

[Billing Code 3290-F1]

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.

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 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.