OFFICE *of the* UNITED STATES TRADE REPRESENTATIVE
EXECUTIVE OFFICE OF THE PRESIDENT

Section 301 Investigations

Status Update on Digital Services Tax Investigations of Brazil, the Czech Republic, the European Union, and Indonesia

January 13, 2021

Contents

STATUS UPDATE ON INVESTIGATIONS OF BRAZIL, THE CZECH REPUBLIC, THE EUROPEAN UNION, AND INDONESIA REGARDING DIGITAL SERVICES TAXES PREPARED IN THE INVESTIGATIONS UNDER SECTION 301 OF THE TRADE ACT OF 1974

On June 2, 2020, the U.S. Trade Representative initiated investigations of Brazil, the Czech Republic, the European Union, and Indonesia regarding digital services taxes (DSTs) under Section 301 of the Trade Act of 1974, as amended (the Trade Act). As explained in the Federal Register notice launching the investigations (the Notice of Initiation),[1] the Office of the United States Trade Representative (USTR) is focusing on various aspects of digital services taxes, including whether these taxes discriminate against U.S. companies, are unreasonable as tax policy, and whether they burden or restrict U.S. commerce. USTR's investigations of digital service tax-related issues in Brazil, the Czech Republic, the European Union, and Indonesia are ongoing.

In this Status Update, USTR reports on the progress of the four investigations, offers brief descriptions of the four jurisdictions' approach to digital services taxes, and describes our preliminary, high-level concerns. In the sections that follow, we address: the procedural developments in the four investigations (Section I); a description and preliminary analysis of Brazil's DST proposal (Section II); a description and preliminary analysis of the Czech Republic's DST proposal (Section III); a description and preliminary analysis of the EU's approach to digital services taxes (Section IV); and a description and preliminary analysis of Indonesia's DST proposal (Section V).

I. PROCEDURAL DEVELOPMENTS IN USTR'S INVESTIGATIONS

USTR's investigations have proceeded according to the Section 301 process. That includes, for example, requesting consultations with the four relevant trading partners. The U.S. Trade Representative requested consultations on June 2, 2020 (the same date that the investigations were initiated) through letters from the U.S. Trade Representative to Brazil, the Czech Republic, the European Union, and Indonesia.[2]

USTR also provided interested persons with an opportunity to present their views and perspectives on the DST-related issues that are the focus of the investigations. The Notice of Initiation invited written comments on these investigations (as well as the investigations of six other jurisdictions' DSTs) by July 15, 2020.[3] Interested persons filed 383 written submissions, the majority of which related (either implicitly or explicitly) to the approach to digital services

[1] USTR, "Initiation of Section 301 Investigations of Digital Services Taxes" 85 FED. REG. 34709, June 5, 2020 ("Notice of Initiation").

[2] *See* Letter from Ambassador Robert Lighthizer to Minister Paulo Guedes, June 2, 2020 (Annex 1); Letter from Ambassador Robert Lighthizer to Deputy Prime Minister Karel Havlíček, June 2, 2020 (Annex 2); Letter from Ambassador Robert Lighthizer to Commissioner Phil Hogan, June 2, 2020 (Annex 3); Letter from Ambassador Robert Lighthizer to Minister Sri Mulyani Indrawati, June 2, 2020 (Annex 4).

[3] Notice of Initiation, at 34709.

taxes taken by Brazil, the Czech Republic, the European Union, and Indonesia.[4] Several of these public comments were lengthy and detailed, and contained separate analyses regarding each of the four jurisdictions.[5]

Based in part on these public comments, USTR is conducting a detailed examination of DSTs adopted or under consideration by Brazil, the Czech Republic, the European Union, and Indonesia. Those analyses are ongoing.[6] The United States encourages engagement on these matters through bilateral discussions and on related taxation issues through multilateral forums.

II. BRAZIL'S DST PROPOSALS

A. DESCRIPTION OF BRAZIL'S PROPOSED DSTS

At the time of this status update, Brazil is considering at least three DST-related legislative proposals, which may be subject to change in the legislative process.

Legislative proposal 2358/2020 is titled "Contribution for Intervention in the Economic Domain" or CIDE.[7] If adopted, the CIDE would create a progressive tax, with rates varying between one percent and five percent of gross revenue derived from digital services.[8] The CIDE would apply to companies, both established in Brazil and external to Brazil, with a global gross revenue exceeding R$ 3 billion and gross revenue exceeding R$ 100 million in Brazil.[9]

Legislative proposal 218/2020 is titled the "Social Contribution on Digital Services" or CSSD.[10] If adopted, the CSSD would impose a three percent tax on the gross revenues of digital services provided by major technology companies, both established in Brazil and external to Brazil.[11] Companies would be subject to the tax if, in the prior calendar year, they generated global gross revenues of R$ 4.5 billion. Under the legislative proposal, the gross revenue arising from digital advertising would be calculated based on the proportion of gross revenue relative to

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[4] Comments submitted to these investigations can be viewed at: https://www.regulations.gov/document?D=USTR-2020-0022-0001.

[5] *See, e.g.*, Public comment submitted by the Information Technology Industry Council, July 15, 2020; Public comment submitted by the Silicon Valley Tax Directors' Group, July 15, 2020; Public comment submitted by the Computer & Communications Industry Association, July 14, 2020.

[6] The descriptions and concerns identified in the status update are of a preliminary nature and may change subject to further analysis and investigation.

[7] Projeto de Lei 2358/2020, CAMARA.LEG.BR, https://www.camara.leg.br/proposicoesWeb/fichadetramitacao?idProposicao=2251395 (hereinafter Draft Law 2358/2020).

[8] Draft Law 2358/2020, art. 6.

[9] Draft Law 2358/2020, arts. 3–4.

[10] Projecto de Lei Complemntar PLP 218/2020, CAMARA.LEG.BR, https://www.camara.leg.br/proposicoesWeb/fichadetramitacao?idProposicao=2260638 (hereinafter PLP 218/2020).

[11] PLP 218/2020, arts. 1, 3, 5.

the number of displays to users in Brazil.[12] For data transmission, the tax would be calculated based on the proportion of gross revenue relative to the numbers of users in Brazil.[13]

Legislative proposal 131/2020 would apply the Contribution for the Financing of Social Security (COFINS) tax to digital service providers.[14] The levy would apply to companies with worldwide monthly gross revenues exceeding R$ 20 million and gross revenues exceeding more than R$ 6.5 million in Brazil.[15] The proposal would apply a 10.6% tax on certain revenues arising from covered digital services, such as digital interfaces and advertising.[16] The legislative proposal indicates that the proposal would enter into force on the first day of the fourth month following publication.[17]

B. PRELIMINARY CONCERNS WITH BRAZIL'S PROPOSED DSTS

Brazil's DST proposals raises numerous concerns that are relevant to USTR's Section 301 investigation. *First*, any of Brazil's DST proposals that involves revenue thresholds may be discriminatory against U.S. companies. Such thresholds could operate to exclude smaller firms—including many Brazilian companies—from tax liability, while focusing the tax burden on large, U.S. firms. In addition, any of Brazil's DST proposals that would target only digital services (but exempt similar services provided non-digitally) could negatively impact U.S companies, as U.S. companies are global leaders in digital services.

Second¸ Brazil's approach to digital services taxes raises concerns in relation to inconsistency with international tax principles. In particular, if one of these proposals is adopted, it may:

- tax companies with no permanent establishment in Brazil; this would contravene the international tax principle that companies should not be subject to a country's corporate tax regime absent a territorial connection to that country; and

- tax companies' revenue rather than income; this would contravene the international tax principle that income—not revenue—is the appropriate basis for corporate taxation.

Third, USTR is concerned that Brazil's DST proposals would burden or restrict U.S. commerce in at least three ways:

- creating an additional tax burden for U.S. companies;

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[12] *Id.* at art. 4.

[13] *Id.*

[14] Projeto de Lei Complementar n° 131, de 2020, SENADO.LEG.BR, https://www25.senado.leg.br/web/atividade/materias/-/materia/142074 (hereinafter Draft Law 131/2020).

[15] Draft Law 131/2020, at. 1.

[16] *Id*.

[17] *Id*. at art. 2.

- forcing U.S. companies to undertake costly measures to comply with the tax's payment and reporting requirements; and
- subjecting U.S. companies to double taxation.

In sum, at this stage of the investigation, USTR has serious concerns regarding Brazil's DST proposals. USTR is continuing its investigation, including by monitoring the status of these proposals.

III. The Czech Republic's DST Proposal

A. Description of the Czech Republic's Proposed DST

The Czech Republic's DST proposal was introduced in the Czech Parliament as Bill No. 658 on November 27, 2019. The proposed DST is a 7% tax on revenue from three types of digital services: "(a) execution of a targeted advertising campaign, (b) use of a multilateral digital interface; and (c) provision of user data."[18] The proposed Czech DST would apply only to digital services involving a "Czech user," which the law defines as "a user who accesses a digital interface using a technical device which, when based on a suitable method of locating the IP address of this device, is located in the Czech Republic."[19]

The proposed Czech DST would apply only to companies that: (i) generate more than CZK 100 million (about US$4.3 million) in revenue in the Czech Republic for covered digital services; and (ii) generate more than €750 million (about US$879 million) globally for all services.[20] In addition, companies that do not generate more than 10% of their total European revenue from covered services in the Czech Republic would be exempt from the tax.[21]

The draft legislation was approved by the current Czech Government and is currently being discussed in the Czech Parliament's lower house (the Chamber of Deputies) for a second reading. While the legislation calls for a 7% tax rate, there is a proposed amendment to lower the rate to 5%. The bill will need to go through two more readings before it moves to the Czech upper house, and then to the Czech President for approval. If the Czech Parliament passes the legislation, it appears that the earliest possible implementation date would be July 2021.

B. Preliminary Concerns with the Czech Republic's Proposed DST

The Czech Republic's proposed DST raises numerous concerns that are relevant to USTR's Section 301 investigation. *First*, if enacted, the proposed Czech DST may discriminate against U.S. companies through its use of revenue thresholds. These thresholds could operate to exclude smaller firms—including most, if not all, Czech companies—from the tax, while focusing the tax burden on large, U.S. firms. We note that the Czech Republic's proposed

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[18] Bill No. 658, introduced on November 27, 2019, at Sections 1(2), 33, 39, 45.

[19] Bill No. 658, introduced on November 27, 2019, at Section 3(1).

[20] Bill No. 658, introduced on November 27, 2019, at Section 15(1).

[21] Bill No. 658, introduced on November 27, 2019, at Section 15(1)(c).

revenue thresholds are similar in their design to the thresholds in the French, Italian, and Turkish DST, which the U.S. Trade Representative determined were discriminatory.[22] In addition, the proposed Czech DST would target only digital services, but exempt similar services provided non-digitally. This aspect of the DST could further focus the tax burden on U.S. companies, because U.S. companies are global leaders in digital services.

Second¸ the proposed Czech DST raises concerns related to consistency with international tax principles. In particular, if enacted, it would:

- tax companies with no permanent establishment in the Czech Republic, which would contravene the international tax principle that companies should not be subject to a country's corporate tax regime absent a territorial connection to that country; and

- tax companies' revenue rather than their income, which would contravene the international tax principle that income—not revenue—is the appropriate basis for corporate taxation.

Third, USTR is concerned that the proposed Czech DST would burden or restrict U.S. commerce in at least three ways:

- creating an additional tax burden for U.S. companies;
- forcing U.S. companies to undertake costly measures to comply with the tax's payment and reporting requirements; and
- subjecting U.S. companies to double taxation.

In sum, at this stage of the investigation, USTR has serious concerns regarding the Czech Republic's proposed DST, including that it may be discriminatory, unreasonable, and burdensome and restrictive to U.S. commerce. USTR is continuing its investigation, including by monitoring the status of the proposed DST.

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[22] *See* Office of the United States Trade Representative, Section 301 Investigation: Report on France's Digital Services Tax, January 6, 2021, at Section IV(A)(3), available at: https://ustr.gov/sites/default/files/Report_On_France%27s_Digital_Services_Tax.pdf; Office of the United States Trade Representative, Section 301 Investigation: Report on Italy's Digital Services Tax, January 6, 2021, at Section III(A)(1), available at: https://ustr.gov/sites/default/files/enforcement/301Investigations/Report%20on%20Italy%E2%80%99s%20Digital%20Services%20Tax.pdf; Office of the United States Trade Representative, Section 301 Investigation: Report on Turkey's Digital Services Tax, January 6, 2021, at Section IV(A)(1), available at: https://ustr.gov/sites/default/files/enforcement/301Investigations/Report%20on%20Turkey%E2%80%99s%20Digital%20Services%20Tax.pdf.

IV. THE EU'S APPROACH TO DIGITAL SERVICES TAXES

A. DESCRIPTION OF THE EU'S APPROACH TO DIGITAL SERVICES TAXES,

The European Union does not have a digital services tax proposal under active consideration, but European leaders have repeatedly stated the intent to move forward with such a tax in the absence of an OECD agreement on digital taxation. The July 2020 European Council agreement on the multiannual financial framework and recovery fund included several proposed EU-level taxes, including a digital services levy, to partially fund a €750 billion (US$910 billion) recovery fund. Furthermore, in a September 2020 State of the Union address, European Commission President von der Leyen said that "[w]e will spare no effort to reach agreement [on digital taxation] in the framework of OECD and G20. But let there be no doubt: should an agreement fall short of a fair tax system that provides long-term sustainable revenues, Europe will come forward with a proposal early next year."[23] A 2018 EU proposal for a digital services tax (discussed below) may form the basis for renewed efforts to enact an EU-wide DST. That 2018 proposal has also been a model for other jurisdictions imposing unilateral digital services taxes.

The 2018 proposal for an EU-wide digital services tax was introduced on March 21, 2018. This proposal called for a 3% tax on revenue from digital services, defined as: "(a) the placing on a digital interface of advertising targeted at users of that interface; (b) the making available to users of a multi-sided digital interface which allows users to find other users and to interact with them, and which may also facilitate the provision of underlying supplies of goods or services directly between users; (c) the transmission of data collected about users and generated from users' activities on digital interfaces."[24]

Under the EU's proposal, digital services only would have been taxable if a user of the service was located in an EU Member State.[25] A user's location would have been determined based on the location of the device used to consume the digital service.[26] The EU's proposed DST also included revenue thresholds such that only companies: (i) generating at least €750 million in annual global revenues; and (ii) generating at least €50 million in annual EU-wide revenues for covered digital services, would have been subject to the tax.[27]

The European Commission's DST proposal received support from some EU Member States, but ultimately was rejected because it did not garner the required unanimous support of

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[23] European Commission President Ursula von der Leyen, "State of the Union 2020," available at: https://ec.europa.eu/commission/presscorner/detail/en/SPEECH_20_1655.

[24] European Commission, "Council Directive on the common system of a digital services tax on revenues resulting from the provision of certain digital services," March 21, 2018, at Articles 3(1), 8.

[25] European Commission, "Council Directive on the common system of a digital services tax on revenues resulting from the provision of certain digital services," March 21, 2018, at Article 5.

[26] European Commission, "Council Directive on the common system of a digital services tax on revenues resulting from the provision of certain digital services," March 21, 2018, at Article 5(2).

[27] European Commission, "Council Directive on the common system of a digital services tax on revenues resulting from the provision of certain digital services," March 21, 2018, at Article 4(1).

all EU Member States. However, several jurisdictions within the EU or influenced by the EU—including Austria, the Czech Republic, France, Italy, Spain, and Turkey—have since adopted or proposed country-specific digital services taxes that are based on the EU's 2018 proposal. Indeed, these national digital services taxes include many features that are identical to the tax that the EU proposed in 2018. For instance:

- Like the EU's 2018 proposal, the digital services taxes adopted or under consideration in Austria, the Czech Republic, France, Italy, Spain, and Turkey all contain revenue thresholds, including a global revenue threshold of €750 million.

- Like the EU's 2018 proposal, the digital services taxes in adopted or under consideration in the Czech Republic, France, Italy, Spain, and Turkey cover digital advertising services, digital platform services, and data-related services.

- Like the EU's 2018 proposal, the digital services taxes in adopted or under consideration in Austria, the Czech Republic, France, Italy, Spain, and Turkey apply to revenue rather than income.

In sum, the EU's 2018 proposal appears to have served as the model for other DSTS, and the EU may come forward with a new proposal sometime this year.

B. PRELIMINARY CONCERNS WITH THE EU'S PROPOSED DST

The approach to DSTs in the EU's 2018 proposal raises numerous concerns that are relevant to USTR's Section 301 investigation. As noted, the EU's 2018 DST proposal served as the archetype for the subsequent DSTs adopted by France, Italy, and Turkey; the U.S. Trade Representative has found these DSTs actionable under Section 301.[28] USTR's specific concerns regarding the EU's previously proposed approach to digital services taxes include:

First, any EU DST proposal that involves revenue thresholds may be discriminatory against U.S. companies. Such thresholds could operate to exclude smaller firms—including many EU-based companies—from tax liability, while focusing the tax burden on large, U.S. firms. In addition, any EU DST proposal that would target only digital services (but exempt similar services provided non-digitally) could inordinately impact U.S. companies, because U.S. companies are global leaders in the digital services sector.

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[28] *See* Office of the United States Trade Representative, Section 301 Investigation: Report on France's Digital Services Tax, January 6, 2021, at Section IV(A)(3), available at: https://ustr.gov/sites/default/files/Report_On_France%27s_Digital_Services_Tax.pdf; Office of the United States Trade Representative, Section 301 Investigation: Report on Italy's Digital Services Tax, January 6, 2021, at Section III(A)(1), available at: https://ustr.gov/sites/default/files/enforcement/301Investigations/Report%20on%20Italy%E2%80%99s%20Digital%20Services%20Tax.pdf; Office of the United States Trade Representative, Section 301 Investigation: Report on Turkey's Digital Services Tax, January 6, 2021, at Section IV(A)(1), available at: https://ustr.gov/sites/default/files/enforcement/301Investigations/Report%20on%20Turkey%E2%80%99s%20Digital%20Services%20Tax.pdf.

Second¸ the EU's 2018 approach to digital services taxes raises concerns related to inconsistency with international tax principles. In particular, if a DST based on the 2018 proposal is adopted, it may:

- tax companies with no permanent establishment in the EU, which would contravene the international tax principle that companies should not be subject to a country's corporate tax regime absent a territorial connection to that country; and

- tax companies' revenue rather than income, which would contravene the international tax principle that income—not revenue—is the appropriate basis for corporate taxation.

Third, USTR is concerned that an EU DST may burden or restrict U.S. commerce in at least three ways:

- creating an additional tax burden for U.S. companies;
- forcing U.S. companies to undertake costly measures to comply with the tax's payment and reporting requirements; and
- subjecting U.S. companies to double taxation.

In sum, at this stage of the investigation, USTR is concerned that the EU may take an approach to digital services taxes that could be discriminatory, unreasonable, and burdensome and restrictive to U.S. commerce. USTR will continue its investigation, including by monitoring the status of any future EU DST proposal.

V. INDONESIA'S DST PROPOSAL

C. DESCRIPTION OF INDONESIA'S PROPOSED DST

On March 31, 2020, Indonesia issued Government Regulation in Lieu of Law (Peraturan Pemerintah Pengganti Undang-Undang or PERPPU) 1-2020.[29] This regulation provided for the "imposition of [i]ncome [t]ax or electronic transaction tax [(ETT)] on [electronic]-[c]ommerce (PMSE) conducted by non-resident tax subjects that meet the provisions of having significant economic presence."[30] This ETT would be "imposed on the sale transactions of goods and/or services from outside of Indonesia through E-Commerce (PMSE) system to buyers or users in Indonesia carried out by non-resident tax subjects, both directly and through foreign E-Commerce (PMSE) Operators."[31] The regulation provided that the ETT tax rate would be set by

[29] *See* Peraturan Pemerintah Pengganti Undang-undang Number 1, Year 2020, March 31, 2020, https://peraturan.go.id/common/dokumen/ln/2020/Perpu1-2020bt.pdf (hereinafter PERPPU 1-2020).

[30] PERPPU 1-2020, Article 6(1); *see also* Law 2-2020, Article 6(1).

[31] PERPPU 1-2020, Article 6(9); *see also* Law 2-2020, Article 6(9).

further regulation.[32] On May 16, 2020, Government Regulation in Lieu of Law (PERPPU) 1-2020 was adopted as Law of the Republic of Indonesia 2-2020.[33]

As noted, in order for Indonesia's DST to take effect, further implementing measures would be necessary. As of this time, Indonesia has not adopted these implementing measures.

D. PRELIMINARY CONCERNS WITH INDONESIA'S PROPOSED DST

Indonesia's DST raises several concerns that are relevant to USTR's Section 301 investigation.[34] Although the implementing measures have not been adopted, the text of the law raises preliminary concerns.

First, the DST may be discriminatory. As indicated in the law, Indonesia's DST applies only to electronic commerce "conducted by non-resident tax subjects[.]"[35] This indicates that, if applied, Indonesia's DST would apply only to foreign electronic commerce companies and not to Indonesian companies. The United States is concerned that a DST structured in this manner may discriminate against U.S. companies and may target U.S. companies for special, unfavorable tax treatment.

Second, the DST may be inconsistent with principles of international taxation. While implementing measures have not been released, the United States is concerned that the DST could be implemented in a manner that is not consistent with principles of international taxation, such as through: taxing revenue instead of income, inconsistency with existing principles regarding permanent establishments, extraterritoriality, and double taxation.

Third, USTR is concerned that Indonesia's DST would burden or restrict U.S. commerce in at least three ways:

- creating an additional tax burden for U.S. companies;
- forcing U.S. companies to undertake costly measures to comply with the tax's payment and reporting requirements; and
- subjecting U.S. companies to double taxation.

USTR will continue its investigation, including by monitoring the status of any proposed adopted implementation measures.

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[32] PERPPU 1-2020, Article 6(12) ("The amount of . . . electronic transaction tax as referred to in paragraph (8) shall be regulated by or based on a Government Regulation."); *see also* Law 2-2020, Article 6(12).

[33] *See* Undang-Undang 2-2020, May 16, 2020, https://jdih.setkab.go.id/PUUdoc/176114/UU_Nomor_2_Tahun_2020.pdf (hereinafter Law 2-2020).

[34] This discussion is non-exhaustive, subject to further investigation.

[35] Law 2-2020, Article 6; *see also* PERPPU 1-2020, Article 6(1).

VI. CONTINUING PROCEEDINGS

As noted in this status update, USTR will continue to investigate these and other related issues. USTR will continue to engage with Brazil, the Czech Republic, the EU, and Indonesia on these important matters.

ANNEX 1: LETTER FROM AMBASSADOR ROBERT LIGHTHIZER TO THE BRAZILIAN GOVERNMENT DATED JUNE 2, 2020

THE UNITED STATES TRADE REPRESENTATIVE
EXECUTIVE OFFICE OF THE PRESIDENT
WASHINGTON

June 2, 2020

Minister Paulo Guedes
Minister of Economy
Brasilia, Brazil

Dear Minister Guedes:

I am writing to inform you that, in accordance with Chapter 1 of Title III of the Trade Act of 1974 (known as Section 301), I have determined to initiate a Section 301 investigation of the digital services tax (DST) under consideration by Brazil. In particular, the investigation addresses a tax entitled "Contribution for Intervention in the Economic Domain", which, if adopted, would apply to the gross revenue derived from digital services provided by large technology companies.

The investigation will initially consider several problematic aspects of DSTs: (1) whether the tax would amount to *de facto* discrimination against U.S. companies; (2) whether the tax would have retroactive elements; and (3) whether the tax diverges from norms reflected in the U.S. tax system and the international tax system due to, *e.g.*, possible extraterritorial application, or a purpose of penalizing certain technology companies for their commercial success. Depending on the course of the investigation, other aspects and features of the measure might also be included.

In accordance with Section 303 of the Trade Act of 1974, I hereby request consultations with the Government of Brazil regarding this matter. These issues are of great concern to the Government of the United States. I look forward to working with you or another appropriate official in a cooperative manner to resolve this matter.

Sincerely yours,

Robert E. Lighthizer

ANNEX 2: LETTER FROM AMBASSADOR ROBERT LIGHTHIZER TO THE CZECH GOVERNMENT DATED JUNE 2, 2020

THE UNITED STATES TRADE REPRESENTATIVE
EXECUTIVE OFFICE OF THE PRESIDENT
WASHINGTON

June 2, 2020

Karel Havlíček
Deputy Prime Minister
Minister of Industry and Trade, Minister of Transport
Czech Republic

Dear Mr. Deputy Prime Minister:

I am writing to inform you that, in accordance with Chapter 1 of Title III of the Trade Act of 1974 (known as Section 301), I have determined to initiate a Section 301 investigation of the digital services tax (DST) under consideration by the Czech Republic. In particular, the investigation addresses a proposed 7% tax on revenues from targeted advertising and digital interface services.

The investigation will initially consider several problematic aspects of DSTs: (1) whether the tax would amount to *de facto* discrimination against U.S. companies; (2) whether the tax would have retroactive elements; and (3) whether the tax diverges from norms reflected in the U.S. tax system and the international tax system due to, *e.g.*, possible extraterritorial application, or a purpose of penalizing certain technology companies for their commercial success. Depending on the course of the investigation, other aspects and features of the measure might also be included.

In accordance with Section 303 of the Trade Act of 1974, I hereby request consultations with the Government of the Czech Republic regarding this matter. These issues are of great concern to the Government of the United States. I look forward to working with you or another appropriate official in a cooperative manner to resolve this matter.

Sincerely yours,

Robert E. Lighthizer

cc: Alena Schillerová, Deputy Prime Minister and Minister of Finance

ANNEX 3: LETTER FROM AMBASSADOR ROBERT LIGHTHIZER TO THE EU DATED JUNE 2, 2020

THE UNITED STATES TRADE REPRESENTATIVE
EXECUTIVE OFFICE OF THE PRESIDENT
WASHINGTON

June 2, 2020

Commissioner Phil Hogan
Commissioner for Trade
European Commission
Brussels, Belgium

Dear Commissioner Hogan:

I am writing to inform you that, in accordance with Chapter 1 of Title III of the Trade Act of 1974 (known as Section 301), I have determined to initiate a Section 301 investigation of the digital services tax (DST) under consideration by the European Commission. In particular, the investigation addresses a proposed 3% tax on revenues from targeted advertising and digital interface services.

The investigation will initially consider several problematic aspects of DSTs: (1) whether the tax would amount to *de facto* discrimination against U.S. companies; (2) whether the tax would have retroactive elements; and (3) whether the tax diverges from norms reflected in the U.S. tax system and the international tax system due to, *e.g.*, possible extraterritorial application, or a purpose of penalizing certain technology companies for their commercial success. Depending on the course of the investigation, other aspects and features of the measure might also be included.

In accordance with Section 303 of the Trade Act of 1974, I hereby request consultations with the European Commission regarding this matter. These issues are of great concern to the Government of the United States. I look forward to working with you or another appropriate official in a cooperative manner to resolve this matter.

Sincerely yours,

Robert E. Lighthizer

Robert E. Lighthizer

cc: Margrethe Vestager, Executive Vice-President for A Europe Fit for the Digital Age

Paolo Gentiloni, Commissioner for Economy

Thierry Breton, Commissioner for Internal Market

ANNEX 4: LETTER FROM AMBASSADOR ROBERT LIGHTHIZER TO THE INDONESIAN GOVERNMENT DATED JUNE 2, 2020

THE UNITED STATES TRADE REPRESENTATIVE
EXECUTIVE OFFICE OF THE PRESIDENT
WASHINGTON

June 2, 2020

H.E. Sri Mulyani Indrawati
Ministry of Finance
Jakarta, Indonesia

Dear Minister:

I am writing to inform you that, in accordance with Chapter 1 of Title III of the Trade Act of 1974 (known as Section 301), I have determined to initiate a Section 301 investigation of the digital services tax (DST) adopted by Indonesia. In particular, the investigation addresses an electronic transaction tax that targets cross-border, digital transactions.

The investigation will initially consider several problematic aspects of DSTs: (1) whether the tax amounts to *de facto* discrimination against U.S. companies; (2) whether the tax has retroactive elements; and (3) whether the tax diverges from norms reflected in the U.S. tax system and the international tax system due to, *e.g.*, possible extraterritorial application, or a purpose of penalizing certain technology companies for their commercial success. Depending on the course of the investigation, other aspects and features of the measure might also be included.

In accordance with Section 303 of the Trade Act of 1974, I hereby request consultations with the Government of Indonesia regarding this matter. These issues are of great concern to the Government of the United States. I look forward to working with you or another appropriate official in a cooperative manner to resolve this matter.

Sincerely yours,

Robert E. Lighthizer

Robert E. Lighthizer