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

In re:
Proposed Action in Section 301
Investigation of Italy's Digital Services Tax Docket No. USTR–2021–0004

COMMENTS OF
INTERNET ASSOCIATION

The internet industry applauds the Office of the United States Trade Representative's (USTR's) prompt and decisive finding in response to Italy's Digital Services Tax (DST), which specifically targets the U.S. digital sector. With this finding, USTR underscored the importance of an American industry that creates unprecedented benefits for society, generates the largest trade surplus of any industry, and supports millions of jobs and businesses of all sizes. USTR's determination that Italy's DST is unreasonable, discriminatory, and restricts U.S. commerce, is an important step in protecting U.S. companies and workers. It is also a key component in stemming the tide of new discriminatory taxes like this one across Europe and around the world.

Internet Association (IA) represents over 40 of the world's leading internet companies.[1] IA is the only trade association that exclusively represents leading global internet companies on matters of public policy. IA supports policies that promote and enable internet innovation, ensuring that information flows freely and safely across national borders, uninhibited by restrictions that are fundamentally inconsistent with the open and decentralized nature of the internet.

American-based internet companies are a significant driver of the U.S. economy and U.S. exports. Small businesses and entrepreneurs across the country use the internet to sell goods and services around the globe. Digital trade now accounts for more than 50 percent of all U.S. services exports. Internet-connected small businesses are three times as likely to export and create jobs, grow four times more quickly, and earn twice as much revenue per employee.[2] American digital services exports are $517 billion per year, generating a U.S. digital trade surplus of $220 billion that is shared by small and large firms and workers far outside the traditional 'digital sector.'[3]

Nonetheless, an increasing number of foreign trading partners are proposing discriminatory 2 to 7.5 percent revenue taxes on digital services provided by U.S. technology firms. The scope of these digital services taxes are specifically designed to target U.S. digital companies while insulating foreign competitors from the scope of taxation. In many cases, these taxation measures contradict long-standing, global, consensus-based practices (e.g., by taxing gross revenues instead of income) and result in double taxation on American businesses. Unfortunately, these tax regimes are on the rise globally. The majority of DSTs have three core problems from a trade perspective: they discriminate against U.S. companies by design; they undermine the competitiveness of the impacted U.S. companies relative to domestic suppliers of the same services; and, in some cases, they have retroactive application. In addition, by taxing gross revenue instead of profits, DSTs do not account for real costs of doing business, such as R&D or capital expenditures. This increases the cost of capital and discourages investment and innovation for all companies in scope, particularly for companies in loss positions or those with low margins. The DSTs are often arbitrary not just in their scope and rate, but also their taxable base; many DSTs focus on user participation which results in taxation of activity that does not generate any actual realized or recognized income. Departure from fundamental concepts, such as taxing net profit or realized income, is a concerning precedent that further supports the need for international consensus.

Italy has adopted a DST, similar in structure to the French DST, that includes a 3 percent tax on revenues from

[1]https://internetassociation.org/our-members/
[2]https://www2.deloitte.com/content/dam/Deloitte/us/Documents/technology-media-telecommunications/us-tmt-connected-small-businesses-Jan2018.pdf
[3] https://apps.bea.gov/iTable/iTable.cfm?reqid=62&step=6&isuri=1&tablelist=357&product=4

targeted advertising and digital interface services. This tax applies only to companies generating at least €750 million in global revenues for all services, and €5.5 million in in-country revenues for covered digital services. The law is effective as of January 2, 2021, and the government intends to begin collections in May 2021. IA expects the tax to predominantly affect U.S. firms, as senior government officials, including former Deputy Prime Minister Luigi Di Maio, directed that prior iterations of the tax be scoped to impact large U.S. tech firms. The parliament continues to consider proposals to substantially increase the DST rate.

IA filed comments to USTR's investigation (85 FR 34709), expressing the industry's belief that the structure of the Italian DST expressly targets U.S. companies, is unreasonable, and discriminates against U.S. digital companies by creating a targeted burden on U.S. commerce.[4] In January 2021, USTR agreed with the industry's filing and determined that Italy's DST is unreasonable or discriminatory and burdens or restricts U.S. commerce, and therefore is actionable under sections 301(b) and 304(a) of the Trade Act (19 U.S.C. 2411(b) and 2414(a)).[5]

While IA applauds USTR for the strong response, it does not take a position on the impact of the proposed action in the form of additional duties of up to 25 percent on products of Italy, with initial estimates indicating that the value of the DST payable by U.S.-based company groups to Italy will be up to approximately $140 million per year.

IA does not have an opinion about any of the individual items found in the preliminary list in the Annex. It is the goal of the digital industry for Italy to end its discriminatory tax before any additional duties would enter into force, thus the proposed duties will not have to be put into place.

IA believes that global tax rules should be updated for the digital age, but imposing discriminatory taxes against U.S. firms is not the right approach. In proceeding with their DST, Italy took a unilateral approach, even as a worldwide solution at the Organisation for Economic Co-operation and Development (OECD) is being developed. IA continues to encourage the U.S. government to keep engaging in the OECD process and to work with Italy and other nations to get a deal as soon as possible.[6]

The finding by USTR against the Italy DST was an important step in protecting U.S. companies and workers while also helping to stem the tide of new discriminatory taxes around the world. The digital industry now hopes the Italian government will roll back this discriminatory tax before any escalation occurs. In order to prevent the imposition of new taxes like the Italy DST, the U.S. must help build a global consensus around developing a modern, fair, and global approach to taxing digital services while continuing to send a strong message to trading partners that targeted, discriminatory taxes against U.S. firms are not an appropriate solution.

[4] https://internetassociation.org/files/ia_comments-on-ustr-301-investigation-of-dst_ustr-2020-0022-0001_july-2020_trade-2
[5] https://ustr.gov/issue-areas/enforcement/section-301-investigations/section-301-digital-services-taxes
[6] http://www.oecd.org/tax/beps/