

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

effective date of 12:01 a.m. eastern standard time on January 6, 2021. The U.S. Trade Representative will continue to monitor the developments in the France DST investigation and the additional DST investigations in considering the trade action in this investigation. If a further modification to the action is appropriate, the U.S. Trade Representative will consider the comments and testimony previously provided.

**Joseph Barloon,**

*General Counsel, Office of the United States Trade Representative.*

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## OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

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

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

**ACTION:** Notice.

**SUMMARY:** The U.S. Trade Representative has determined that Turkey'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 Michael Rogers, Director, Europe and the Middle East at (202) 395-2684.

#### SUPPLEMENTARY INFORMATION:

#### I. Turkey's DST

Based on information obtained during the investigation, USTR has prepared a comprehensive report on Turkey's DST (Turkey DST Report). The Turkey 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 Turkey's DST. To summarize, Turkey adopted the operative form of its DST on December 7, 2019. The DST applies to companies that, during the previous calendar year, generated €750 million or more in worldwide revenues and TRY 20 million or more in revenues deriving from the provision of digital services in Turkey. The tax applies as of March 1, 2020.

#### II. Proceedings in the Investigation

On June 2, 2020, the U.S. Trade Representative initiated an investigation of Turkey'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 Turkey'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 Turkey regarding the issues involved in the investigation. Consultations were held on September 29, 2020.

As noted, based on information obtained during the investigation, USTR has prepared and published the Turkey 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 Turkey DST Report supports findings that Turkey'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 Turkey'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. Turkey'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. Turkey'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. Turkey'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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## DEPARTMENT OF TRANSPORTATION

### Federal Highway Administration

#### Notice of Final Federal Agency Actions on Proposed Highway in California

**AGENCY:** Federal Highway Administration (FHWA), Department of Transportation (DOT).

**ACTION:** Notice of limitation on claims for judicial review of actions by the California Department of Transportation (Caltrans).

**SUMMARY:** The FHWA, on behalf of Caltrans, is issuing this notice to announce actions taken by Caltrans that are final. The actions relate to a proposed highway project, the Santa Maria River Bridge Replacement Project on State Route 1 at postmile 0.0, in San Luis Obispo County, and north of the City of Guadalupe, in Santa Barbara County, State of California. Those actions grant licenses, permits, and approvals for the project.

**DATES:** By this notice, the FHWA, on behalf of Caltrans, is advising the public of final agency actions subject to 23 U.S.C. 139(l)(1). A claim seeking judicial review of the Federal agency actions on the highway project will be barred unless the claim is filed on or before June 11, 2021. If the Federal law that authorizes judicial review of a claim provides a time period of less than 150 days for filing such claim, then that shorter time period still applies.

**FOR FURTHER INFORMATION CONTACT:** For Caltrans: Matt Fowler, Branch Chief,