

[Billing Code 3290-F0]

**OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE**

**Notice of Determination Pursuant to Section 301: India's Digital Services Tax**

**AGENCY:** Office of the United States Trade Representative (USTR).

**ACTION:** Notice.

**SUMMARY:** The U.S. Trade Representative has determined that India's Digital Services Tax (DST) is unreasonable or discriminatory and burdens or restricts U.S. commerce and thus is actionable under Section 301.

**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) 395-9531, respectively, Robert Tanner, Director, Services and Investment at (202) 395-6125, or Brendan Lynch, Deputy Assistant U.S. Trade Representative, South and Central Asian Affairs, 202-395-2851.

**SUPPLEMENTARY INFORMATION:**

**I. India's DST**

Based on information obtained during the investigation, USTR has prepared a comprehensive report on India's DST (India DST Report). The India DST Report, which is posted on the USTR website at <https://ustr.gov/issue-areas/enforcement/section-301-investigations/section-301-digital-services-taxes>, includes a full description of India's DST. To summarize, India adopted the operative form of its DST on March 27, 2020. India's DST 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. The tax applies as of April 1, 2020.

## **II. Proceedings in the Investigation**

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). 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 and unreasonableness as tax policy. With respect to unreasonable tax policy, USTR solicited comments on, *inter alia*, whether the DST diverges from principles reflected in the U.S. and international tax systems, including extraterritorial application and taxing revenue rather than income.

Interested persons filed over 380 written submissions in response to the notice of initiation. The public submissions are available on [www.regulations.gov](http://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.

As noted, based on information obtained during the investigation, USTR has prepared and published the India DST Report, which includes a comprehensive discussion on whether the acts, policies, and practices under investigation are actionable under Section 301(b) of the Trade Act. The India DST Report supports findings that India's DST is unreasonable or discriminatory and burdens or restricts U.S. commerce.

## **III. Determination on the Act, Policy, or Practice under Investigation**

Based on the information obtained during the investigation, and taking account of public comments and the advice of the Section 301 Committee and advisory committees, the U.S. Trade Representative has made the following determination under sections 301(b) and 304(a) of the Trade Act (19 U.S.C. 2411(b) and 2414(a)): the act, policy, or practice covered in the investigation, namely India's DST, is unreasonable or discriminatory and burdens or restricts U.S. commerce, and is thus actionable under section 301(b) of the Trade Act. In particular:

1. India's DST, by its structure and operation, discriminates against U.S. digital companies, including due to the selection of covered services and its applicability only to non-resident companies.
2. India's DST is unreasonable because it is inconsistent with principles of international taxation, including due to its application to revenue rather than income, extraterritorial application, and failure to provide tax certainty.
3. India's DST burdens or restricts U.S. commerce.

#### **IV. Further Proceedings**

Sections 301(b) and 304(a)(1)(B) of the Trade Act provides that if the U.S. Trade Representative determines that an act, policy, or practice of a foreign country is unreasonable or discriminatory and burdens or restricts United States commerce, the U.S. Trade Representative shall determine what action, if any, to take under Section 301(b).

These matters will be addressed in subsequent proceedings under Section 301.

Joseph Barloon  
General Counsel  
Office of the United States Trade Representative.