

[Billing Code 3290-F1]

OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

Docket Number USTR–2021–0003

Proposed Action in Section 301 Investigation of India’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 India’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 10, 2021 at 9:30 am: Virtual hearing on India DST proposed action.

May 17, 2021: To be assured of consideration, submit India 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 Brendan Lynch, Deputy Assistant U.S. Trade Representative for South and Central Asian Affairs at (202) 395-2851. For issues with on-line submissions, please contact the USTR Section 301 line at (202) 395-5725.

SUPPLEMENTARY INFORMATION:

I. Proceedings in the Investigation

India has adopted a DST that imposes a two percent tax on revenue generated from a broad range of digital services offered in India, 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. India's DST only applies to "non-resident" companies.

On June 2, 2020, the U.S. Trade Representative initiated an investigation of India'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 India'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 India regarding the issues involved in the investigation. Consultations were held on November 5, 2020.

Based on information obtained during the investigation, USTR prepared a comprehensive report on India’s DST (India DST Report). The India 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 India’s DST, and supports findings that India’s DST is unreasonable and discriminatory and burdens or restricts U.S commerce.

On January 6, 2021, based on the information obtained during the investigation and the advice of the Section 301 Committee, the U.S. Trade Representative determined that India’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 2478 (January 12, 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 India.

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 India in the range of the amount of DST that India 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 India will be up to approximately \$55 million per year.

USTR further proposes that the goods of India 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 outlined above, USTR specifically invites comments regarding:

- The level of the burden or restriction on U.S. commerce resulting from India'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 India'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 India 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 17, 2021 for the India DST hearing.

IV. Hearing Participation

The Section 301 Committee will convene a virtual public hearing for comments pertaining to the India DST proposed action on May 10, 2021, beginning at 9:30 am. Those requesting to appear at this hearing should have comments applicable only to the India 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 India’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 India’s Digital Services Tax’ on the portal, docket number USTR-2021-0003.

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
0306.16.00	Cold-water shrimps and prawns, cooked in shell or uncooked, dried, salted or in brine, frozen
0306.35.00	Cold water shrimps and prawns, shell-on or peeled, live, frozen, or chilled
0306.95.00	Other shrimps and prawns, shell-on or peeled
1006.20.20	Basmati rice, husked
4421.91.40	Blinds, shutters, screens and shades of bamboo, with wooden frames w/o fixed louver boards or slats in the center
4421.91.94	Edge-glued lumber of bamboo
4421.91.97	Other articles, nesoi, of bamboo, incl pencil slats, burial caskets, gates for confining children or pets
4421.99.97	Other articles, nesoi, of wood other than of bamboo, incl pencil slats, burial caskets, gates for confining children or pets,
4503.10.40	Corks and stoppers of natural cork, tapered & of a thickness (or length) greater than the maximum diam., over 19 mm maximum diam., nesoi
4813.10.00	Cigarette paper in the form of booklets or tubes
4813.90.00	Cigarette paper, whether or not cut to size, nesoi
5109.90.90	Yarn of wool nesoi, or fine animal hair nesoi, < 85% of that wool/hair, put up for retail sale, nesoi
6212.10.50	Brassieres containing lace, net or embroidery, containing under 70% by weight of silk or silk waste, whether or not knitted or crocheted
7101.22.30	Cultured pearls, worked, graded and temporarily strung for convenience of transport
7101.22.60	Cultured pearls, worked, not strung, mounted or set
7103.99.50	Precious or semiprecious stones, nesoi, worked, whether or not graded, but n/strung (ex. ungraded temporarily strung), mtd. or set
7104.90.50	Synth. or reconstruct. precious or semiprecious stones, wkd, whether or not graded, but n/strung (ex. ungraded temp. strung), mtd./set, nesoi
7106.10.00	Silver powder

7113.11.20	.....	Silver articles of jewelry and parts thereof, nesoi, valued not over \$18 per dozen pieces or parts
7113.19.21	.....	Gold rope necklaces and neck chains
7113.19.25	.....	Gold mixed link necklaces and neck chains
7113.20.25	.....	Base metal clad w/gold mixed link necklaces and neck chains
7113.20.50	.....	Base metal clad w/precious metal articles of jewelry and parts thereof, nesoi
7114.20.00	.....	Goldsmiths' or silversmiths' wares of base metal clad with precious metal
7116.20.05	.....	Jewelry articles of precious or semiprecious stones, valued not over \$40 per piece
7116.20.15	.....	Jewelry articles of precious or semiprecious stones, valued over \$40 per piece
7116.20.30	.....	Semiprecious stones (except rock crystal), graded and strung temporarily for convenience of transport
7116.20.35	.....	Semiprecious stone (except rock crystal) figurines
7116.20.40	.....	Semiprecious stone (except rock crystal) articles (other than jewelry and figurines)
7116.20.50	.....	Precious stone articles, nesoi
7410.21.30	.....	Refined copper, clad laminates, w/thickness of 0.15 mm or less, backed
7504.00.00	.....	Nickel, powders and flakes
9401.69.20	.....	Seats nesoi, of bent-wood
9401.69.40	.....	Chairs nesoi, w/teak frames, not upholstered
9401.69.60	.....	Chairs nesoi, w/wooden frames (o/than teak), not upholstered
9401.69.80	.....	Seats (o/than chairs) nesoi, w/wooden frames, not upholstered
9403.50.40	.....	Furniture (o/than seats) of bentwood nesoi, of a kind used in the bedroom
9403.50.90	.....	Furniture (o/than seats) of wood (o/than bentwood), of a kind used in the bedroom & not designed for motor vehicle use
9403.83.00	.....	Rattan furniture and parts
9504.30.00	.....	Coin- or token-operated games for arcade, table or parlor (o/than bowling alley equipment) nesoi and parts and accessories thereof