

United States Reaches Deal with Austria, France, Italy, Spain, and the United Kingdom to Avoid Section 301 Duties

October 21, 2021

Today, the Office of the U.S. Trade Representative (USTR) announced an agreement reached with five countries – Austria, France, Italy, Spain, and the United Kingdom – on digital services tax (DST) measures that had been subject to recent investigations by USTR under Section 301 of the Trade Act of 1974. These countries will avoid 25 percent duties on certain imports into the United States as a result of the deal.

We previously reported on the investigations [here](#) and [here](#), which concluded that these countries' DST measures (plus measures announced in India and Turkey) burden or restrict U.S. commerce, and are discriminatory and inconsistent with prevailing principles of international taxation.[1] With the affirmative investigation findings, in March 2021, [USTR proposed lists](#) of products from Austria, India, Italy, Spain, Turkey, and the United Kingdom that would be subject to an additional 25 percent import tariff, subject to public comment and hearing. In June 2021, USTR announced that it would be suspending the proposed tariff measures for each of the six countries for 180 days to “to allow additional time for multilateral and bilateral discussions that could lead to a satisfactory resolution of this matter.” USTR had previously and separately investigated France's DST measures, determining in June 2020 to impose an additional 25 percent tariff on certain French imports and, in January 2021, deciding to indefinitely suspend that action pending further negotiations.

The [agreement](#) reached today terminates the United States' proposed Section 301 tariffs with respect to Austria, France, Italy, Spain, and the United Kingdom. India and Turkey did not join in the agreement. The “political compromise” reached does not require the five countries involved to withdraw their existing DST measures. Instead, those countries have agreed that to the extent U.S. companies accrue any DST liability before implementation of Pillar 1 of the Organization for Economic Co-operation and Development (OECD) global tax agreement, such liability will be creditable against future income taxes as determined under Pillar 1. The OECD global tax agreement is a historic, multilateral tax reform project aimed at addressing the challenges of the digital economy and earning the high-level political support of the G7, G20, and 136 members of the OECD. Pillar 1 of the OECD agreement relates to a global framework allocation of firms' digital services profits by introducing new profit allocation mechanisms and nexus rules to expand the taxing authority of market jurisdictions. According to today's Section 301 deal, once OECD Pillar 1 is in effect (2023), the United States will work with the five countries to roll back their existing, individual digital services taxes.

The suspended 25 percent tariffs on certain imports from India and Turkey are set to go into effect

on November 30, 2021, barring satisfactory resolution of the dispute before that time or USTR's decision to further suspend the tariff actions.

[1] USTR also investigated DST measures by Brazil, the Czech Republic, the European Union, and Indonesia. In March 2021, USTR announced the termination of these investigations, without further action, because none of the four investigated jurisdictions had adopted or implemented the DST policies at issue.