US confronts 'digital dagger' from overseas aimed at top tech companies

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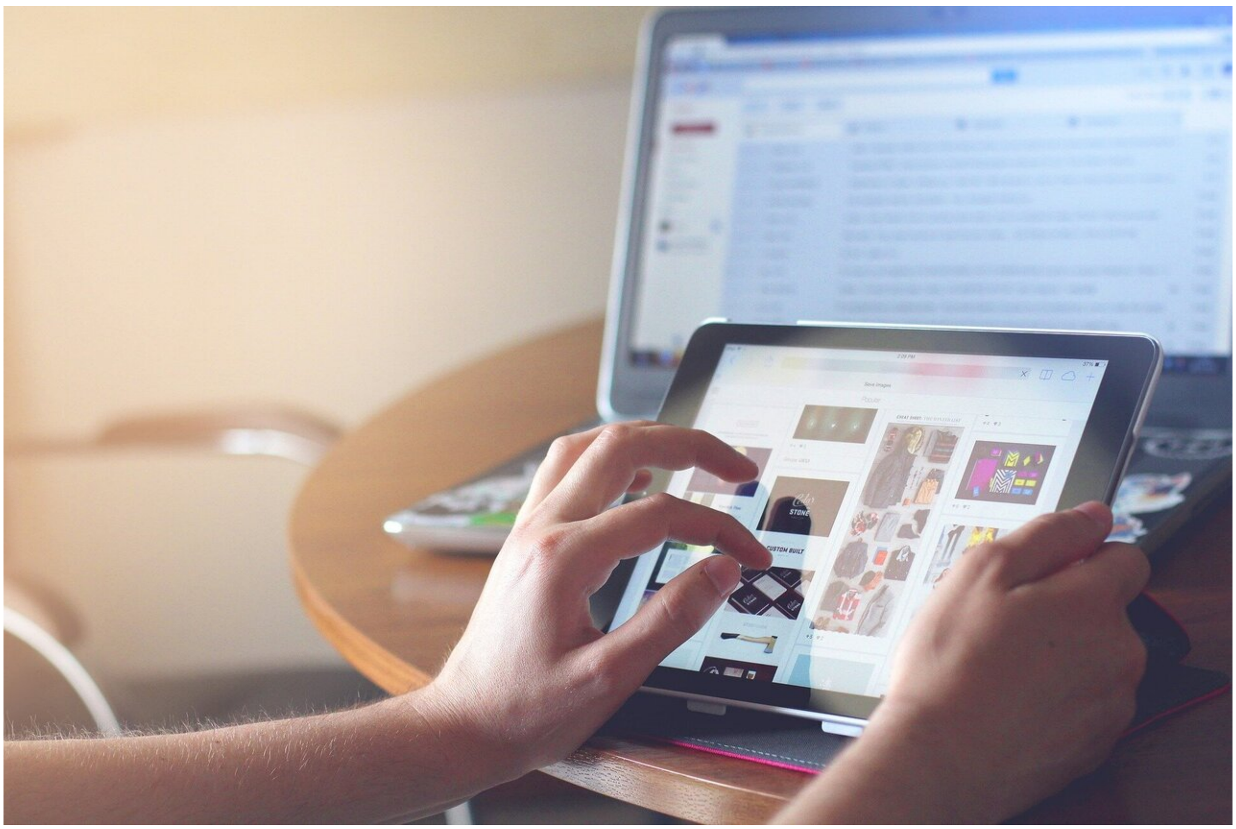

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Late last month, the Biden administration signaled that it was preparing to slap a 25 percent tariff on goods imported from six countries, including the United Kingdom, in retaliation for a digital service tax those countries were set to collect on search engines, social media companies and online retailers that were mostly American.

The Office of the U.S. Trade Representative said a six-month investigation had found that the digital tax levied by the U.K. and other countries was "unreasonable, or discriminatory and burdens or restricts U.S. commerce."

In addition to the U.K., the countries that have adopted such taxes are Austria, India, Italy, Spain and Turkey. Their actions were discriminatory, the USTR found, after conducting so-called Section 301 investigations. Others, including Brazil, the Czech Republic, the European Union and Indonesia, are considering similar proposals but have yet to adopt them.

During the Trump administration, the USTR also investigated France's digital service tax and determined that it was discriminatory and recommended retaliatory tariffs, but it suspended implementation pending an ongoing negotiation under the aegis of the Organization of Economic Cooperation and Development and the G-20 group of countries.

The Internet Association, a trade group that represents top online companies, said in a statement that it backed the USTR's move to propose retaliatory tariffs on goods and services imported from Austria, India, Italy, Spain, Turkey and the U.K.

The USTR position is "an important affirmation in pushing back on these discriminatory trade barriers as the U.S. continues to work to find a viable solution at the OECD," the trade group said.

Top U.S. lawmakers have said that the digital service tax adopted by other countries unfairly targets top American tech companies, including

Facebook, Google and Amazon, that provide services to consumers around the world.

"We are seeing many countries around the world in effect deploying what I call a digital dagger," Senate Finance Chairman Ron Wyden, D-Ore., said at the Feb. 25 hearing on the nomination of Katherine Tai to become the U.S. trade representative. Referring to digital service taxes being adopted by other countries, Wyden said it was aimed "right at the heart of American companies that pay high-skill, high-wage jobs, and it really just seems an effort to hold our companies back to advantage others."

Idaho Sen. Michael D. Crapo, the top Republican on the Finance Committee, said he had the same concerns as Wyden on the digital tax.

Close cooperation required

Tai, who was confirmed by the Senate on March 17, told Wyden and the panel that she would focus on the issue, adding that resolving it would require close coordination between the administration and Congress as well as between USTR and the Treasury Department.

The friction between the United States and its top tech companies and the rest of the world stems from how the global economy has shifted toward a model where companies based in one country earn profits from delivering services to citizens of another country without establishing a physical presence, said Clete Willems, a partner in the law firm of Akin, Gump, Strauss, Hauer & Feld LLP, who served in the White House as a top trade adviser during the Trump administration.

The OECD has been discussing how to determine taxing rights when companies have no physical presence in a country and which companies should be considered digital entities, Willems said.

Biden's infrastructure plan would boost science, tech, R&D funding

"It's really just this broad conversation about how to allocate taxing rights, of which digital companies are implicated, but from the perspective of the United States, are not the only companies providing services around the globe," he said.

Even as the discussions have been ongoing since 2018 with no consensus yet on how to allocate taxing rights and define digital companies, 10 countries around the world decided to unilaterally proceed with digital service taxes, defining the threshold in terms of annual corporate revenues that would target U.S. companies while leaving out others.

Amazon a target

The countries that have adopted the digital service tax tend to focus on transactions that would occur on Amazon, for example, while overlooking a similar transaction that could take place on a brick-and-mortar retailer's website, Willems said.

"If I buy a handbag on Amazon's website, I'm subject to France's digital services tax, but if I buy on the Louis Vuitton website, I'm not," Willems said. "The way the tax is designed is it sort of excludes the brick-and-mortar companies with a digital interface while only applying to the digital companies."

The Internet Association also has submitted comments to the OECD saying the industry supports the global move to find a solution to "taxation in the digital age," but the rules must be clear, predictable and "not favor certain sectors or technologies over others." Foreign and domestic firms in each of the OECD member countries' jurisdiction should be treated equally and must not be subject to double taxation of profits, the group said.

The OECD and G-20 negotiators have set a deadline to complete negotiations on a global tax regime by the summer of 2021.

U.S. Treasury Secretary Janet L. Yellen in February dropped one of the proposals from the Trump administration to allow top companies such as Amazon, Google, and Facebook to opt out of whatever agreement OECD and the G-20 reach. The Trump administration idea, known as a safe-harbor position, had impeded further negotiations.

The United States "really removed what was the Europeans' biggest complaint about our negotiating posture, and that means the ball is now in Europe's court to see if it will show reciprocal flexibility" and modify its position on singling out American companies as well as broadening the definition of digital entities, Willems said.

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