

Comments of the Office of the United States Trade Representative (USTR) on Canada's proposed Digital Services Tax Act

Submitted on February 22, 2022

Thank you to the Government of Canada for this opportunity to comment. The United States has serious concerns about the Canadian Government's plan to enact a Digital Services Tax (DST).

The Canadian Government's legislative proposal for a DST, as described in its Notice of Ways and Means Motion to introduce an Act to implement a Digital Services Tax, would implement a three-percent DST on revenue from certain digital services. The tax would apply to businesses with gross revenues of at least EUR 750 million (at least USD 850 million) and at least CAD 20 million (more than USD 15 million) of certain in-scope Canadian revenues. If implemented, the proposed DST would be payable with respect to revenues retroactively to January 1, 2022, despite the proposed entry into force date of "not earlier than January 1, 2024".

The Canadian Government estimates that this unilateral measure would generate USD 2.7 billion (CAD 3.4 billion) in revenue over five years.

Canada has joined the United States and 135 other jurisdictions in the OECD/G20 Statement on a Two-Pillar Solution to Address the Tax Challenges Arising from the Digitalisation of the Economy (October 8, 2021 Statement on a Two-Pillar Solution). The removal and standstill of DSTs and other relevant similar measures (collectively "unilateral measures") prior to the implementation of Pillar One of the October 8 OECD/G20 agreement is an important part of the new architecture for international taxation.

Canada has repeatedly stated its hope that implementation of the Two-Pillar Solution would make Canada's DST proposal unnecessary. Instead of pursuing a counterproductive unilateral measure that risks encouraging other countries to follow suit thus undermining the ongoing negotiations, Canada can focus efforts on engaging constructively in the multilateral OECD negotiations – ensuring that its unilateral measure proposal is unnecessary and that Canadian interests are protected.

As Canada is fully aware, the United States has serious concerns about measures that single out American firms for taxation while effectively excluding national firms engaged in similar lines of business. Based on previous communications from the Canadian Government and its officials, the United States understands that the Canadian DST proposal will duplicate most aspects of the DSTs adopted in France, Italy, Spain, Turkey, and the United Kingdom. The United States found these DSTs (and others) to be actionable under Section 301 of the United States Trade Act of 1974 and concluded that these DSTs are discriminatory and burden U.S. commerce. Any tax adopted by Canada would be assessed against the same standard.

The United States urges Canada to abandon any plans for a unilateral measure and instead redouble its commitment to the rapid implementation of Pillar One of the October 8 OECD/G20 agreement and the completion of a multilateral convention in 2022. We look forward to continued cooperation in our OECD/G20 efforts.