



FedEx Regulatory Alerts & Updates

Regulatory Alert: USTR 301 Investigation into Digital Service Taxes

April 22, 2021

BACKGROUND

On June 2, 2020, the Office of the United States Trade Representative (USTR) initiated an investigation into Digital Service Taxes (DST) imposed by certain countries or regions on certain U.S. companies. In January 2021, the USTR found that the DST adopted by Austria, India, Italy, Spain, Turkey, and the United Kingdom were subject to action under Section 301 because those countries discriminated against U.S. digital companies, were inconsistent with principles of international taxation, and burdened U.S. companies.

WHAT IS THE CURRENT STATUS OF THE INVESTIGATION?

On March 26, 2021, the recently confirmed USTR Katherine Tai announced the next steps in its Section 301 investigations of DST adopted or under consideration by ten U.S. trading partners.

The USTR is proceeding with the public notice and comment process on possible trade actions to preserve procedural options before the conclusion of the statutory one-year time period for completing the investigations. The USTR had posted copies of the Federal Register requests for comments and notices of virtual public hearings, which were published in the Federal Register on March 31, 2021 (all USTR Notices are listed below in REFERENCES section).

The merchandise subject to the proposed Section 301 duties differs between each country of export. The proposed duties cover imported goods such as clothing articles, furniture, jewelry, shoes, and high-tech merchandise. The USTR specifically found:

- 40 Austrian tariff lines, including optical equipment, grand pianos, and glassware, worth about \$45 million
- 40 Indian tariff lines, including jewelry, furniture, basmati rice and wooden caskets, worth about \$55 million
- More than 50 Italian tariff lines, including clothing, shoes, and handbags, worth about \$140 million

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- More than 30 Turkish tariff lines, including ceramic tiles, ceramic tubs and sink basins, carpets, and jewelry, worth about \$160 million
- More than 50 British tariff lines, including clothing, toiletries, furniture, saddles and toys and games, worth about \$325 million
- More than 30 Spanish tariff lines, including seafood, footwear, glassware, and hats and headgear worth about \$155 million per year.

The goal is to come to some agreement with each country on how to tax digital services companies in a non-discriminatory manner. In each notice below, USTR requests comments with respect to any issue related to the action to be taken in each investigation. If a satisfactory agreement cannot be made with the various countries, USTR has proposed an additional ad valorem duty rate of 25% on certain tariff lines that would collect duties on goods from the subject countries in the range of the amount of the DST each country is expected to collect from U.S. companies.

Comments are accepted from interested parties until April 30, 2021. There will be a series of hearings by the USTR in May 2021.

Q & A

Q 1 – What are Digital Service Taxes (DST)?

A 1 – As per the first section of “Supplementary Information” in the June 5, 2020 USTR Notice, DST are taxes adopted “...on revenues that certain companies generate from providing certain digital services to, or aimed at users” in the specific countries.

Q 2 - How soon could the USTR implement any potential Section 301 tariffs?

A 2 - Normally, USTR investigations for enforcement purposes take up to a full year or longer. This investigation began on June 2, 2020. We cannot project when any 301 tariff actions could be imposed if deemed necessary by the USTR.

Q 3 – If the 301 tariffs are applied to various countries, would they only be applied on the specific goods manufactured in each individual country?

A 3 - The tariffs are indeed based on the country of origin of the affected products. However, the tariffs apply regardless of the country of export. For example, shoes manufactured in Italy and classified under a subject HTS number but exported from Japan, UK, Canada, Brazil, or any other country will still be assessed the Section 301 duty.

Q 4 – The USTR originally considered ten trading partners in this action; what became of the remaining four countries not included in the proposed tariff actions?

A 4 - The USTR said it was terminating the Section 301 investigations of DSTs under consideration by Brazil, the Czech Republic, the European Union, and Indonesia. These four countries/regions either have not adopted or not implemented a DST during the period of investigation.

REFERENCES

Initial USTR Notice June 5, 2020:

https://ustr.gov/sites/default/files/enforcement/301Investigations/DST_Initiation_Notice_June_2020.pdf

USTR-2021-002 (Austria):

https://ustr.gov/sites/default/files/enforcement/301Investigations/Proposed_Action_Austria_FRN_March.pdf

USTR-2021-003 (India):

https://ustr.gov/sites/default/files/enforcement/301Investigations/Proposed_Action_India_FRN_March.pdf

USTR-2021-004 (Italy):

https://ustr.gov/sites/default/files/enforcement/301Investigations/Proposed_Action_Italy_FRN_March.pdf

USTR-2021-005 (Spain):

https://ustr.gov/sites/default/files/enforcement/301Investigations/Proposed_Action_Spain_FRN_March.pdf

USTR-2021-006 (Turkey):

https://ustr.gov/sites/default/files/enforcement/301Investigations/Proposed_Action_Turkey_FRN_March.pdf

USTR-2021-007 (UK):

https://ustr.gov/sites/default/files/enforcement/301Investigations/Proposed_Action_UK_FRN_March.pdf

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