

[Billing Code 3290-F1]

OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

Docket Number USTR–2021–0002

Proposed Action in Section 301 Investigation of Austria’s Digital Services Tax

AGENCY: Office of the United States Trade Representative.

ACTION: Request for comments and notice of public hearing.

SUMMARY: The Office of the United States Trade Representative (USTR) requests written comments regarding a potential trade action in connection with the Section 301 investigation of Austria’s Digital Services Tax (DST). USTR also will convene virtual public hearings and accept rebuttal comments in relation to the potential action.

DATES:

April 21, 2021: To be assured of consideration, submit requests to appear at a hearing, along with a summary of the testimony, by this date.

April 30, 2021: To be assured of consideration, submit written comments by this date.

May 3, 2021: Multi-jurisdictional virtual hearing on proposed actions.

May 10, 2021: To be assured of consideration, submit multi-jurisdictional hearing rebuttal comments by this date.

May 11, 2021 at 9:30 am: Virtual hearing on Austria DST proposed action.

May 18, 2021: To be assured of consideration, submit Austria DST hearing rebuttal comments by this date.

ADDRESSES: Submit documents in response to this notice, including written comments and hearing appearance requests, through the online USTR portal:

<https://comments.ustr.gov/s/>.

FOR FURTHER INFORMATION CONTACT: For questions concerning the investigation, please contact Ben Allen or Patrick Childress, Assistant General Counsels at (202) 395-9439 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. For issues with on-line submissions, please contact the USTR Section 301 line at (202) 395-5725.

SUPPLEMENTARY INFORMATION:

I. Proceedings in the Investigation

Austria has adopted a DST that imposes a 5% tax on gross revenues from digital advertising services provided in Austria. The DST applies only 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.

On June 2, 2020, the U.S. Trade Representative initiated an investigation of Austria's DST pursuant to section 302(b)(1)(A) of the Trade Act of 1974, as amended (Trade Act). *See* 85 FR 34709 (June 5, 2020) (notice of initiation). The notice of initiation solicited written comments on, *inter alia*, the following aspects of Austria's DST: discrimination against U.S. companies; retroactivity; and possibly unreasonable tax policy. With respect to tax policy, USTR solicited comments on, *inter alia*, whether the DST diverged from principles reflected in the U.S. and international tax systems including extraterritoriality; taxing revenue not income; and a purpose of penalizing particular technology companies for their commercial success. Interested persons filed over 380 written submissions in response. The public submissions are available on 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 Austria regarding the issues involved in the investigation. Consultations were held on December 21, 2020.

Based on information obtained during the investigation, USTR prepared a comprehensive report on Austria's DST (Austria DST Report). The Austria DST Report is posted on the USTR website at <https://ustr.gov/issue-areas/enforcement/section-301-investigations/section-301-digital-services-taxes>. The report includes a full description of Austria's DST, and supports findings that Austria's DST is unreasonable and discriminatory and burdens or restricts U.S. commerce.

On January 14, 2021, based on the information obtained during the investigation and the advice of the Section 301 Committee, the U.S. Trade Representative determined that Austria'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* 86 FR 6406 (January 21, 2021).

II. Proposed Action

Section 301(b) provides that upon determining that the acts, policies, and practices under investigation are actionable and that action is appropriate, the U.S. Trade Representative shall take all appropriate and feasible action authorized under section 301(c), subject to the specific direction, if any, of the President regarding such action, and all other appropriate and feasible action within the power of the President that the President may direct the U.S. Trade Representative to take under section 301(b), to obtain the elimination of that act, policy, or practice.

Section 301(c)(1)(B) of the Trade Act authorizes the U.S. Trade Representative to impose duties on the goods of the foreign country subject to the investigation. Pursuant to sections 301(b) and (c), USTR proposes that the U.S. Trade Representative should determine that action is appropriate and that appropriate action would include the imposition of additional *ad valorem* tariffs on certain products of Austria.

In particular, USTR proposes to impose additional tariffs of up to 25 percent *ad valorem* on an aggregate level of trade that would collect duties on goods of Austria in the range of the amount of the DST that Austria is expected to collect from U.S. companies. Initial estimates indicate that the value of the DST payable by U.S.-based company groups to Austria will be up to approximately \$45 million per year.

USTR further proposes that the goods of Austria subject to additional tariffs would be drawn from the preliminary list of products in the Annex to this notice, as specified by the listed eight-digit tariff subheadings.

III. Request for Public Comments

In accordance with section 304(b) of the Trade Act (19 U.S.C. 2414(b)), USTR invites comments from interested persons with respect to whether action is appropriate, and if so, the appropriate action to be taken.

USTR requests comments with respect to any issue related to the action to be taken in this investigation. With respect to the proposed tariff action outline above, USTR specifically invites comments regarding:

- The level of the burden or restriction on U.S. commerce resulting from Austria's DST, including the amount of DST payments owed by U.S. companies, the annual growth rate of such payments, and other effects, such as compliance costs.

- The appropriate aggregate level of trade to be covered by additional duties.
- The level of the increase, if any, in the rate of duty.
- The specific products to be subject to increased duties, including whether the tariff subheadings listed in the Annex should be retained or removed, or whether tariff subheadings not currently on the list should be added.

In commenting on the inclusion or removal of particular products on the preliminary list of products subject to the proposed additional duties, USTR requests that commenters specifically address whether imposing increased duties on a particular product would be practicable or effective to obtain the elimination of Austria's acts, policies, and practices, and whether imposing additional duties on a particular product would cause disproportionate economic harm to U.S. interests, including small- or medium-size businesses and consumers.

Simultaneously with this notice, USTR also is requesting public comments on proposed trade actions in five other DST investigations initiated at the same time as the Austria DST investigation. Certain interested persons may wish to provide written comments or oral testimony on multi-jurisdictional issues common to two or more investigations. To avoid duplication, the USTR portal will have a separate docket for multi-jurisdictional submissions, and USTR will hold a separate multi-jurisdictional hearing.

To be assured of consideration, you must submit written comments on the proposed action by April 30, 2021, and post-hearing rebuttal comments by May 10, 2021 for the multi-jurisdictional hearing, and by May 18, 2021 for the Austria DST hearing.

IV. Hearing Participation

The Section 301 Committee will convene a virtual public hearing for comments pertaining to the Austria DST proposed action on May 11, 2021, beginning at 9:30 am. Those requesting to appear at this hearing should have comments applicable only to the Austria DST proposed action.

The Section 301 Committee will convene a virtual public hearing for comments pertaining to multiple jurisdictions on May 3, 2021, beginning at 9:30 am. Those requesting to appear at the multi-jurisdictional hearing should have comments that are applicable to two or more DST investigations.

For either hearing, you must submit a request to appear at the specific hearing using the electronic portal at <https://comments.ustr.gov/s/>. You will be able to view a docket entitled ‘Request to Appear at Hearing on Proposed Action in Section 301 Investigation of Austria’s Digital Services Tax.’ Requests to appear must include a summary of testimony, and may be accompanied by a pre-hearing submission. Remarks at the hearing are limited to five minutes to allow for possible questions from the Section 301 Committee. All submissions must be in English. To be assured of consideration, USTR must receive your request to appear by April 21, 2021.

V. Procedures for Written Submissions

You must submit written comments, rebuttal comments, and requests to appear at the hearing using the electronic portal at <https://comments.ustr.gov/s/>. You will be able to view a docket entitled ‘Comments Concerning Proposed Action in Section 301 Investigation of Austria’s Digital Services Tax’ on the portal, docket number USTR-2021-0002.

You do not need to establish an account to submit comments. Fields with a gray (BCI) notation are for Business Confidential Information and the information entered will not be publicly available. Required fields are marked 'Required' and will have a red asterisk (*). Fields with a green (Public) notation will be viewable by the public.

The first screen of the portal requires you to enter identification and contact information. Third party organizations such as law firms, trade associations, or customs brokers, should identify the full legal name of the organization they represent, and identify the primary point of contact for the submission. The remaining fields of the form are optional.

After entering the identification and contact information, you can complete the remainder of the questionnaire, or any portion of it by clicking 'Next.' You can comment on multiple products in a single entry, or submit multiple comments. You will be able to navigate through each screen of the form by clicking 'Next,' with or without entering a response to each field on an individual screen or page. Additionally, you will be able to upload documents at the end of the form and designate whether USTR should treat the documents as business confidential or public information.

For uploads containing BCI, the file name of the business confidential version should begin with the characters 'BCI'. Any page containing BCI must be clearly marked 'BUSINESS CONFIDENTIAL' on the top of that page and the submission should clearly indicate, via brackets, highlighting, or other means, the specific information that is BCI. If you request business confidential treatment, you must certify in writing that disclosure of the information would endanger trade secrets or profitability, and that the information would not customarily be released to the public. Parties uploading attachments containing

BCI also must submit a public version of their comments. The file name of the public version, which must be uploaded on <https://comments.ustr.gov/s/>, should begin with the character 'P'. The 'BCI' and 'P' should be followed by the name of the person or entity submitting the comments or rebuttal comments. If these procedures are not sufficient to protect BCI or otherwise protect business interests, please contact the USTR Section Hotline 301 line at (202) 395-5725 to discuss whether alternative arrangements are possible. USTR will post attachments uploaded to the docket for public inspection, except for attachments marked as business confidential.

You can view all public submissions on the USTR portal at <https://comments.ustr.gov/s/>.

Greta Peisch
General Counsel
Office of the United States Trade Representative.

Annex

Note: All products that are classified in the eight-digit subheadings of the Harmonized Tariff Schedule of the United States (HTSUS) that are listed in this Annex are covered by the proposed action. The product descriptions that are contained in this Annex are provided for informational purposes only, and are not intended to delimit in any way the scope of the proposed action. Any questions regarding the scope of a particular HTSUS subheading should be referred to U.S. Customs and Border Protection. In the product descriptions, the abbreviation "nesoi" means "not elsewhere specified or included".

HTSUS Subheading	Product Description
4107.99.70	Bovine (not buffalo) and equine leather, not whole, nesoi, without hair on, not fancy, prepared after tanning or crusting, not heading 4114
4203.40.60	Clothing accessories of leather or of composition leather, nesoi
4205.00.80	Articles of leather or of composition leather, nesoi, excluding reptile leather
5209.12.00	Unbleached 3- or 4-thread twill fabrics of cotton, including cross twill, 85 percent or more cotton by weight, weighing more than 200 g/m ²
5402.49.91	Other yarns, monofil; multifil, untwisted or twisted > or = to 5, not exceeding 50 turns per meter of other synthetic, not for retail sale
5404.19.10	Racket strings of synthetic monofilament of 67 decitex or more and of which no cross-sectional dimension exceeds 1 mm
5404.19.80	Synthetic monofilament (exc. polypropylene), of 67 decitex or more and with no cross-sectional dimension > 1 mm, nesoi
5603.94.10	Nonwoven floor covering underlays (not of man-made filaments), weighing >150 g/square m, whether or not impreg, coated, cov or laminated
5603.94.90	Nonwovens nesoi (not of man-made filaments), weighing >150 g/square m, whether or not impregnated, coated, covered but not laminated
6903.20.00	Refractory ceramic goods (o/than of siliceous fossil meals or earths), nesoi, cont. by wt. o/50% alumina or mix. or comp. of Al ₂ O ₃ & SiO ₃
7013.22.50	Stemware drinking glasses of lead crystal, valued over \$5 each
7013.28.20	Stemware, o/than of pressed and toughened glass, o/than lead crystal, valued o/\$0.30 but n/over \$3 each
7013.28.50	Stemware, o/than of pressed and toughened glass, o/than lead crystal, not cut or engraved, valued o/\$3 but n/over \$5 each
7013.28.60	Stemware, o/than of pressed and toughened glass, o/than lead crystal, not cut or engraved, valued over \$5 each
7013.37.20	Drinking glasses, nesoi, o/than of pressed and toughened glass, o/than lead crystal, valued o/\$0.30 but n/over \$3 each
7013.37.60	Drinking glasses, nesoi, o/than of pressed and toughened glass, o/than lead crystal, not cut or engraved, valued over \$5 each

HTSUS Subheading	Product Description
7013.41.50	Glassware for table or kitchen purposes (o/than drinking glasses), of lead crystal, valued over \$5 each
7013.49.60	Glassware for table or kitchen purposes (o/than drinking glasses), nesoi, n/cut or engraved, valued over \$5 each
7013.91.50	Glassware for toilet/office/indoor decor. & similar purposes, of lead crystal, valued over \$5 each
7019.90.10	Woven glass fiber articles (other than fabrics), nesoi
7019.90.50	Glass fibers (including glass wool), nesoi, and articles thereof, nesoi
7105.90.00	Natural or synthetic precious (except diamond) or semiprecious stone dust and powder
7403.29.01	Copper alloys (o/than copper-zinc, copper-tin alloys), unwrought nesoi
8305.20.00	Base metal staples in strips (e.g., for offices, upholstery, packaging)
8418.10.00	Combined refrigerator-freezers, fitted with separate external doors, electric or other
8504.90.65	Printed circuit assemblies of the goods of subheading 8504.40 or 8504.50 for telecommunication apparatus
8504.90.75	Printed circuit assemblies of electrical transformers, static converters and inductors, nesoi
8515.80.00	Electric welding apparatus nesoi, and electric machines and apparatus for hot spraying metals or sintered metal carbides
8526.10.00	Radar apparatus
9003.11.00	Frames and mountings, of plastics, for spectacles, goggles or the like
9005.10.00	Binoculars
9005.80.40	Optical telescopes, including monoculars
9005.80.60	Monoculars and astronomical instruments other than binoculars and optical telescopes but not including instruments for radio-astronomy
9010.60.00	Projection screens
9012.10.00	Microscopes other than optical microscopes; diffraction apparatus
9015.40.80	Photogrammetrical surveying instruments and appliances, other than electrical
9015.80.20	Optical surveying, hydrographic, oceanographic, hydrological, meteorological or geophysical instruments and appliances, nesoi
9027.50.80	Nonelectrical instruments and apparatus using optical radiations (ultraviolet, visible, infrared), nesoi
9030.40.00	Instruments and apparatus specially designed for telecommunications
9201.20.00	Grand pianos