United States Senate

COMMITTEE ON FINANCE

WASHINGTON, DC 20510–6200

October 18, 2018

The Honorable Donald Tusk
President of the European Council
Rue de la Loi 175
1048 Brussels

The Honorable Jean-Claude Juncker
President of the European Commission
Rue de la Loi 200
1049 Brussels

Dear President Tusk and President Juncker:

We write to express our significant and growing concern regarding the European Commission proposal to introduce a three-percent digital services tax on revenues resulting from the supply of certain digital services ("the EU DST Proposal"). The EU DST Proposal has been designed to discriminate against US companies and undermine the international tax treaty system, creating a significant new transatlantic trade barrier that runs counter to the newly-launched US and EU dialogue to reduce such barriers. Therefore, we urge the EU to abandon this proposal, urge the member states to delay unilateral action, and instead refocus efforts on reaching consensus with other leading economies within the OECD on any new digital taxation models.

We understand that the Austrian Presidency of the EU is pushing for an agreement in principle on the EU DST Proposal in the coming weeks. This is troubling news as there are multiple problems with the EU DST Proposal. The EU DST Proposal violates the long-held principle that taxes on multinationals should be profit-based, not revenue-based. The EU already has a revenue tax based on the location of the customer – the VAT. Consequently, the DST will undoubtedly lead to double taxation of multinational companies.

Further, as indicated in leaked drafts of the current interim proposal, the turnover thresholds for the EU DST Proposal are discriminatory, putting in-scope companies at a competitive disadvantage without objective justification. This raises concerns about the EU DST Proposal's compliance with the EU's national treatment commitments under the World Trade Organization General Agreement on Trade in Services. In addition, since European countries have no enforceability mechanisms against non-EU companies with little or no footprint in the EU, third country (i.e., Chinese) technology companies would effectively fall outside the proposal's scope, further enhancing the legal problems with the interim proposal.

Finally, the EU claims that the EU DST Proposal is an interim measure; however, the proposal contains no end date and could conceivably last indefinitely. In the unlikely event the EU DST

Proposal is approved as an interim measure, taxpayers and taxing authorities would be required to develop new, complex, and costly tax collection and compliance systems, which would be discarded once international consensus is reached. By forcing these burdens largely on US companies, the EU would be erecting another deeply concerning barrier to transatlantic trade.

Given these many issues, and the potential for long-term harm arising from the EU DST Proposal, the EU should refocus its efforts away from this interim tax measure and back on reaching consensus with other leading economies within the OECD on new digital taxation models. This will allow for the development of a policy that will guarantee fairness, avoid discrimination, and prevent double taxation. We are confident that this approach will prevent this issue from complicating other areas of transatlantic cooperation during such a crucial time.

We look forward to continuing to work with you on this and other issues.

Sincerely,

Orrin G. Hatch
Chairman
U.S. Senate Committee on Finance

Ron Wyden
Ranking Member
U.S. Senate Committee on Finance

CC:
Robert Lighthizer, United States Trade Representative
Wilbur Ross, Secretary of Commerce