

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

June 10, 2024

Dear Ambassador Tai:

On behalf of the undersigned associations and organizations, we write to urge prompt and decisive U.S. action in response to Canada's imminent enactment of legislation unilaterally imposing a three percent digital services tax (DST), the effects of which will be predominantly felt by U.S. firms.¹ Canada is poised to enact its DST through Bill C-59 in the coming week, with the law having passed the House of Commons, and expected to pass in the Senate before Canada's summer break that begins on June 21.² Estimates show that this law will directly cost U.S. exporters and the U.S. tax base up to \$2.3 billion annually and could directly result in the loss of thousands of full-time U.S. jobs.³ The broader job losses are likely to be much higher, particularly if the Office of the United States Trade Representative (USTR) declines to challenge this legislation and other countries view U.S. inaction as justification to pursue their own discriminatory taxes aimed at U.S. entities.

Canada's proposal to make this DST nearly three years retroactive is unprecedented. This undermines basic principles of tax certainty and will have a chilling effect on the investment climate in Canada among U.S. companies.

In testimony before the Senate Finance Committee on April 17, you committed that, with respect to DSTs, the USTR is "prepared to use the tools that we have." On April 30, Secretary of the Treasury Janet Yellen echoed your stance, stating, "We're trying as hard as we can to get rid of digital service taxes that we regard as discriminatory against US firms." We appreciate your commitment to action and commend the administration's unified stance on the matter.

Now that Canada is poised to pass this legislation, in the face of broad U.S. opposition, it is clear that a more robust response is called for—a response reliant on the trade tools you recently endorsed. Specifically, we urge USTR to initiate formal dispute settlement procedures with Canada, beginning with consultations under the U.S.-Mexico-Canada Free Trade Agreement (USMCA). We note that key features of Canada's DST are expected parallel those found to be

¹ 2023 Canada Fall Economic Statement, <https://www.budget.canada.ca/fes-eea/2023/report-rapport/FES-EEA-2023-en.pdf>.

² <https://www.parl.ca/LegisInfo/en/bill/44-1/C-59>

³ <https://ccianet.org/research/reports/impacts-canada-proposed-digital-service-tax-united-states/>.

unreasonable, burdensome and discriminatory in USTR’s investigation of France’s and other countries’ analogous DSTs under Section 301 of the Trade Act of 1974,⁴ and that much of this same analysis applies to Canada’s imminent measure, including under USMCA. We also believe that Canada’s posture with respect to the DST and other recent revenue-extraction measures targeted at U.S. digital services and content providers should inform USTR’s preparations for the USMCA review mandated in Article 34.7 of the Agreement.

Although determining the specific economic effect on U.S. firms may not yet be possible given lack of implementing rules, industry is already feeling the effects of Canada’s decision. Many companies have begun the costly and burdensome process of preparing for incipient tax liability. Moreover, as underscored by previous 301 investigations regarding DSTs, the tax will also negatively affect U.S. startups, small businesses, and consumers, in the form of increased prices for critical services on which they rely. In short, firms are already experiencing the harms of the law, and the clear outlines of Canada’s intent now create the basis for a legal response. Although Canada has indicated a willingness to entertain possible adjustments in implementation to mitigate immediate effects, the discriminatory structure of the law will remain intact. Thus, any such adjustments would be an insufficient response to a measure that, by design, predominantly targets U.S. firms, and excludes like Canadian competitors.

Principled and lasting reform of the global rules governing taxation of U.S. multinationals requires multilateral cooperation. We appreciate the leadership of the United States through the OECD/G20 Inclusive Framework to remove DSTs and create tax certainty. Importantly, the October 2021 OECD/G20 political agreement dictated that all parties would “remove all Digital Services Taxes and other relevant similar measures with respect to all companies, *and . . . commit not to introduce such measures in the future*” [emphasis added].⁵ Canada’s decision to break with other OECD members by refusing to extend this commitment and institute a discriminatory DST at this critical juncture could render the years of work pursuing the OECD solution futile and result in other countries following its lead. We urge USTR to leverage its enforcement tools to protect both U.S. business interests and the U.S. tax base.

⁴ <https://ustr.gov/issue-areas/enforcement/section-301-investigations/section-301-digital-services-taxes>

⁵ <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>. Canada further abandoned global consensus by neglecting to support the conditional extension to December 31, 2024, see <https://www.reuters.com/business/finance/countries-agree-extend-digital-services-tax-freeze-through-2024-2023-07-12/>.

We appreciate your engagement on this issue and look forward to continuing to support your efforts to oppose any discriminatory digital taxes by U.S. trading partners.

Sincerely,

ACT | The App Association
Coalition of Service Industries (CSI)
Computer & Communications Industry Association (CCIA)
Consumer Technology Association (CTA)
Engine
Information Technology Industry Council (ITI)
National Foreign Trade Council (NFTC)
Software & Information Industry Association (SIIA)
TechNet
U.S. Chamber of Commerce
U.S. Council on International Business (USCIB)

CC:

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