

November 30, 2021

The Honorable Janet Yellen
Secretary of the Treasury
U.S. Department of the Treasury
1500 Pennsylvania Avenue, N.W.
Washington D.C. 20220

The Honorable David Cohen
U.S. Ambassador to Canada
The Embassy of the United States of America
PO Box 866 Station B
Ottawa, Ontario K1P 5T1

The Honorable Katherine Tai
U.S. Trade Representative
600 17th Street, NW
Washington, D.C. 20508

Dear Secretary Yellen, Ambassador Tai and Ambassador Cohen:

On behalf of the undersigned organizations, we write to express our appreciation for the leadership you have shown in working with partners around the world to reach an agreement on a two-pillar solution to bring certainty and stability to the global tax and trade system, and to share our concerns over the Canadian government's plans to institute a unilateral, retroactive digital services tax (DST). We request that you urge your Canadian counterparts to stop the January 1, 2022 implementation of this DST, which is contrary to the spirit of the Organization for Economic Co-operation and Development's (OECD) recent agreement¹ and inconsistent with Canada's trade commitments.

After years of negotiations, the OECD announced in October that more than 130 countries, including Canada, had reached agreement on a global tax solution, an important step towards modernizing taxation in the digital age and eliminating discriminatory taxes targeting mostly American digital companies. The OECD agreement states "[n]o newly enacted Digital Services Taxes or other relevant similar measures will be imposed on any company from 8 October 2021 and until the earlier of 31 December 2023 or the coming into force of the [Multilateral Convention]."² Despite this agreement, Canada announced its intention to move ahead with legislation and finalize the enactment of a DST by January 1, 2022. Canada maintains that their DST will be imposed if the global agreement has not come into force by January 1, 2024, but the tax applies to revenues that arise on or after January 1, 2022 if the agreement is not implemented.

Canada's likely adoption of a retroactive DST raises several issues that appear inconsistent with the OECD framework, as well as Canada's USMCA and WTO commitments. Given its similarity to DSTs enacted in other jurisdictions, such as France, Canada's DST appears to meet the requirements for actionability under Section 301 of the Trade Act of 1974. The Canadian measure emulates other DSTs in targeting mostly American digital companies for discriminatory taxation, and it would force these companies to set up compliance systems, start tracking, and set aside potential payments as of January 1, 2022, because they may ultimately be subject to the tax. If allowed to stand, Canada's imposition of

¹ OECD/G20 Base Erosion and Profit Shifting Project, *Statement on a Two-Pillar Solution to Address the Tax Challenges Arising from the Digitalisation of the Economy*, Oct. 8, 2021 available at <https://www.oecd.org/tax/beps/statement-on-a-two-pillar-solution-to-address-the-tax-challenges-arising-from-the-digitalisation-of-the-economy-october-2021.pdf>.

² *Id.* at. 3

a DST would also embolden other jurisdictions to adopt unilateral, retroactive DSTs despite the OECD moratorium.³

Canada's determination to pursue a unilateral, retroactive DST immediately following the OECD's much-heralded final agreement threatens years of work by the U.S. government. We appreciate your prioritization of this urgent issue, and we look forward to continuing to support your efforts to pursue a more simplified and sustainable global tax framework.

Sincerely,

ACT | The App Association
Chamber of Progress
Computer and Communications Industry Association
Developers Alliance
Engine
Internet Association
NetChoice
Silicon Valley Leadership Group
Software & Information Industry Association
TechNet
Travel Technology Association

³ As Canada is a prominent member of the G8, developing countries may point to Canada's example to enact their own DSTs.