

## II. Proceedings in the Investigation

On June 2, 2020, the U.S. Trade Representative initiated an investigation of Italy's DST pursuant to section 302(b)(1)(A) of the Trade Act of 1974, as amended (Trade Act). 85 FR 34709 (June 5, 2020) (notice of initiation). The notice of initiation solicited written comments on, *inter alia*, the following aspects of Italy's DST: Discrimination against U.S. companies; retroactivity; and possibly unreasonable tax policy. With respect to tax policy, USTR solicited comments on, *inter alia*, whether the DST diverges from principles reflected in the U.S. and international tax systems, including extraterritoriality; taxing revenue not income; and a purpose of penalizing particular technology companies for their commercial success.

Interested persons filed over 380 written submissions in response to the notice of initiation. The public submissions are available on [www.regulations.gov](http://www.regulations.gov) in docket number USTR–2020–0022.

Under Section 303 of the Trade Act, the U.S. Trade Representative requested consultations with the Government of Italy regarding the issues involved in the investigation. Consultations were held on November 10, 2020.

As noted, based on information obtained during the investigation, USTR has prepared and published the Italy DST Report, which includes a comprehensive discussion on whether the acts, policies, and practices under investigation are actionable under Section 301(b) of the Trade Act. The Italy DST Report supports findings that Italy's DST is unreasonable or discriminatory and burdens or restricts U.S. commerce.

## III. Determination on the Act, Policy, or Practice Under Investigation

Based on the information obtained during the investigation, and taking account of public comments and the advice of the Section 301 Committee and advisory committees, the U.S. Trade Representative has made the following determination under sections 301(b) and 304(a) of the Trade Act (19 U.S.C. 2411(b) and 2414(a)): The act, policy, or practice covered in the investigation, namely Italy's DST, is unreasonable or discriminatory and burdens or restricts U.S. commerce, and thus is actionable under section 301(b) of the Trade Act. In particular:

1. Italy's DST, by its structure and operation, discriminates against U.S. digital companies, including due to the selection of covered services and the revenue thresholds.

2. Italy's DST is unreasonable because it is inconsistent with principles of

international taxation, including due to application to revenue rather than income and extraterritoriality.

3. Italy's DST burdens or restricts U.S. commerce.

## IV. Further Proceedings

Sections 301(b) and 304(a)(1)(B) of the Trade Act provide that if the U.S. Trade Representative determines that an act, policy, or practice of a foreign country is unreasonable or discriminatory and burdens or restricts United States commerce, the U.S. Trade Representative shall determine what action, if any, to take under Section 301(b). These matters will be addressed in subsequent proceedings under Section 301.

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## OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

### Notice of Determination Pursuant to Section 301: India's Digital Services Tax

**AGENCY:** Office of the United States Trade Representative (USTR).

**ACTION:** Notice.

**SUMMARY:** The U.S. Trade Representative has determined that India's Digital Services Tax (DST) is unreasonable or discriminatory and burdens or restricts U.S. commerce and thus is actionable under Section 301.

**FOR FURTHER INFORMATION CONTACT:** For questions concerning the investigation, please contact Thomas Au or Patrick Childress, Assistant General Counsels at (202) 395–0380 and (202) 395–9531, respectively, Robert Tanner, Director, Services and Investment at (202) 395–6125, or Brendan Lynch, Deputy Assistant U.S. Trade Representative, South and Central Asian Affairs, 202–395–2851.

#### SUPPLEMENTARY INFORMATION:

##### I. India's DST

Based on information obtained during the investigation, USTR has prepared a comprehensive report on India's DST (India DST Report). The India DST Report, which is posted on the USTR website at <https://ustr.gov/issue-areas/enforcement/section-301-investigations/section-301-digital-services-taxes>, includes a full description of India's DST. To summarize, India adopted the operative form of its DST on March 27, 2020. India's DST imposes a two

percent tax on revenue generated from a broad range of digital services offered in India, including digital platform services, digital content sales, digital sales of a company's own goods, data-related services, software-as-a-service, and several other categories of digital services. India's DST only applies to "non-resident" companies. The tax applies as of April 1, 2020.

## II. Proceedings in the Investigation

On June 2, 2020, the U.S. Trade Representative initiated an investigation of India's DST pursuant to section 302(b)(1)(A) of the Trade Act of 1974, as amended (Trade Act). 85 FR 34709 (June 5, 2020) (notice of initiation). The notice of initiation solicited written comments on, *inter alia*, the following aspects of India's DST: Discrimination against U.S. companies and unreasonableness as tax policy. With respect to unreasonable tax policy, USTR solicited comments on, *inter alia*, whether the DST diverges from principles reflected in the U.S. and international tax systems, including extraterritorial application and taxing revenue rather than income.

Interested persons filed over 380 written submissions in response to the notice of initiation. The public submissions are available on [www.regulations.gov](http://www.regulations.gov) in docket number USTR–2020–0022.

Under Section 303 of the Trade Act, the U.S. Trade Representative requested consultations with the Government of India regarding the issues involved in the investigation. Consultations were held on November 5, 2020.

As noted, based on information obtained during the investigation, USTR has prepared and published the India DST Report, which includes a comprehensive discussion on whether the acts, policies, and practices under investigation are actionable under Section 301(b) of the Trade Act. The India DST Report supports findings that India's DST is unreasonable or discriminatory and burdens or restricts U.S. commerce.

## III. Determination on the Act, Policy, or Practice Under Investigation

Based on the information obtained during the investigation, and taking account of public comments and the advice of the Section 301 Committee and advisory committees, the U.S. Trade Representative has made the following determination under sections 301(b) and 304(a) of the Trade Act (19 U.S.C. 2411(b) and 2414(a)): The act, policy, or practice covered in the investigation, namely India's DST, is unreasonable or discriminatory and burdens or restricts U.S. commerce, and is thus actionable

under section 301(b) of the Trade Act. In particular:

1. India's DST, by its structure and operation, discriminates against U.S. digital companies, including due to the selection of covered services and its applicability only to non-resident companies.

2. India's DST is unreasonable because it is inconsistent with principles of international taxation, including due to its application to revenue rather than income, extraterritorial application, and failure to provide tax certainty.

3. India's DST burdens or restricts U.S. commerce.

#### IV. Further Proceedings

Sections 301(b) and 304(a)(1)(B) of the Trade Act provides that if the U.S. Trade Representative determines that an act, policy, or practice of a foreign country is unreasonable or discriminatory and burdens or restricts United States commerce, the U.S. Trade Representative shall determine what action, if any, to take under Section 301(b). These matters will be addressed in subsequent proceedings under Section 301.

Joseph Barloon,

General Counsel, Office of the United States Trade Representative.

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#### OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

[Docket Number USTR-2019-0009]

#### Notice of Modification of Section 301 Action: Investigation of France's Digital Services Tax

**AGENCY:** Office of the United States Trade Representative (USTR).

**ACTION:** Notice.

**SUMMARY:** The U.S. Trade Representative has determined to modify the action being taken in this investigation by suspending, until further notice, the additional duties on products of France scheduled to take effect on January 6, 2021.

**DATES:** The additional duties on products of France are suspended indefinitely, as of the previously scheduled effective date of 12:01 a.m. eastern standard time on January 6, 2021.

**FOR FURTHER INFORMATION CONTACT:** For questions concerning the investigation, please contact Thomas Au or Patrick Childress, Assistant General Counsels at (202) 395-0380 and (202) 385-9531,

respectively, Robert Tanner, Director, Services and Investment at (202) 395-6125, or Michael Rogers, Director for Europe at (202) 395-2684. For specific questions on customs classification or implementation of additional duties on products, contact [traderemedy@cbp.gov](mailto:traderemedy@cbp.gov).

#### SUPPLEMENTARY INFORMATION:

##### I. Background

On July 10, 2019, the U.S. Trade Representative initiated the investigation of France's digital services tax (DST) pursuant to section 302(b)(1)(A) of the Trade Act of 1974, as amended (Trade Act). See 84 FR 34042 (July 16, 2019) (July 16, 2019 notice). The July 16, 2019 notice invited public comment on France's DST, including whether the tax would discriminate against U.S. companies, the retroactive application of the new tax, and whether France's DST diverged from norms reflected in the U.S. and international tax system. Witnesses provided testimony at an August 19, 2019 public hearing and interested persons filed written submissions.

Following a request by the U.S. Trade Representative, consultations were held with the Government of France on November 14, 2019.

On December 2, 2019, USTR published a comprehensive report on France's DST which is available at <https://ustr.gov/issue-areas/enforcement/section-301-investigations/section-301-frances-digital-services-tax>. On December 6, 2019, based on the information obtained during the investigation and the advice of the Section 301 Committee, and as reflected in the December 2, 2019 report on the findings in the investigation, the U.S. Trade Representative published a determination that France'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)). See 84 FR 66956 (December 6, 2019) (December 6, 2019 notice).

The December 6, 2019 notice proposed that appropriate action would include additional *ad valorem* duties of up to 100 percent on products of France to be drawn from a list of 63 tariff subheadings of the Harmonized Tariff Schedule of the United States (HTSUS) included in the annex to that notice. The December 6, 2019 notice requested comments on the proposed action, as well as on other potential actions, including the imposition of fees or restrictions on services of France. Witnesses provided testimony at a January 7-8, 2020 public hearing and interested persons filed written

comments. Transcripts from the August 2019 and January 2020 hearings are available on the USTR website at <https://ustr.gov/issue-areas/enforcement/section-301-investigations/section-301-frances-digital-services-tax>. The written public submissions are available on [www.regulations.gov](http://www.regulations.gov) under docket number USTR-2019-0009.

In a notice published on July 16, 2020, the U.S. Trade Representative determined to impose *ad valorem* duties of 25 percent on specified products of France. See 85 FR 43292 (July 16, 2020 notice). The U.S. Trade Representative also determined to suspend the additional duties for up to 180 days (that is, until January 6, 2021) to allow additional time for bilateral and multilateral discussions that could lead to a satisfactory resolution of this matter.

##### II. Determination To Modify Action

Section 307(a)(1) of the Trade Act authorizes the U.S. Trade Representative to modify or terminate any action, subject to the specific direction, if any, of the President with respect to such action, that is being taken under Section 301, if, *inter alia*, the action being taken is no longer appropriate. Pursuant to sections 301(b)-(c) and 307(a) of the Trade Act (19 U.S.C. 2417(a)), the U.S. Trade Representative has determined that the imposition of duties on the current effective date of January 6, 2021 no longer is appropriate.

Subsequent to the initiation of this investigation, the U.S. Trade Representative initiated Section 301 investigations of DSTs adopted or under consideration by Austria, Brazil, the Czech Republic, the European Union, India, Indonesia, Italy, Spain, Turkey, and the United Kingdom. See 85 FR 34709 (June 5, 2020). These investigations involve similar DST measures, either in effect or under consideration, in ten additional jurisdictions. Given that these DST investigations are ongoing and have not yet reached any determinations on what, if any, trade action should be taken, the U.S. Trade Representative has determined that it is appropriate to suspend the action in the France DST investigation indefinitely.

In making this determination, the U.S. Trade Representative considered the public comments submitted in the investigation, as well as advice of advisory committees.

To give effect to the U.S. Trade Representative's determination, the additional duties set out in Annex A of the July 16, 2020 notice are suspended indefinitely, as of the scheduled