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

In re Proposed Action Regarding Digital Service Taxes - Multijurisdictional	Docket Number USTR–2021–0001 Docket Number USTR–2021–0002 Docket Number USTR–2021–0003 Docket Number USTR–2021–0004 Docket Number USTR–2021–0005 Docket Number USTR–2021–0006

WRITTEN COMMENTS OF COMPUTER & COMMUNICATIONS INDUSTRY ASSOCIATION (CCIA)

Pursuant to the Notice of Proposed Action published by the Office of the United States Trade Representative in the Federal Register,[1] the Computer & Communications Industry Association (CCIA) submits the following written comments. CCIA is a trade association of internet and technology firms, many of whom export goods and services around the world.[2]

I. Introduction

Digital services taxes at the center of the six Section 301 Investigations of Austria, India, Italy, Spain, Turkey, and the United Kingdom discriminate against U.S. firms, conflict with existing international commitments, and undermine ongoing work to update taxation norms for the 21st century. CCIA continues to be supportive of U.S. scrutiny to determine whether these measures are actionable under relevant trade remedies.

CCIA welcomes USTR's conclusions in the reports and supports the findings of the Section 301 investigation. In the United States, officials and lawmakers across the spectrum have made clear their disapproval of any discriminatory tax measures against U.S. tech firms.[3]

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[1] OFFICE OF U.S. TRADE REP., *USTR Announces Next Steps of Section 301 Digital Services Taxes Investigations* (Mar. 26, 2021), https://ustr.gov/about-us/policy-offices/press-office/press-releases/2021/march/ustr-announces-next-steps-section-301-digital-services-taxes-investigations.

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

[3] *See, e.g.*, Reps. DelBene, LaHood Letter to USTR, Mar. 29, 2021 ("We are concerned by recent policies and proposals, predominately in Europe and Asia, that unfairly target American firms and threaten U.S. competitiveness. These policies include the proliferation of discriminatory digital services taxes[.]"), *available at* https://www.politico.com/f/?id=00000178-7a5b-d59d-a7f9-7b7f95160000; Press Release, Grassley, Wyden Joint Statement, July 10, 2020, https://www.grassley.senate.gov/news/news-releases/grassley-wyden-joint-statement-ustr-action-french-digital-services-tax; Press Release, Grassley, Wyden Joint Statement, June 18, 2020, https://www.finance.senate.gov/chairmans-news/grassley-wyden-joint-statement-on-oecd-digital-economy-tax-negotiations; Press Release, Chairman Neal Statement on New USTR Section 301 Investigation, June 3, 2020,

The actions of Austria, India, Italy, Spain, Turkey, and the United Kingdom warrant a substantial, proportionate response from the United States.

USTR's report and conclusion under Section 301 sends a strong signal to trading partners that discriminatory taxes will not be tolerated. As countries consider changes to the international taxation framework in light of the digital economy, this work should be done pursuant to a multilateral process currently ongoing at the OECD. An OECD solution, not discriminatory national digital taxes that incite trade conflicts, remains the best path forward.

CCIA continues to support efforts to negotiate with U.S. trading partners in the context of the Section 301 process to remove the taxes, and instead reach a global solution at the OECD to address taxation challenges from the digitalization of the economy. However, considering 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 countries 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.[4] 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. DSTs are, 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.

II. The Level of the Burden or Restriction on the U.S. Economy Resulting from the DST

A. Analysis of Estimated Costs

Drawing on publicly available data and relevant filings, CCIA has conducted an analysis of projected costs to U.S. firms in the scope of the taxes. Across the six investigations, it is estimated that these taxes will cost U.S. firms at least $3.1 billion. The methodology of these estimates, and the estimated costs in each country is attached to this filing.

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https://neal.house.gov/press-releases/chairman-neal-statement-new-ustr-section-301-investigations; Reps. LaHood, DelBene Letter to White House, June 19, 2019, https://lahood.house.gov/sites/lahood.house.gov/files/6.19.19_Digital%20Tax%20Letter_Signed.pdf; Letter to White House, House Ways & Means Committee Republicans, Apr. 3, 2019, https://lahood.house.gov/sites/lahood.house.gov/files/LaHood%20DST%20Letter%20-%20Final.pdf.

[4] Comments of CCIA, In Re Initiation of Section 301 Investigations of Digital Services Taxes, Dkt. No. USTR-2020-002, filed July 14, 2020, *available at* https://www.ccianet.org/wp-content/uploads/2020/07/Comments-of-CCIA-USTR-2020-0022-Section-301-Digital-Services-Taxes-.pdf.

B. General Costs Associated with DSTs

DSTs, while modeled on the abandoned 2018 EU proposal, all vary slightly in terms of covered digital services, rate of taxation, and revenue thresholds. The cost burdens associated with compliance are exacerbated 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.

DSTs serve as a market access barrier for U.S. internet service exporters. U.S. exporters are deterred from investing in a foreign market by measures that are essentially targeted at the business models and revenue streams of U.S. firms. The administrative burden associated with compliance is significant, even if firms can pay the tax. DSTs can also serve as a *de facto* tariff. If DSTs are left unchecked and the proliferation of DSTs continues, U.S. internet companies will face significant challenges in serving markets around the world. USTR has cited various DSTs as key digital trade barriers, and USTR was correct to emphasize unilateral digital taxes as a trade barrier in its 2021 National Trade Estimate Report.[5]

Further, in its 2018 report, the OECD has listed several 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 taxation on consumers and businesses; possibility of over-taxation; possible difficulties in implementing the tax as an interim measure; and compliance and administration costs.[6]

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

Countries continue to either propose or enact DSTs or similarly discriminatory taxation measures.[7] In light of the number of these digital taxes, a strong response by the U.S. government in the Section 301 investigation is critical. Many of these countries are looking at the U.S. response in their consideration of whether to move forward with a DST before a

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[5] OFFICE OF U.S. TRADE REP., *2021 National Trade Estimate Report*, https://ustr.gov/sites/default/files/files/reports/2021/2021NTE.pdf.

[6] OECD, *Tax Challenges Arising from Digitalisation – Interim Report 2018*, http://www.oecd.org/tax/taxchallenges-arising-from-digitalisation-interim-report-9789264293083-en.html at 178-179.

[7] *See* KPMG, *Digitalized Economy Taxation Developments*, https://tax.kpmg.us/content/dam/tax/en/pdfs/2021/digitalized-economy-taxation-developments-summary.pdf (last updated Apr. 2021).

solution is reached at the international level at the OECD. DSTs and other unilateral measures threaten to undermine the progress made at the global level on international tax reform taking place at the OECD.

CCIA is encouraged by the OECD's significant strides toward addressing the tax challenges arising from digitalization, using an inclusive and consensus-driven process. CCIA supports an ambitious, comprehensive, and long-term solution by 2021 that does not ring-fence the digital economy. Industry is committed to this important process and remains optimistic that the 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 U.S. response to DSTs, there is a risk that by the time the OECD finds consensus, firms will have already been paying digital taxes in multiple countries and countries may be unwilling to remove these discriminatory measures.

IV. Conclusion

CCIA welcomes USTR's conclusions in the reports and supports the findings of the Section 301 investigations. In the United States, officials and lawmakers across the spectrum have made clear their disapproval of any discriminatory tax measures against U.S. tech firms. The actions of Austria, India, Italy, Spain, Turkey, and the United Kingdom warrant a substantial, proportionate response from the United States.

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Appendix: Analysis of Estimated Costs

The total burden to U.S. commerce from the digital services taxes in Austria, India, Italy, Spain, Turkey, and the United Kingdom is estimated to be at least **$3.1 billion**, as indicated below.[8]

With respect to Austria's Digital Services Tax, which applies to online advertising, the most recent, public available estimates of the size of the Austrian online advertising market are in excess of **$1 billion** annually, most of which involves transactions with U.S. firms. The 5% DST rate was then multiplied by the total Austria-specific online advertising revenues to estimate tax payments to Austria of at least **$50 million**. This figure is slightly larger than the Austrian government's estimated revenues of approximately **$30 million.** In addition, each covered company is likely to face significant compliance and administrative costs in connection with the Austrian DST, as well as initial program design costs, which collectively are likely to exceed $1 million in the first year for each covered firm on average. While firm estimates of the number of covered firms vary, Austrian government statements indicate that at least four U.S. companies were explicitly targeted by the DST. This implies a first year compliance and administrative burden of at least **4 million**. In total, the Austrian DST imposes burdens of at least **$54 million** on U.S. commerce.

With respect to India's Digital Services Tax, the most recent, publicly available annual India-specific revenues of four U.S. firms expected to be covered by the DST were summed for nearly **$3 billion** in total revenues. The source for this data was publicly available financial reports and regulatory filings. The 2% DST rate was then multiplied by the total India-specific revenues of the four firms to estimate minimum total annual payments to India, at approximately **$59 million**. This figure is an underestimate, as USTR identified at least 86 U.S. firms likely to be covered by India's DST, and CCIA's estimate comes from just four of those firms. In addition, each covered company is likely to face extremely large compliance and administrative costs in connection with India's DST in excess of $1 million in the first year, implying a minimum compliance and administrative burden of **$86 million**. In total, the Indian DST imposes burdens of at least **$145 million** on U.S. commerce in 2021, and potentially far more depending on the covered revenues of the 82 other U.S. firms.

With respect to Italy's Digital Services Tax, the most recent, publicly available Italy-specific revenues of five U.S. firms that were expected to be covered by the DST were summed for a total of approximately **$17 billion**. The source for this data was publicly available financial reports and regulatory filings. The 3% DST rate was then multiplied by the total Italy-specific revenues of the five firms to estimate minimum total annual payments to Italy, at approximately **$510 million**. This figure is an underestimate, as USTR identified at least 27 U.S. firms likely to be covered by the Italian DST, while CCIA's estimate comes from just five of those firms. Moreover, the Italian government estimated annual revenues at 708 million euros, or approximately **$855 million.** In addition, each covered company is likely to face significant compliance and administrative costs in connection with the Italian DST, as well as initial program design costs, which collectively are likely to exceed $1 million in the first year for each covered firm on average. This implies a first year compliance and administrative burden of about **$27 million**. In total, the Italian DST imposes burdens of at least **$882 million** on U.S.

[8] All figures are USD.

commerce, and potentially far more depending on the covered revenues of the other U.S. firms whose payments to the Italian government were not included in CCIA's estimates.

With respect to Spain's Digital Services Tax, the Spanish government estimated annual revenues at 968 million euros, or approximately **$1.17 billion.** In addition, each covered company is likely to face significant compliance and administrative costs in connection with the Spanish DST, as well as initial program design costs, which collectively are likely to exceed $1 million in the first year for each covered firm on average. As USTR identified 25 U.S. firms likely to be covered, this implies a first year compliance and administrative burden of at least **$25 million**. In total, the Spanish DST imposes burdens of at least **$1.2 billion** on U.S. commerce.

With respect to Turkey's Digital Services Tax, the most recent, publicly available Turkey-specific revenues of two U.S. firms that were expected to be covered by the DST were summed for a total of approximately $440 million USD. The source for this data was publicly available financial reports and regulatory filings. The 7.5% DST rate was then multiplied by the total Turkey-specific revenues of the two firms to estimate minimum total annual payments to Turkey, at approximately **$33.2 million**. This figure is an underestimate, as USTR identified at least 42 U.S. firms likely to be covered by the Turkish DST, while CCIA's estimate comes from just two of those firms. In addition, each covered company is likely to face significant compliance and administrative costs in connection with the Turkish DST, as well as initial program design costs, which collectively are likely to exceed $1 million in the first year for each covered firm on average. As USTR identified 42 U.S. firms likely to be covered, this implies a first year compliance and administrative burden of at least **$42 million**. In total, the Turkish DST imposes burdens of at least **$75.2 million** on U.S. commerce, and potentially far more depending on the Turkish revenues of the 40 U.S. firms covered by the DST but not included in CCIA's estimates.

With respect to the United Kingdom's Digital Services Tax, the most recent, publicly available UK-specific revenues of five U.S. firms that were expected to be covered by the DST were summed for a total of approximately **$34 billion**. The source for this data was publicly available financial reports and regulatory filings. The 2% DST rate was then multiplied by the total UK-specific revenues of the five firms to estimate minimum total annual payments to the UK, at approximately **$680 million**. This figure is an underestimate, as the UK government identified at least 30 corporate groups likely to be covered by the UK DST, and it is widely expected that most will be U.S. firms, while CCIA's estimate comes from just five of those firms. In addition, each covered company is likely to face significant compliance and administrative costs in connection with the UK's DST, as well as initial program design costs, which collectively are likely to exceed $1 million in the first year for each covered firm on average. This implies a first year compliance and administrative burden of about **$30 million**. In total, the UK DST imposes burdens of at least **$710 million** on U.S. commerce, and potentially far more depending on the covered revenues of the other U.S. firms whose payments to the UK government were not included in CCIA's estimates.