

ALERT

USTR: Section 301 Tariffs Expected in Response to Digital Services Taxes Imposed by Six Countries

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In June 2021, the Office of the United States Trade Representative (USTR) will likely announce its decision on tariffs authorized by Section 301 of the Trade Act of 1974, as amended, on certain imports from Austria, India, Italy, Spain, Turkey, and the United Kingdom in response to the digital service taxes (DSTs) imposed by these countries on U.S. businesses. USTR's investigations into these DSTs were launched in June 2020 by the Trump Administration under Sections 301 and 302 of the Act to determine the extent to which the DSTs discriminate against U.S. companies and are unreasonable as tax policies. In January 2021, USTR affirmatively determined under Sections 301 and 304 of the Act that these countries' DSTs are unreasonable or discriminatory and burden or restrict U.S. commerce, and are thus actionable.

At a May 13, 2021 hearing before the House Ways and Means Committee, Ambassador Katherine Tai confirmed that USTR intends to issue a list of products imported into the United States from these countries that may be subject to Section 301 tariffs "by the beginning of June," consistent with the statutory deadline. USTR has proposed imposing *ad valorem* tariffs of 25% on specific imports from each of these six countries.

USTR's actions follow the 25% *ad valorem* tariff that the United States proposed imposing on certain imports from France following a December 6, 2019 affirmative finding that France's DSTs were similarly unreasonable or discriminatory and burdened or restricted U.S. Commerce. Those tariffs were temporarily suspended until January 6, 2021 to allow additional time for bilateral and multilateral

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discussions (with France and other trading partners) that could lead to a satisfactory resolution of proposed DSTs across Europe. Subsequently, on January 12, 2021, USTR suspended “indefinitely” the proposed tariff measures on France pending the outcome of “similar” DST investigations by the United States against Australia, Brazil, the Czech Republic, the European Union, India, Indonesia, Italy, Spain, Turkey, and the United Kingdom.

On March 31, 2021, USTR terminated the DST investigations with respect to Brazil, the Czech Republic, the European Union, and Indonesia because these jurisdictions had either not adopted or not implemented any DSTs during the period of investigation. Accordingly, tariffs on these countries will not be imposed at this time. USTR has not yet made a final decision about the imposition of tariffs on imports from France.

With respect to Austria, India, Italy, Spain, Turkey, and the United Kingdom, the tariffs proposed by USTR on imports from these countries are intended to approximate the amount of the DSTs that these countries are expected to collect from U.S. companies. USTR estimates that these countries’ DSTs would cost U.S. companies millions of dollars:

- **Austria:** USTR estimates that the value of the DST payable by U.S.-based company groups to Austria will be up to approximately \$45 million per year. Austria adopted a DST that imposes a 5% tax on gross revenues generated from digital advertising services provided in the country. The DST applies to companies with annual global revenues of €750 million or more, and annual revenues from digital advertising services in Austria of €25 million or more.
- **India:** USTR estimates that the value of the DST payable by U.S.-based company groups to India will be up to approximately \$55 million per year. India adopted a DST that imposes a 2% tax on revenue generated from digital services provided in India by “non-resident companies”, 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.
- **Italy:** USTR estimates that the value of the DST payable by U.S.-based company groups to Italy will be up to approximately \$140 million per year. Italy adopted a DST that applies to companies that, during the previous calendar year, generated €750 million or more in worldwide revenues and €5.5 million or more in revenues deriving from the provision of digital services in Italy.
- **Spain:** USTR estimates that the value of the DST payable by U.S.-based company groups to Spain will be up to approximately \$155 million per year. Spain adopted a DST that applies a 3% tax on certain digital services revenues related to online advertising services, online intermediary services, and data transmission services. Companies with worldwide revenues of €750 million or more and €3 million in certain digital services revenues are subject to the DST.
- **Turkey:** USTR estimates that the value of the DST payable by U.S.-based company groups to Turkey will be up to approximately \$160 million per year. Turkey adopted a DST that 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.

- **United Kingdom:** USTR estimates that the United Kingdom's DST would cost U.S.-based companies approximately \$325 million per year. The United Kingdom adopted a DST that applies a 2% tax on the revenues of certain search engines, social media platforms, and online marketplaces. The United Kingdom's DST applies to companies with digital services revenues exceeding £500 million and United Kingdom digital services revenues exceeding £25 million.

During May 2021, USTR has held a series of hearings to discuss the scope of imported products that may be subject to the proposed 25% *ad valorem* tariffs from the foregoing six countries. Interested parties were also afforded the opportunity to submit written comments to USTR. USTR is authorized to suspend the imposition of tariffs on goods imported from these six countries in order to continue negotiations on an international, non-discriminatory DST framework through the Organization for Economic Cooperation and Development.

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Should you have questions on digital service taxes, Section 301 investigations, or digital trade generally, please contact one of the authors listed on the alert.