



Workshop Series
GLOBALIZATION AND DIGITALIZATION: INTERCONNECTIONS BETWEEN
TAXATION, TRADE, AND INVESTMENT

Session 2: Digital Taxes and Trade in Services

Digital Services Tax & Trade in Services: *an international trade law perspective*

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10 June 2020

Outline

Digital Services Taxes (DST): variations

The relevance of international trade and trade law

DST as a measure affecting trade in services

Countermeasures (US Section 301 Investigation)

Conclusion

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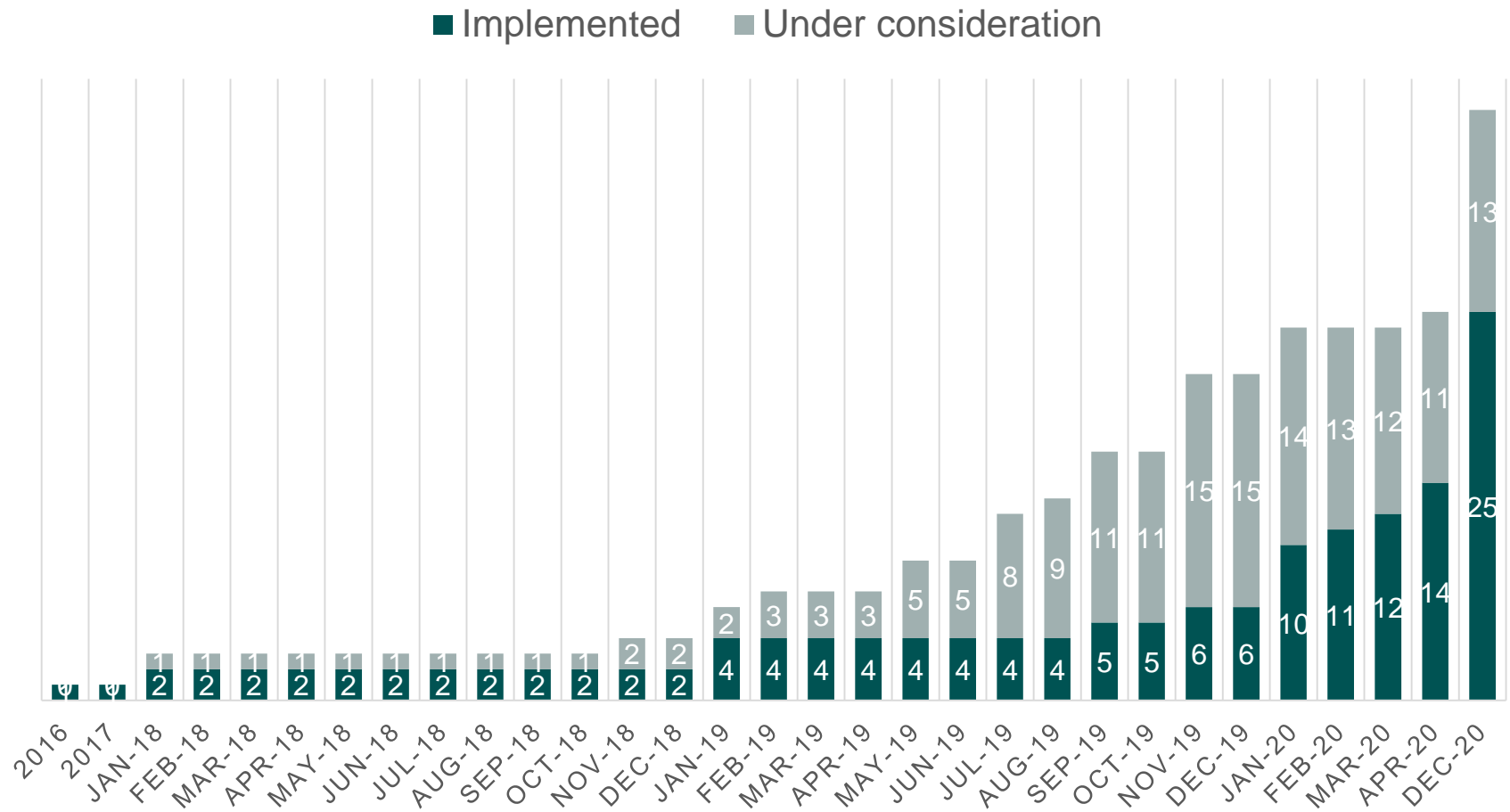
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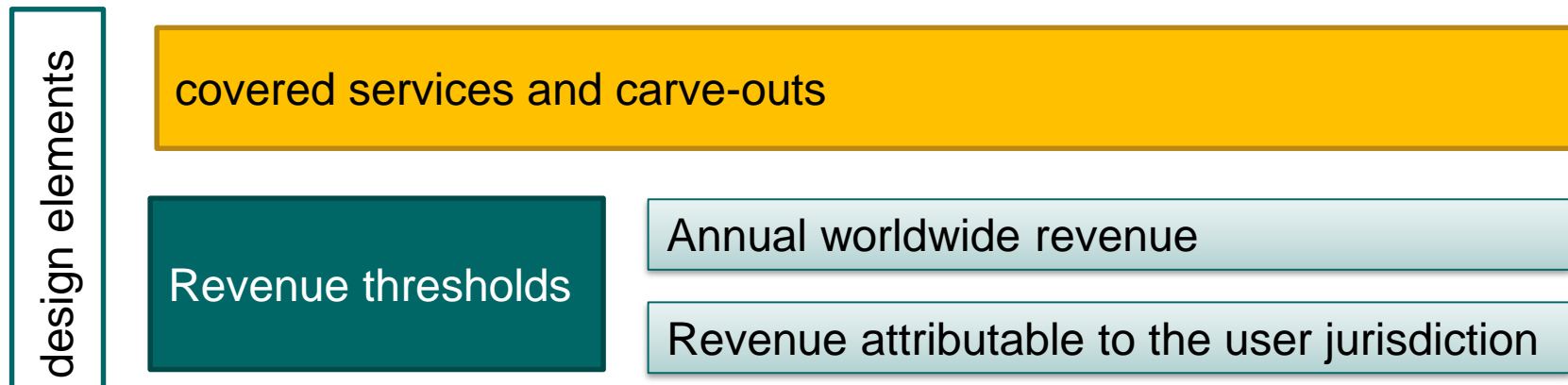
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Digital services taxes: proliferation



DSTs: variations



Selected examples of covered services

	Austria	France/UK/ Spain/Italy	Tunisia	Kenya	Paraguay	Turkey	India
Advertising	✓	✓	x	x	✓	✓	✓
Marketplace platform	x	✓	x	✓	x	✓	✓
Data transmission	x	✓	✓	x	✓	✓	✓
Online sale of digital content	x	x	✓	✓	x	✓	✓
Online sale of services	x	x	x	✓	✓	x	✓
Online sale of goods	x	x	x	x	x	x	✓

Digital services taxes: types

	EU-Style DST	Other DSTs
Example country	EU + EU MS	India, Indonesia
Tax type	Direct tax based on gross revenue	Both direct and indirect tax
Coverage	advertising services; intermediary services provided through a digital interface	<ul style="list-style-type: none"> • Goods and services delivered via e-commerce • E-commerce suppliers
Tax rate	3 – 7.5 per cent	2 – 10 per cent
Affected	big platform operators: <ul style="list-style-type: none"> • online marketplace operators (e.g. Alibaba, Airbnb); • social media operators (e.g. Facebook); and • search engines (e.g. Google) 	everyone in e-commerce: <ul style="list-style-type: none"> • online marketplace operators, • suppliers and consumers of goods and services; and • electronic payment service suppliers

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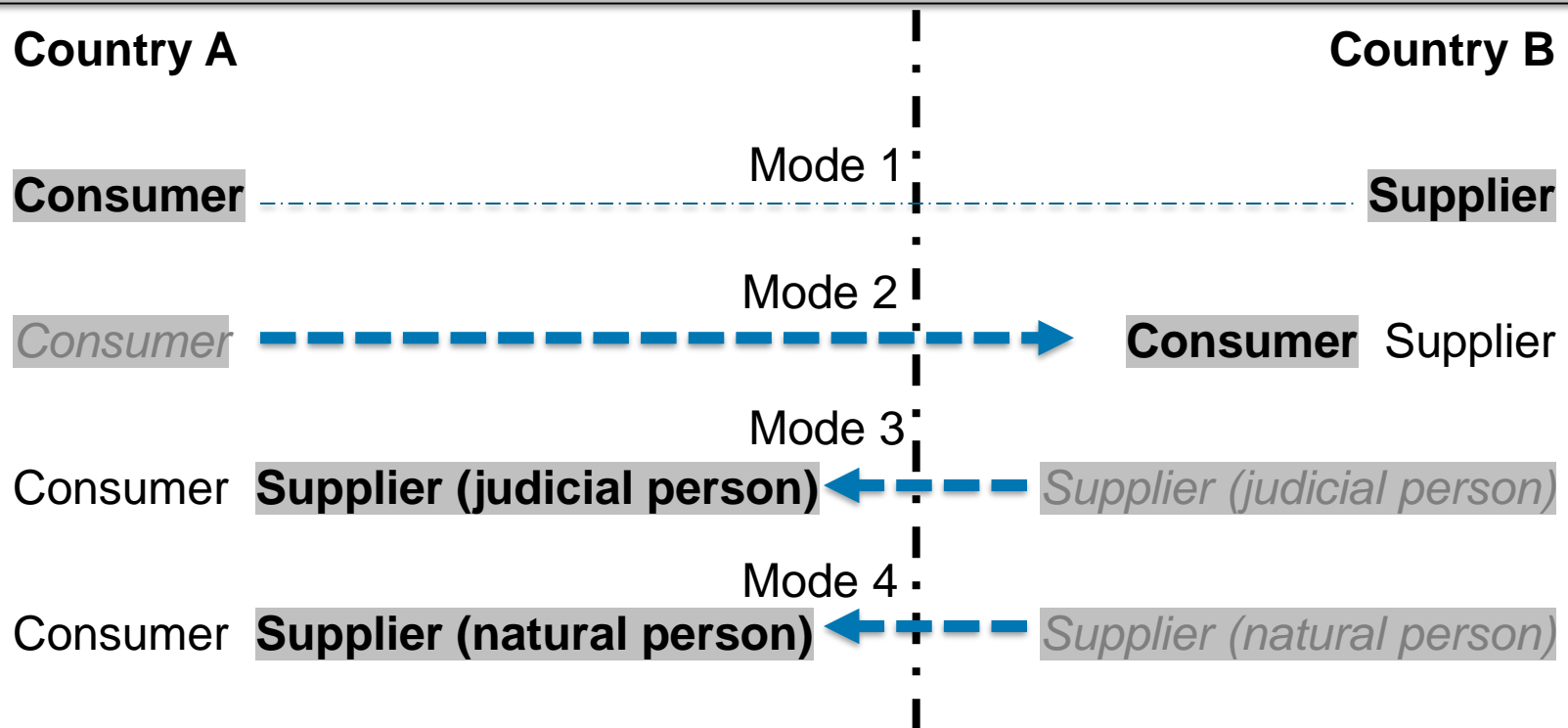
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General Agreement on Trade in Services (GATS)

Broad coverage: apply to all measures “affecting trade in services”

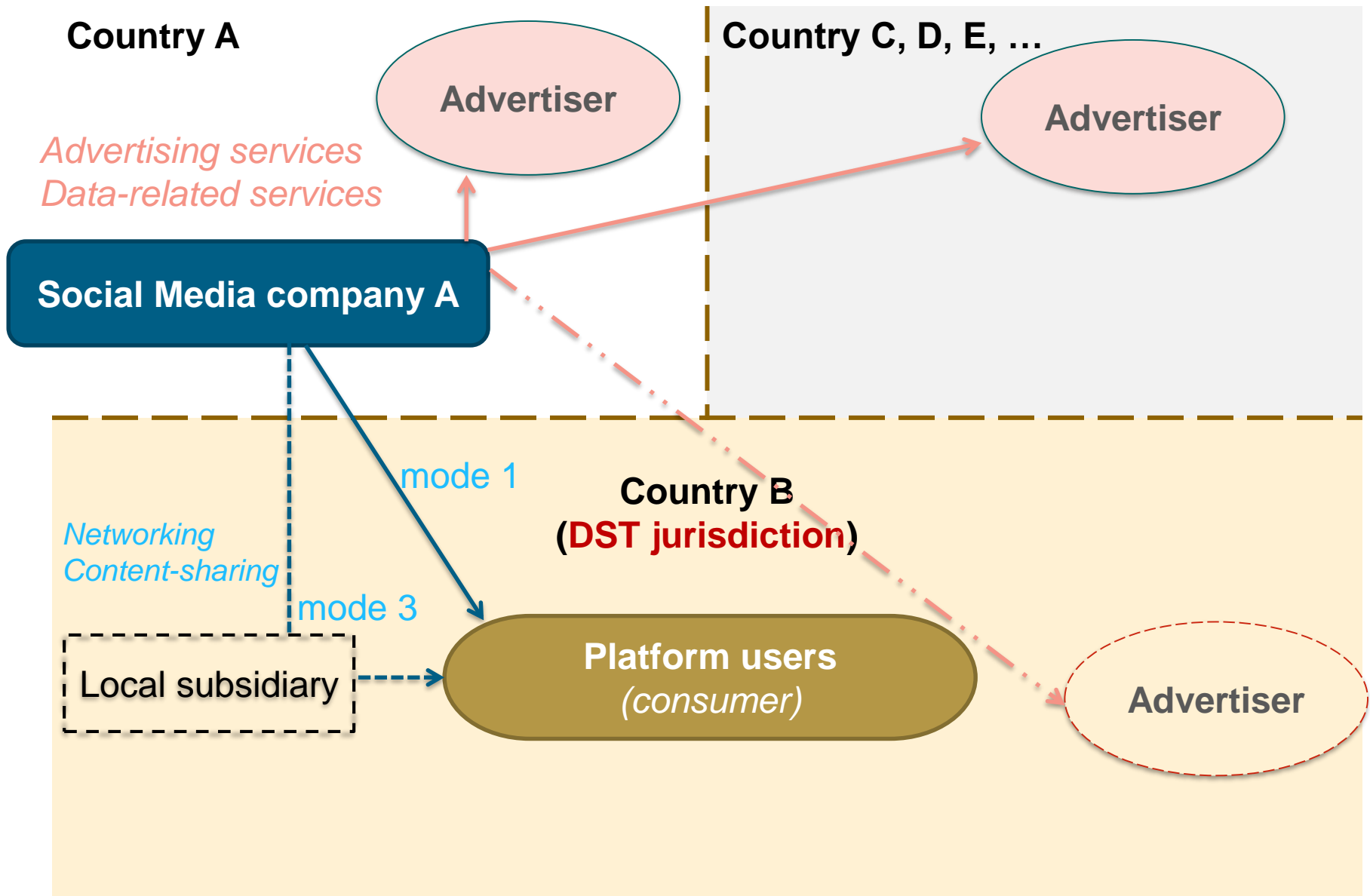


Defined on the basis of geographical location of the service consumer and suppliers

Conceptual challenge:

Digitalized business models often involve multiple services, multiple players

DSTs: affecting trade in services within the meaning of the GATS



GATS: broad scope, but ...

Unconditional Obligations, i.e., apply with or without commitments

- **MFN Art. II**
- **Transparency Art.III:1**
(general publication)
- **Domestic Regulation Art.VI:2**
(availability of legal remedies)
- **Monopolies Art.VIII:1**
- **Business Practices (Art.IX)**
- **Subsidies Art. XV:2**
(consultations)

Conditional Obligations, i.e., apply solely where scheduled commitments are made

- **Market access, national treatment**
- **Transparency Art.III:3**
(notification)
- **Domestic Regulation Art.VI**
(administration of measures of general application, due process, regulatory disciplines)
- **Behaviour of monopolies (MA and NT) Art.VIII:2**
- **Payments and Transfers Art.XI**

GATS: non-discrimination obligation

- **Most-favored-nation treatment (MFN):** generally universally applied obligation irrespective of specific commitments (unless exempted upon WTO entry)
- **National treatment:** applies only to the sectors and modes of supply under which commitments are undertaken

DSTs are selective, but do they constitute discrimination under the GATS?

A typical EU-style DST design elements:

- Definition of taxable services
- Threshold/exemptions: e.g. revenue threshold

Distinct treatment (tax rate & associated compliance burden):

- Similar services supplied by different business models
- Same services, different suppliers

Different treatment => discrimination ?

Example: scope of France DST (source: USTR)

Company Group (Covered Brands)	Nationality	Advertising	Marketplace
Airbnb	USA		X (travel services)
Alibaba	China		X (retail)
Alphabet Inc. (Google, YouTube)	USA	X	X (apps)
Amadeus	Spain		X (travel services)
Amazon	USA	X	X (retail)
Apple	USA		X (apps)
Axel Springer (Seloger)	Germany		X (real estate)
Booking Holdings Inc.	USA		X (travel services)
Criteo	France	X	
eBay	USA	X	X (retail)
Expedia	USA		X (travel services)
Facebook (Facebook, Instagram)	USA	X	
Groupon	USA		X
Match Group (Match, Meetic, Tinder)	USA		X (dating services)
Microsoft	USA	X	
Rakuten	Japan		X (retail)
Randstad	Netherlands		X (human resources)
Recruit	Japan		X (human resources)
Sabre	USA		X (travel services)
Schibsted (Leboncoin)	Norway		X (retail)
Snapchat	USA	X	
Travelport	UK		X (travel services)
Twitter	USA	X	
Uber Technologies, Inc.	USA		X (transportation)
Verizon Communications Inc.	USA	X	

GATS: tax-related exceptions

Article XIV: General Exceptions

... nothing in this Agreement shall be construed to prevent the adoption or enforcement by any Member of measures:

(d) inconsistent with Article XVII [[national treatment](#)], provided **that the difference in treatment is aimed at ensuring the equitable or effective imposition or collection of direct taxes in respect of services or service suppliers of other Members;**

(e) inconsistent with Article II [[MFN](#)], provided that the difference in treatment is the result of an agreement on the avoidance of double taxation or provisions on the avoidance of double taxation in any other international agreement or arrangement by which the Member is bound.

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Looking forward ...

US Section 301 Investigation

- France, Italy, India, Turkey, UK, Spain, and Austria

USTR Decisions:

- Discriminate against U.S. digital companies.
- Unreasonable because they are inconsistent with principles of international taxation
- Burden or restrict U.S. commerce

	Import duties	No. of tariff lines	Total value (USD)
France	25%	21	1.3 billion
Austria	25%	23	65 million
India	25%	26	119 million
Italy	25%	44	386 million
Spain	25%	27	324 million
Turkey	25%	32	310 million
UK	25%	67	887 million

- Brazil, the Czech Republic, EU, and Indonesia (not yet in force): a status report highlights USTR's preliminary concerns over certain discriminatory and unreasonable aspects of the DSTs

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Conclusion: prospect

A multilateral agreement under the Inclusive Framework

- Need to clarify and update the relevant exceptions under the GATS?
- WTO-consistency of domestic implementing measures (*Argentina – Financial Services*)
- Ongoing Joint Initiative on Ecommerce

Persisting unilateral DSTs

- USTR Section 301 tariffs => further trade disputes
- Disputes under the WTO