

[Billing Code 3290-F1]

OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

Docket Number USTR–2021–0005

Proposed Action in Section 301 Investigation of Spain’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 Spain’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 6, 2021 at 9:30 a.: Virtual hearing on Spain DST proposed action.

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

May 13, 2021: To be assured of consideration, submit Spain 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

Spain has adopted a DST that applies a three percent 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.

On June 2, 2020, the U.S. Trade Representative initiated an investigation of Spain'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 Spain'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 Spain regarding the issues involved in the investigation. Consultations were held on December 17, 2020.

Based on information obtained during the investigation, USTR prepared a comprehensive report on Spain's DST (Spain DST Report). The Spain 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 Spain's DST, and supports findings that Spain'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 Spain'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 6407 (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 Spain.

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 Spain in the range of the amount of the DST that Spain 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 Spain will be up to approximately \$155 million per year.

USTR further proposes that the goods of Spain 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 Spain'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 address specifically whether imposing increased duties on a particular product would be practicable or effective to obtain the elimination of Spain'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 Spain 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 13, 2021 for the Spain DST hearing.

IV. Hearing Participation

The Section 301 Committee will convene a virtual public hearing for comments pertaining to the Spain DST proposed action on May 6, 2021, beginning at 9:30 am. Those requesting to appear at this hearing should have comments applicable only to the Spain 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 Actions in Section 301 Investigation of Spain’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 Spain’s Digital Services Tax’ on the portal, docket number USTR-2021-0005.

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
0306.17.00	Other shrimps and prawns, cooked in shell or uncooked, dried, salted or in brine, frozen
0307.51.00	Octopus, live, fresh or chilled
0307.52.00	Octopus, frozen
0307.59.01	Octopus, dried, salted or in brine
1605.21.05	Shrimp & prawns not in airtight containers: fish meat and prepared meals
1605.21.10	Shrimp & prawns not in airtight containers: other than fish meat and prepared meals
1605.55.05	Octopus, as containing fish meat or prepared meals
1605.55.60	Octopus, prepared or preserved
4202.21.90	Handbags, with or without shoulder strap or without handle, with outer surface of leather, composition or patent leather, nesoi, over \$20 ea.
4202.22.15	Handbags, with or without shoulder straps or without handle, with outer surface of sheeting of plastics
4203.30.00	Belts and bandoliers with or without buckles, of leather or of composition leather
6402.99.31	Footwear w/outer soles & uppers of rubber or plastics, nesoi, n/cov. ankle, w/ext. surf. of uppers o/90% rubber or plastics, nesoi
6403.51.30	Footwear w/outer soles and uppers of leather, nesoi, covering the ankle, welt
6403.51.60	Footwear w/outer soles and uppers of leather, nesoi, covering the ankle, n/welt, for men, youths and boys
6403.51.90	Footwear w/outer soles and uppers of leather, nesoi, covering the ankle, n/welt, for persons other than men, youths and boys
6403.59.15	Turn or turned footwear w/outer soles and uppers of leather, not covering the ankle
6403.59.30	Footwear w/outer soles and uppers of leather, not covering the ankle, welt, nesoi
6403.59.60	Footwear w/outer soles and uppers of leather, not cov. ankle, n/welt, for men, youths and boys

HTSUS Subheading	Product Description
6403.59.90	Footwear w/outer soles and uppers of leather, not cov. ankle, n/welt, for persons other than 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
6403.99.60	Footwear w/outer soles of rubber/plastics/comp. leather & uppers of leather, n/cov. ankle, n/welt, for men, youths and boys, nesoi
6403.99.90	Footwear w/outer soles of rubber/plastics/comp. leather & uppers of leather, n/cov. ankle, for women/child./infants, val. over \$2.50/pair
6404.19.39	Footwear w/outr sole rub/plast & upp. textile, nesoi, w/open toes/heels or slip-on, >10% by wt. rub./plast not subj note 5 ch 64
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
6404.20.60	Footwear w/outer soles of leather/comp. leather & uppers of textile, nesoi
6405.90.90	Footwear, nesoi, w/outer soles and uppers o/than leather or comp. leather, not disposable
6504.00.60	Hats and headgear, plaited or assembled from strips of veg. fibers or unspun fibrous veg. materials and/or paper yarn, not sewed
6505.00.04	Hats and headgear of fur felt made from hat forms and hat bodies of 6501
6505.00.08	Hats and headgear made from hat forms and hat bodies of 6501, except of fur felt
6505.00.15	Hats and headgear, of cotton and/or flax, knitted
6505.00.30	Hats and headgear, of wool, knitted or crocheted or made up from knitted or crocheted fabric
6505.00.60	Hats and headgear, of man-made fibers, knitted or crocheted or made up from knitted or crocheted fabrics, not in part of braid
7013.99.50	Glassware for toilet/office/indoor decor. or similar purposes, nesoi, valued over \$0.30 but n/over \$3 each
7013.99.80	Glassware for toilet/office/indoor decor. or similar purposes, nesoi, n/cut or engraved, valued over \$3 but n/over \$5 each
7013.99.90	Glassware for toilet/office/indoor decor. or similar purposes, nesoi, n/cut or engraved, valued over \$5 each