://www.bundesregierung.de/resource/blob/975226/1753772/414a4b5a1ca91d4f7146eeb2b39ee72b/2020-05-18-deutsch-franzoesischer-erklaerung-eng-data.pdf?download=1.

[30] *India: Digital Taxation, Enlarging the Scope of 'Equalisation Levy',* KPMG (Mar. 24, 2020), https://home.kpmg/us/en/home/insights/2020/03/tnf-india-digital-taxation-enlarging-the-scope-of-equalisation-levy.html.

[31] *Global Lobbying Groups Call for Delay To India's New Digital Tax*, REUTERS (Apr. 29, 2020), https://www.reuters.com/article/us-india-tax-digital/global-lobbying-groups-call-for-delay-to-indias-new-digital-tax-idUSKCN22B0EL.

carried out by foreign individuals or digital companies with a significant economic presence. Per reports, the significant economic presence will be determined through the companies' gross circulated product, sales and/or active users in Indonesia.[32] Companies determined to have a significant economic presence will be declared permanent establishments and as a result subject to domestic tax regulations.[33] If this determination of permanent establishment conflicts with an existing treaty, such as the U.S.-Indonesia tax treaty, then a new "electronic transaction tax" (ETT) would apply to income sourced from Indonesia.[34]

While structurally different from DSTs from European countries, the tax is similarly concerning insofar as it looks to increase U.S. firms' tax payments in the region by departing from long standing international taxation norms. U.S. companies were cited as targets of these tax measures.[35] Governments should be discouraged from pursuing discriminatory taxes on foreign companies to fund economic response measures.[36]

G. Italy

Italy's 2020 Budget introduced a 3 percent digital services tax closely aligned with the EU's original proposal.[37] Covered services started accruing tax on January 1, 2020, and payments are due in 2021. The global revenue threshold is set at 750 million euros, and the local threshold is 5.5 million euros. The tax applies to revenue derived from the following digital activities: (1) the "provision of advertising on a digital interface targeted to users of the same interface"; (2) the "provision of a digital multilateral interface aimed at allowing users to interact (also in order to facilitate the direct exchange of good and services)"; and (3) the "transmission of data collected from users and generated by the use of a digital interface".[38]

The tax is expected to predominantly affect U.S. firms. Senior government officials, including Former Deputy Prime Minister Luigi Di Maio, directed that prior iterations of the tax

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[32] *Indonesia Taxes Tech Companies Through New Regulation*, THE JAKARTA POST (Apr. 1, 2020), https://www.thejakartapost.com/news/2020/04/01/indonesia-taxes-tech-companies-through-new-regulation.html.

[33] *Id*.

[34] *Indonesia Government Proposes Key Tax Changes*, EY (Mar. 19, 2020), https://taxnews.ey.com/news/2020-0604-indonesian-government-proposes-key-tax-changes.

[35] *Indonesia Defends Digital Tax Policy Despite US Scrutiny*, THE JAKARTA POST (June 16, 2020), https://www.thejakartapost.com/news/2020/06/16/indonesia-defends-digital-tax-policy-despite-us-scrutiny.html.

[36] Matt Schruers, *To Fund Emergency Measures, Tax Collectors Tap Tech*, DISRUPTIVE COMPETITION PROJECT (May 18, 2020), https://www.project-disco.org/21st-century-trade/051820-to-fund-emergency-measures-tax-collectors-tap-tech/.

[37] Italy included a digital tax in the Italian Budget Law 2019 (Law no.145/2018), but never took the final steps to implement the tax.

[38] *Tax Alert: Italy Digital Services Tax Enters into Force*, EY, https://www.ey.com/en_gl/tax-alerts/ey-italys-digital-services-tax-enters-into-force-as-of-1%C2%A0january-2020.

be gerrymandered around large U.S. tech firms.[39] It appears that this remains the case with the current tax.

H. Spain

Legislation has been submitted to impose a digital tax of 3 percent of revenue derived from online advertising services, the sale of online advertising, and the sale of user data.[40] The current legislation tracks previous attempts to introduce a digital tax in Spain.[41] The global threshold is 750 million euros, with a local threshold of 3 million euros. It is likely that the legislation will be finalized in the next 3-4 months, and first payments would be due end-2020.[42] U.S. companies were cited throughout legislative debate on the legislation making the targets clear.

- "¿De qué estamos hablando? Estamos hablando de que empresas tecnológicas grandes, multinacionales como Google, Amazon, Facebook o Apple paguen impuestos como la España que madruga." [*What are we talking about in this debate? We are talking if we want big tech companies such as Google Amazon Facebook and Apple pay taxes (in Spain)*.][43]

- "Volviendo al impuesto, la Red es un espacio, evidentemente como el resto, donde la riqueza se acumula. Nos parece bien planteado gravar el tráfico de datos, de contenidos y de publicidad. De hecho, el capitalismo de plataforma —empresas como Amazon o como Glovo, o aplicaciones como Facebook, Telegram o WhatsApp— acumulan miles de millones de beneficios a costa del uso de la ciudadanía." [*Returning to the tax, the Internet is a space, obviously like the rest, where wealth accumulates. It seems appropriate to us to tax data, content and advertising traffic. In fact, platform capitalism - companies like Amazon or Glovo, or applications like Facebook, Telegram or*

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[39] *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.

[40] Proyecto de Ley del Impuesto sobre Determinados Servicios Digitale, Feb. 28, 2020, *available at* www.congreso.es/public_oficiales/L14/CONG/BOCG/A/BOCG-14-A-1-1.PDF#page=1. *See also KPMG Digital Taxation Report*, *supra* note 2 at 11; Congreso de los Diputados, Proyecto de Ley del Impuesto sobre Determinados Servicios Digitales, http://www.congreso.es/portal/page/portal/Congreso/Congreso/Iniciativas?_piref73_2148295_73_1335437_1335437.next_page=/wc/servidorCGI&CMD=VERLST&BASE=IW14&PIECE=IWA4&FMT=INITXD1S.fmt&FORM1=INITXLUS.fmt&QUERY=%28I%29.ACIN1.+%26+%28%22DETERMINADOS+SERVICIOS+DIGITALES%22%29.ALL.&DOCS=1-1.

[41] *See* 2019 legislation: http://www.congreso.es/public_oficiales/L12/CONG/BOCG/A/BOCG-12-A-40-1.PDF.

[42] *Spain's Lower House to Draft 3% Digital Tax on Internet Giants*, REUTERS (June 4, 2020), https://www.reuters.com/article/us-spain-tax-internet/spains-lower-house-to-draft-3-digital-tax-on-internet-giants-idUSKBN23B1QI.

[43] Daily Sessions of Congress of the Plenary Members and Permanent Membership, 2020 XIV Legislature No. 26, June 4, 2020), http://www.congreso.es/portal/page/portal/Congreso/PopUpCGI?CMD=VERLST&BASE=pu14&DOCS=1-1&QUERY=%28DSCD-14-PL-26.CODI.%29#(P%C3%A1gina14).

WhatsApp - accumulate billions of benefits at the cost of the use of citizenship (online).].[44]

I. Turkey

Turkey enacted a 7.5 percent digital tax which became effective March 1, 2020.[45] The legislation also permits the President of Turkey to either reduce the rate to 1 percent, or double the tax to 15 percent.[46] Global threshold is 750 million euros, with a local threshold of 20m TYR. The tax applies to revenue generated from the following services: (1) "all types of advertisement services provided through digital platforms" ; (2) "the sale of all types of auditory, visual or digital contents on digital platforms . . . and services provided on digital platforms for listening, watching, playing of these content or downloading of the content to the electronic devices or using of the content in these electronic devices"; and (3) "[s]ervices related to the provision and operation services of digital platforms where users can interact with each other".[47]

Digital service providers that provide the covered services, but whose revenue does not make them subject to the tax, still must certify that they are exempt.[48]

J. The United Kingdom

Following a public consultation, the UK announced in 2019 it would impose a digital services tax. The 2020 Finance Budget, presented on March 11, 2020, included legislation to introduce a digital services tax of 2 percent. The tax is to be paid on an annual basis, with accruals beginning April 1, 2020. The UK has moved forward with steps to implement the legislation with the major parties in Parliament approving the measure's passage.[49]

The tax applies to revenues of "digital services activity" which are (1) "social media platforms", (2) "internet search engines", or (3) "online marketplaces". The legislation seeks to address double taxation in instances where a firm owes multiple digital services taxes, but it is not clear whether sufficient certainty is provided to reduce double taxation under existing corporate tax structures. The UK expects to raise 2 billion pounds over a five-year period with

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[44] *Id.*

[45] Law numbered 7194 published in the Official Gazette dated 07.12.2019 and numbered 30971, *available at* https://perma.cc/WZR5-C2F3.

[46] *Id.*

[47] Turkey Revenue Administration, Digital Service Tax Office, https://digitalservice.gib.gov.tr/kdv3_side/maindst.jsp?token=d1078f5e3dc646b78d5d4e5842f21e97feb48d366bc7617458b6679dec12675154a01fccc42292bb04d926bc259dbc75e39dd8e202535fd70a7098396c74a6f7&lang=en.

[48] *Turkey: Digital Services Tax, A Primer*, KPMG (Apr. 21, 2020), https://home.kpmg/us/en/home/insights/2020/04/tnf-turkey-digital-services-tax-a-primer.html.

[49] UK Finance Bill Committee approved the digital tax on June 11, 2020.

the DST.[50] The practical effect of the tax will be that a handful of U.S. companies will contribute the majority of the tax revenue.

There are concerns regarding the definition of "online marketplace" which was amended following the consultation on the draft Bill last Summer and published in the final Bill in March that have caused confusion. Organizations such as the Chartered Institute for Taxation have raised concerns that this will create issues for certain online marketplaces and gaming companies.[51] In addition, HM Revenue & Customs guidance applies a very expansive interpretation to the new definition of marketplace such that any intermediary involved in connecting buyers and sellers could be in scope rather than what was originally intended per previous UK documents — *i.e.* just passive intermediaries connecting sellers with buyers and taking a percentage or fee for the transaction. This uncertainty comes at an unwelcome time and could mean the scope is broader than intended, without any further assessment of its impact. There is concern that companies will not be provided adequate guidance leading up to the first payment next April, despite accruing payments throughout this year. UK domestic constituencies have also made requests to triple the DST to 6 percent.

While the proposal document itself purports to have a non-discriminatory intent,[52] statements from policymakers suggest otherwise.[53]

- "We will now introduce a UK Digital Services Tax....It will be carefully designed to ensure it is established tech giants – rather than our tech start-ups - that shoulder the burden of this new tax."[54]

- Then-UK Chancellor of the Exchequer Philip Hammond described this as a "narrowly targeted tax", noting that "It's only right that these global giants, with profitable businesses in the UK, pay their fair share towards supporting our public services."[55]

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[50] *UK Aims to Raise £500 a Year Through Digital Services Tax*, FT (Mar. 11, 2020), https://www.ft.com/content/a2ccbba8-5f0e-11ea-b0ab-339c2307bcd4.

[51] *Call for More Clarity and Greater Understanding Around Digital Tax*, CHARTERED INSTITUTE OF TAXATION (Apr. 16, 2020), https://www.politics.co.uk/opinion-formers/chartered-institute-of-taxation-ciot/article/call-for-more-clarity-and-greater-understanding-around-digit.

[52] UK Digital Services Tax Consultation (Nov. 2019), *available at* https://www.gov.uk/government/consultations/digital-services-tax-consultation.

[53] Others: https://twitter.com/Hamza_M_Ali/status/1278329809857363968 ("Amazon undercuts high street because they are not paying their fair share in tax, says conservative back-bencher Andrew Mitchell. He calls for level playing field and transparency to be included the digital services tax section of the Finance Bill 2019-21")

[54] Tweet of HM Treasury, Oct. 29, 2018, https://twitter.com/hmtreasury/status/1056942074271072258.

[55] *Hammond Targets US Tech Giants With Digital Services Tax*, THE GUARDIAN (Oct. 29, 2018), https://www.theguardian.com/uk-news/2018/oct/29/hammond-targets-us-tech-giants-with-digital-services-tax

The developments in the UK are especially concerning due to ongoing trade negotiations with the UK for a free trade agreement critical to the future of the U.S.-UK relationship. USTR should oppose taxes that seek to disadvantage American companies, and obtain commitments not to impose such measures in trade negotiations.

IV. DSTS BURDEN AND RESTRICT U.S. COMMERCE.

DSTs serve as a market access barrier for U.S. internet service exporters. U.S. firms are deterred from investing in a foreign market that will essentially penalize success. The administrative burden associated with compliance is significant, even if firms can pay the tax. DSTs can also serve as a *de facto* tariff. [56] If DSTs are left unchecked and the proliferation of DSTs continues, U.S. internet exports will be discouraged from serving markets around the world. USTR has cited various DSTs as a key digital trade barrier. USTR was correct to emphasize unilateral digital taxes as a trade barrier in its 2020 National Trade Estimate Report.[57]

DSTs also risk double taxation.[58] It is likely that the same tax base will be taxed several times. For example in digital advertising, the advertising value chain includes several intermediaries between the ad and the publishers and in some cases, DSTs in multiple jurisdictions could tax the same transaction. There are also domestic competition concerns against foreign competitors that will restrict U.S. commerce.[59]

In its 2018 report, the OECD has listed a number of other risks associated with unilateral measures that rely on intangible assets or user contribution as a basis for taxation. These include: impacts on investment, innovation and growth; impact on welfare; economic incidence of

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[56] Peterson Institute for International Economics, *The European Union's Proposed Digital Services Tax: A De Facto Tariff* (2018), *available at* https://www.piie.com/publications/policy-briefs/european-unions-proposed-digital-services-tax-de-facto-tariff.

[57] OFFICE OF U.S. TRADE REP., National Trade Estimate Report (2020) ("The United States opposes proposals that single out digital services for tax purposes. In addition, to the extent that these proposals are aimed at U.S. companies, they raise concerns about discriminatory effects on U.S. suppliers.").

[58] OECD, Tax Challenges Arising from Digitalisation – Interim Report 2018, *available at* http://www.oecd.org/tax/taxchallenges-arising-from-digitalisation-interim-report-9789264293083-en.html ("[E]conomic double taxation may arise due to the fact that the excise tax is applied to both residents and non-residents with no ability to credit the tax against corporate income tax levied on the same payment. . . . Another type of double taxation can arise in those cases where a supply of e- services is made to a person that incorporates those services into an onward supply that is subject to the excise tax under domestic or foreign law.") [hereinafter "*OECD 2018 Interim Report*"].

[59] Matt Schruers, *To Fund Emergency Measures, Tax Collectors Tap Tech*, DISRUPTIVE COMPETITION PROJECT (May 18, 2020), https://www.project-disco.org/21st-century-trade/051820-to-fund-emergency-measures-tax-collectors-tap-tech/.

taxation on consumers and businesses; possibility of over-taxation; possible difficulties in implementing the tax as an interim measure; and compliance and administration costs.[60]

V. DSTS MAY CONFLICT WITH INTERNATIONAL COMMITMENTS.

DSTs may conflict with international agreements with the United States, and international agreements these countries are party to. The consistency of DSTs with commitments under tax treaties, WTO obligations, and laws for members of the European Union has been questioned by the OECD and other stakeholders.[61]

A. Potential conflicts with WTO commitments and commitments under tax treaties.

DSTs may violate commitments made to the U.S. under various tax treaties by departing from the principle of "permanent establishment" when determining relevant tax jurisdiction[62] and violate non-discrimination clauses.[63]

The discriminatory nature of the DST conflicts with commitments under the World Trade Organization's General Agreement on Trade in Services (GATS), notably the non-discrimination principles under Article II and Article XVII. Article II mandates that members offer "treatment no less favorable than it accords to like services and suppliers of any other country." Domestic firms that offer the same targeted services in DSTs – such as intermediary and ad-supported services – as their U.S. competitors are unlikely to be taxed.

B. State Aid under European Union law

Under Article 107(1) of the Treaty on the Functioning of the European Union, impermissible state aid is any aid granted by a Member State or through State resources which "distorts or threatens to distort competition by favoring certain undertakings or the production of

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[60] *OECD Tax Interim Report 2018*, *supra* note 58 at 178-179.

[61] *Id.* at 183.

[62] Gary Clyde Hufbauer, *France Threatens a Digital Tax: Will the US Retaliate?*, PETERSON INSTITUTE FOR INTERNATIONAL ECONOMICS (April 19, 2019), https://www.piie.com/blogs/trade-investment-policy-watch/france-threatens-digital-tax-will-us-retaliate ("The French digital tax is ill-considered firstly because it contravenes the 'permanent establishment' principle for dividing the profits of a multinational company between two or more taxing jurisdictions. Under current tax treaties, the existence of a permanent establishment—some sort of physical presence—is the threshold for including a portion of corporate profits in the domestic tax base. Digital firms, including US tech giants, purvey their websites globally with no physical presence in most countries. The claim is often made that the internet calls for a new threshold for dividing the corporate tax base. But until a new threshold is agreed between countries, national self-help measures, like the proposed French tax, will result in double taxation and discourage the spread of digital commerce, one of the strongest forces now lifting the global economy.").

[63] *See* U.S. DEP'T OF TREASURY, Resource Center - Treaties and TIEAs - https://www.treasury.gov/resource-center/tax-policy/treaties/Pages/treaties.aspx (last visited Jul. 14, 2020).

certain goods."[64] "Favoring certain undertakings" has been construed by EU courts to mean that imposing a specific tax to certain undertakings may imply a selective advantage to other companies not subject to the tax. In the case of the Czech Republic, Spain, and Italy, the DST may then be unlawful under these EU state aid rules.[65]

VI. DSTS UNDERMINE THE PROGRESS MADE AT THE INTERNATIONAL LEVEL.

Studies document that digital firms targeted by unilateral digital services taxation proposals pay as much tax as traditional firms.[66] The calls for the need for interim emergency measures, then, are not justified. CCIA also cautions against justifications for emergency measures related to economic stimulus and recovery packages that discriminate against specific sectors of the global economy.[67]

The OECD is the optimal forum to review the current international tax framework and to seek global consensus-based solutions. CCIA strongly supports the efforts under the OECD/G20 Inclusive Framework on BEPS (base erosion and profit shifting), which seeks to develop a consensus solution to the tax challenges arising from the digitization of the global economy.[68] CCIA has participated in the consultation process.[69] The OECD is making significant strides in its work to address the tax challenges arising from the digitalization of our economies through an inclusive and consensus-driven process.[70] The OECD is making significant progress and

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[64] Consolidated Version of the Treaty on the Functioning of the European Union art. 107, 2008 O.J. C 115/47.

[65] As a number of the taxes proliferating in Europe mirror the French DST, analysis focusing on the French DST is informative if not conclusive. *See* Christian Borggreen, *Legal Experts: National Digital Taxes Constitute State Aid That Must Be Pre-Cleared by the EU*, DISRUPTIVE COMPETITION PROJECT (Mar. 25, 2019), http://www.project-disco.org/european-union/032519-legal-experts-national-digital-taxes-constitute-state-aid-pre-cleared-by-eu/ (summarizing findings of law firm analysis).

[66] *ECIPE Digital Companies Tax Share Study*, *supra* note 7; COPENHAGEN ECONOMICS, The Proposed EU Digital Services Tax (Sept. 2018), *available at* https://www.copenhageneconomics.com/dyn/resources/Publication/publicationPDF/7/457/1537162175/copenhagen-economics-study-on-the-eu-dst-proposal-13-september.pdf; Daniel Bunn, *France's Digital Services Tax: Facts and Analysis*, TAX FOUNDATION (Mar. 11, 2019), https://taxfoundation.org/france-digital-services-tax/.

[67] Matt Schruers, *To Fund Emergency Measures, Tax Collectors Tap Tech*, DISRUPTIVE COMPETITION PROJECT (May 18, 2020), https://www.project-disco.org/21st-century-trade/051820-to-fund-emergency-measures-tax-collectors-tap-tech/.

[68] OECD, International Collaboration to End Tax Avoidance, https://www.oecd.org/tax/beps/ (last visited July 14, 2020).

[69] Comments of CCIA to OECD Consultation on the possible solutions to the tax challenges of digitalisation, filed Mar. 6, 2019, *available at* http://www.ccianet.org/wp-content/uploads/2019/07/CCIA-Response-To-OECD-Tax-Consultation.pdf.

[70] OECD/G20 Inclusive Framework on BEPS, *Programme of Work to Develop a Consensus Solution to the Tax Challenges Arising from the Digitalisation of the Economy*, at 35, 40 *available at* https://www.oecd.org/tax/beps/programme-of-work-to-develop-a-consensus-solution-to-the-tax-challenges-arising-

countries should let the process continue under the current timeframe to deliver a solution before imposing national taxes that undermine this progress.[71]

CCIA encourages the OECD, and participating governments, to reach consensus on a truly ambitious, comprehensive and a long term solution. This solution should prevent double taxation and ring fencing of the so-called "digital economy" and it should seek simplicity for authorities and firms that will need to implement it and strong dispute mechanisms. The international tech industry is committed to this important process and CCIA remains optimistic that the end result can solve taxation challenges worldwide and provide certainty needed to enhance investments, trade and growth globally. The G7 and the G20 continue to endorse the OECD work, and the need for a truly consensus-based solution.[72]

These changes should not be carried out by disproportionately focusing on a single sector of the global economy, or by singling out U.S. digital services for unique treatment. An international collaborative approach that considers all aspects of the changing global economy should be championed rather than a country-by-country approach. As the OECD noted, "it would be difficult, if not impossible, to ring-fence the digital economy from the rest of the economy" and that there is "no consensus on either the merit or need for interim measures" as

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from-the-digitalisation-of-the-economy.pdf (delivery of a status update of OECD work to the Group of 20 in June 2019 and confirmed delivery of a long-term solution by 2020).

[71] This was reaffirmed by the G20 Finance Ministers following meetings on October 18-19, 2019. Press Release, G20 Press Release on International Taxation, Japan Ministry of Finance, https://www.mof.go.jp/english/international_policy/convention/g20/g20_191018it.htm ("We reaffirm our full support for a consensus-based solution with a final report to be delivered by the end of 2020. With a view to meeting this ambitious timeline, we stress the importance of the Inclusive Framework on BEPS agreeing to the outlines of the architecture by January 2020. The outlines will include a determination of the nature of, and the interaction between, both Pillars. We welcome the OECD Secretariat's efforts for the proposed unified approach under Pillar 1.").

[72] G20 Leaders' 2019 Declaration at ¶ 16 (2019), https://g20.org/en/documents/final_g20_osaka_leaders_declaration.html ("We will continue our cooperation for a globally fair, sustainable, and modern international tax system, and welcome international cooperation to advance pro-growth tax policies. We reaffirm the importance of the worldwide implementation of the G20/OECD Base Erosion and Profit Shifting (BEPS) package and enhanced tax certainty. We welcome the recent progress on addressing the tax challenges arising from digitalization and endorse the ambitious work program that consists of a two-pillar approach, developed by the Inclusive Framework on BEPS. We will redouble our efforts for a consensus-based solution with a final report by 2020."); G7 Leaders' Declaration at ¶ 3, https://www.consilium.europa.eu/en/press/press-releases/2018/06/09/the-charlevoix-g7-summit-communique/ (2018) ("In order to ensure that everyone pays their fair share, we will exchange approaches and support international efforts to deliver fair, progressive, effective and efficient tax systems. We will continue to fight tax evasion and avoidance by promoting the global implementation of international standards and addressing base erosion and profit shifting. The impacts of the digitalization of the economy on the international tax system remain key outstanding issues. We welcome the OECD interim report analyzing the impact of digitalization of the economy on the international tax system. We are committed to work together to seek a consensus-based solution by 2020.").

contemplated by European countries and others.[73] The OECD also cautioned in October 2019 that "uncoordinated unilateral tax measures, including measures that tax gross revenues . . . would undermine the relevance and sustainability of the international tax framework, and would damage global investment and growth."[74]

Interim measures should not be pursued as countries pursue this work at the OECD and international level. While countries have suggested that they will remove their national DST once an OECD solution is reached, enacted DSTs do not include a sunset provision. In fact, the UK removed its sunset provision in the final legislation included in the 2020 Finance Bill. Others have commented on the difficulty in rolling back interim taxes once put in place and once companies have structured compliance mechanisms.[75]

However, based on the actions of some participants at the OECD, it is yet to be determined that a global solution that does *not* single out the U.S. technology firms will meet their standard for an appropriate solution in order to remove national DSTs. Reports that certain European countries wanted to move forward on an interim solution focusing on U.S. tech in light of an ongoing economic crisis are extremely concerning and threaten to disrupt the consensus-based approach of these talks. A solution that focuses on singling out U.S. digital firms once again rather than addressing comprehensive tax challenges to the digitization taking place across all global enterprises will not meet the task the OECD process set out to address. CCIA strongly encourages all parties to continue participation at the OECD, and follow through on the objectives set at the start of these negotiations. Departing from a consensus approach to solving these challenging issues risks trade conflicts.

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[73] 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 [hereinafter "*OECD Tax Interim Report 2018*"].

[74] OECD Public Consultation Document, Secretariat Proposal for a "Unified Approach" Under Pillar One, *available at* https://www.oecd.org/tax/beps/public-consultation-document-secretariat-proposal-unified-approachpillar-one.pdf.

[75] AICPA, *Taxation of the Digitized Economy* (2018), *available at* https://www.aicpa.org/content/dam/aicpa/advocacy/tax/downloadabledocuments/201810-taxation-of-the-digitalized-economy.pdf ("Temporary tax measures tend not to expire as planned, if they expire at all10, 11. Taxpayers have well-founded concerns that any implementation of an "interim" or "temporary" measure may become permanent. The reasons for this outcome are numerous but are generally linked to governmental tendencies to rely on the new revenue sources for spending. Once these sources are established, abolishing a temporary tax often appears as a spending cut that is politically untenable to the constituency benefitting from the spending. Also, when temporary measures are enacted, tax authorities and other government agencies often are forced to establish systems to ensure the fair and accurate collection of those taxes. Those systems (and jobs) become obsolete if the underlying tax is abolished. Therefore, it becomes difficult to justify eliminating a tax after the government has invested in resources designed to aid in its collection.").

VII. RECOMMENDED ACTION AS A RESULT OF THE SECTION 301 INVESTIGATION.

The Section 301 process is the correct action for the Administration to take to investigate and make clear to trading partners the gravity of their action in moving forward with a unilateral tax. CCIA recognizes that there are a number of tools at USTR's disposal as a result of the Section 301 investigation, and all options should be considered as the investigation progresses.[76] CCIA notes that it appears that there are limited options left to address this dispute in a timely manner recognizing the timeline for the OECD process and the imminent risk of other unilateral action by other countries. In the Section 301 investigation into the French DST, USTR proposed tariffs against foreign imports as retaliation for the pursuit of a DST.[77] CCIA takes seriously the impact that tariffs can have and, as a general policy view, believes that they 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. In the French case, it was encouraging that this strong action led to the temporary pause of collection on behalf of the French government in January 2020.

VIII. CONCLUSION

CCIA applauds USTR's scrutiny and strong action against taxation measures that unduly target U.S. digital companies. If discriminatory taxes are left unchecked by the United States, countries will continue enacting unilateral policies targeting American companies, fragmenting the global digital economy and undermining any chance to achieve a consensus-based, fair framework for international taxation in the 21st century.

July 14, 2020

Sincerely,

Rachael Stelly
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25 Massachusetts Avenue, NW Suite 300C
Washington, DC 20001

[76] 19 U.S.C. § 2411.

[77] USTR has since announced it would impose targeted duties on French products as a result of the investigation, but suspend application of the duties. OFFICE OF THE U.S. TRADE REP., Draft Notice of Action in the Section 301 Investigation of France's Digital Services Tax, *available at* https://ustr.gov/sites/default/files/enforcement/301Investigations/France_Digital_Services_Tax_Notice_July_2020.pdf.