



Regulatory Alerts & Updates

Regulatory Alert: USTR Section 301 Investigation into Digital Services Taxes

June 9, 2021

BACKGROUND

On June 2, 2020, the Office of the United States Trade Representative (USTR) initiated an investigation into Digital Services Taxes (DST) imposed by certain countries or regions upon particular U.S. companies.

In January 2021, the USTR determined that the DST adopted or under consideration by Austria, India, Italy, Spain, Turkey, and the United Kingdom were subject to action under Section 301 because those actions discriminated against U.S. digital companies, were inconsistent with principles of international taxation, and burdened U.S. companies.

In March 2021, USTR announced proposed trade actions in these six investigations and undertook a public notice and comment process.

WHAT HAS CHANGED?

On June 2, 2021, the USTR announced the conclusion of the year-long Section 301 investigations of DST adopted by Austria, India, Italy, Spain, Turkey, and the United Kingdom. The USTR's final determination in those investigations was to impose additional tariffs of 25% on certain goods from these countries, while simultaneously suspending these new tariffs for up to 180 days to provide additional time to complete the ongoing multilateral negotiations on international taxation.

The list of products that would be impacted by the 25% tariff can be found in Annex A of the Federal Register notice for each country (links found in the REFERENCES section below).

Q & A

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

A 1 – As noted in the USTR’s notice announcing the initiation of the Section 301 investigations, 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 – The USTR has made it clear that the intent is to negotiate with each of these countries in order to avoid the implementation of any tariffs. However, the tariff suspension is in place for 180 days (until November 29, 2021), and after that date, it is possible that these tariffs could be levied upon the specified products.

Q 3 – Are any shipments from one of the six investigated countries affected by the tariffs?

A 3 - The tariffs are levied based upon the country of origin of the specific products listed in the notice. Further, the tariffs apply regardless of the country of export. For example, shoes manufactured in Italy and classified under a subject HTSUS 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

USTR Notice of Initiation of Section 301 DST Investigations:

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

USTR Announcement and Suspension of Section 301 DSTs:

<https://ustr.gov/about-us/policy-offices/press-office/press-releases/2021/june/ustr-announces-and-immediately-suspends-tariffs-section-301-digital-services-taxes-investigations>

USTR-2021-0002 (Austria):

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

USTR-2021-0003 (India):

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

USTR-2021-0004 (Italy):

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

USTR-2021-0005 (Spain):

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

USTR-2021-0006 (Turkey):

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

USTR-2021-0007 (UK):

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

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https://www.fedex.com/content/dam/fedex/us-united-states/International/images/2021/RegAlert_21-060_USTR_301_Investigation_into_Digital_Service_Taxes.pdf

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