

[Billing Code 3290-F1]

OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

Docket Number USTR–2021–0004

Proposed Action in Section 301 Investigation of Italy’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 Italy’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 5, 2021 at 9:30 am: Virtual hearing on Italy DST proposed action.

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

May 12, 2021: To be assured of consideration, submit Italy 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

Italy has 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.

On June 2, 2020, the U.S. Trade Representative initiated an investigation of Italy'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 Italy'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 Italy regarding the issues involved in the investigation. Consultations were held on November 10, 2020.

Based on information obtained during the investigation, USTR prepared a comprehensive report on Italy's DST (Italy DST Report). The Italy 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 Italy's DST, and supports findings that Italy'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 Italy'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 2477 (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 Italy.

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 Italy in the range of the amount of DST that Italy 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 Italy will be up to approximately \$140 million per year.

USTR further proposes that the goods of Italy 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 Italy'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 Italy'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 Italy 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 12, 2021 for the Italy DST hearing.

IV. Hearing Participation

The Section 301 Committee will convene a virtual public hearing for comments pertaining to the Italy DST proposed action on May 5, 2021, beginning at 9:30 am. Those requesting to appear at this hearing should have comments applicable only to the Italy 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 Italy’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 Italy’s Digital Services Tax’ on the portal, docket number USTR-2021-0004.

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
0305.63.60	Anchovies, in brine or salted but not dried or smoked, other than in immediate containers weighing with their contents 6.8 kg or less each
1604.16.20	Anchovies, whole or in pieces but not minced, in oil, in airtight containers
1604.16.40	Prepared or preserved anchovies, whole or in pieces, not minced, not in oil, in immediate containers with their contents 6.8 kg or less ea.
1604.31.00	Caviar
1604.32.40	Caviar substitutes prepared from fish eggs, nesoi
3303.00.20	Perfumes and toilet waters, other than floral or flower waters, not containing alcohol
3307.90.00	Depilatories and other perfumery, cosmetic or toilet preparations. nesoi
4202.29.10	Handbags w. or w/o shld. strap or w/o handle of mat. (o/t leather, shtng. of plas., tex. mat., vul. fib. or paperbd.), paper cov., of plas.
4202.29.50	Handbags w. or w/o shld. strap or w/o handle of mat. (o/t leather, shtng. of plas., tex. mat., vul. fib. or paperbd.), pap.cov.,of mat. nesoi
4202.29.90	Handbags with or without shoulder straps or without handle, with outer surface of vulcanized fiber or of paperboard, not covered with paper
4202.31.30	Articles of a kind normally carried in the pocket or handbag, with outer surface of reptile leather
4203.29.30	Men's gloves, mittens and mitts of leather or composition leather, nesoi, seamed
4203.29.40	Gloves, mittens and mitts of leather or composition leather, nesoi, not lined, for persons other than men
4203.29.50	Gloves, mittens and mitts of leather or composition leather, nesoi, lined, for persons other than men
6103.10.10	Men's or boys' suits, knitted or crocheted, of wool or fine animal hair
6103.31.00	Men's or boys' suit-type jackets and blazers, knitted or crocheted, of wool or fine animal hair
6103.32.00	Men's or boys' suit-type jackets and blazers, knitted or crocheted, of cotton
6103.33.20	Men's or boys' suit-type jackets and blazers, knitted or crocheted, of synthetic fibers, nesoi

HTSUS Subheading	Product Description
6103.39.80	Men's or boys' suit-type jackets and blazers, of textile mats, (except wool, cotton, or mmf), cont less than 70% by wt of silk, knitted/croc
6104.31.00	Women's or girls' suit-type jackets and blazers, knitted or crocheted, of wool or fine animal hair
6104.32.00	Women's or girls' suit-type jackets and blazers, knitted or crocheted, of cotton
6104.33.20	Women's or girls' suit-type jackets and blazers, knitted or crocheted, of synthetic fibers, nesoi
6110.30.10	Sweaters, pullovers, sweatshirts and similar articles, knitted or crocheted, of man-made fibers, cont. 25% or more by weight of leather
6117.80.20	Ties, bow ties and cravats, containing 70% or more by weight of silk or silk waste, knitted or crocheted
6117.80.87	Ties, bow ties and cravats, containing under 70% by weight of silk or silk waste, knitted or crocheted
6117.80.95	Made up clothing accessories (excl shawl, scarve, and like, tie, cravat, headband, ponytail holder and like), cont < 70% wt of silk, k/c
6203.19.10	Men's or boys' suits, not knitted or crocheted, of cotton
6203.31.90	Men's or boys' suit-type jackets and blazers, of wool or fine animal hair, not knitted or crocheted
6203.32.10	Men's or boys' suit-type jackets and blazers, not knitted or crocheted, of cotton, containing 36 percent or more of flax fibers
6203.32.20	Men's or boys' suit-type jackets and blazers, not knitted or crocheted, of cotton, under 36% by weight of flax
6203.33.10	Men's or boys' suit-type jackets and blazers, not knitted or crocheted, of synthetic fibers, cont. 36% or more of wool or fine animal hair
6203.33.20	Men's or boys' suit-type jackets and blazers, not knitted or crocheted, of synthetic fibers, under 36% by weight of wool
6203.39.10	Men's or boys' suit-type jackets and blazers, of artificial fibers, containing 36% or more by weight of wool or fine animal hair, not k/c
6203.39.20	Men's or boys' suit-type jackets and blazers, not knitted or crocheted, of artificial fibers, under 36% by weight of wool
6203.39.50	Men's or boys' suit-type jackets and blazers, of textile materials (except wool, cotton or mmf), cont 70% or more by weight of silk, not k/c
6203.39.90	Men's or boys' suit-type jackets and blazers, of text materials (except wool, cotton or mmf), containing under 70% by weight of silk, not k/c
6204.31.10	Women's or girls' suit-type jackets & blazers, of wool or fine animal hair, not knitted or crocheted, cont. 30% or more of silk/silk waste
6204.31.20	Women's or girls' suit-type jackets and blazers, of wool or fine animal hair, not knitted or crocheted, under 30% by weight of silk

HTSUS Subheading	Product Description
6204.32.20	Women's or girls' suit-type jackets and blazers, of cotton, not knitted or crocheted, under 36% flax
6204.33.10	Women's or girls' suit-type jackets and blazers, not knitted or crocheted, of synthetic fibers, cont. 30% or more of silk/silk waste
6204.33.40	Women's or girls' suit-type jackets & blazers, not knitted or crocheted, of synthetic fibers, cont. 36% or more of wool or fine animal hair
6204.33.50	Women's or girls' suit-type jackets and blazers, not knitted or crocheted, of synthetic fibers, nesoi
6204.39.20	Women's or girls' suit-type jackets & blazers, not knitted or crocheted, of artificial fibers, cont. 36% or more of wool or fine animal hair
6204.39.30	Women's or girls' suit-type jackets and blazers, not knitted or crocheted, of artificial fibers, under 36% by weight of wool
6204.39.60	Women's or girls' suit-type jackets and blazers, not knitted/crocheted, of textile materials nesoi, cont. 70% + of silk or silk waste
6204.39.80	Women's or girls' suit-type jackets and blazers, not knitted or crocheted, of textile materials nesoi
6211.39.03	Rec perf outerwear, men's or boys' track suits or other garments nesoi, not knitted or crocheted, of wool or fine animal hair
6211.39.30	Men's or boys' track suits or other garments nesoi, not knitted or crocheted, of wool or fine animal hair, o/than rec perf outerwear
6215.10.00	Ties, bow ties and cravats, not knitted or crocheted, of silk or silk waste
6215.20.00	Ties, bow ties and cravats, not knitted or crocheted, of man-made fibers
6215.90.00	Ties, bow ties and cravats, not knitted or crocheted, of textile materials nesoi
6403.59.60	Footwear w/outer soles and uppers of leather, not cov. ankle, n/welt, for men, youths and boys
6403.91.60	Footwear w/outer soles of rubber/plastics/composition leather & uppers of leather, covering the ankle, n/welt, for men, youths and boys
6403.91.90	Footwear w/outer soles of rubber/plastics/comp. leather & uppers of leather, cov. ankle, n/welt, for persons other than men/youths/boys
6404.20.40	Footwear w/outer soles of leather/comp. leath., n/o 50% by wt. rub./plast. or rub./plast./text. & 10%+ by wt. rub./plast., val. o/\$2.50/pr
9001.40.00	Spectacle lenses of glass, unmounted
9001.50.00	Spectacle lenses of materials other than glass, unmounted
9001.90.40	Lenses nesoi, unmounted
9001.90.90	Optical elements nesoi, unmounted