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OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

[Docket No. USTR-2020-0022]

Initiation of Section 301 Investigations of Digital Services Taxes

AGENCY: Office of the United States Trade Representative.

ACTION: Notice of initiation of investigations, and request for comments.

SUMMARY: The U.S. Trade Representative is initiating investigations with respect to Digital Services Taxes (DSTs) adopted or under consideration by Austria, Brazil, the Czech Republic, the European Union, India, Indonesia, Italy, Spain, Turkey, and the United Kingdom. The Office of the United States Trade Representative (USTR) is seeking public comments in connection with these investigations.

DATES: To be assured of consideration, you must submit written comments by July 15, 2020.

ADDRESSES: You should submit written comments through the Federal eRulemaking Portal: http://www.regulations.gov (Regulations.gov). Follow the instructions for submitting comments in section IV. The docket number is USTR-2020-0022. For issues with on-line submissions, please contact the USTR Section 301 line at 202-395-5725.

FOR FURTHER INFORMATION CONTACT: For procedural questions concerning the submission of written comments, please contact the USTR Section 301 line at 202-395-5725.

For questions concerning the investigation, please contact Patrick Childress, Assistant General Counsel, 202-395-3150; or Robert Tanner, Director for ICT Services & Digital Trade, 202-395-6125.

For questions regarding specific jurisdictions covered by the investigations, please contact: For the EU, EU member States, Turkey, and the United Kingdom: Michael Rogers, Director for Europe, 202-395-2684; for Brazil, Courtney Smothers, Senior Director for MERCOSUR Countries, 202-395-7657; for India, Brendan Lynch, Deputy Assistant U.S. Trade Representative, South and Central Asian Affairs, 202-395-2851; and for Indonesia, Bart Thanhauser, Director for Southeast Asia and the Pacific, 202-395-4088.

SUPPLEMENTARY INFORMATION:

I. Digital Services Taxes

Over the past two years, various jurisdictions have taken under consideration or adopted taxes on revenues that certain companies generate from providing certain digital services to, or aimed at, users in those jurisdictions. They are referred to as Digital Services Taxes or DSTs. Available evidence suggests the DSTs are expected to target large, U.S.-based tech companies. These jurisdictions include:

Austria: In October 2019, Austria adopted a DST that applies a 5% tax to revenues from online advertising services. The law went into force on January 1, 2020. The tax applies only to companies with at least €750 million in annual global revenues for all services and €25 million in in-country revenues for covered digital services.

Brazil: Brazil is considering a legislative proposal entitled the "Contribution for Intervention in the Economic Domain" or CIDE. If adopted, CIDE would apply to the gross revenue derived from digital services provided by large technology companies.

The Czech Republic: The Parliament of the Czech Republic is considering a draft law that would apply a 7% DST to revenues from targeted advertising and digital interface services. The tax would apply only to companies generating €750 million in annual global revenues for all services and CZK 50 million in in-country revenues for covered digital services.

The European Union: The European Commission is considering a DST as part of the financing package for its proposed COVID-19 recovery plan. The EU DST is based on a 2018 DST proposal that was not adopted. The 2018 EU proposal included a 3% tax on revenues from targeted advertising and digital interface services, and would have applied only to companies generating at least €750 million in global revenues from covered digital services and at least €50 million in EU-wide revenues for covered digital services.

India: In March 2020, India adopted a 2% DST. The tax only applies only to non-resident companies, and covers online sales of goods and services to, or aimed at, persons in India. The tax applies only to companies with annual revenues in excess of approximately Rs. 20 million (approximately US$ $267,000). The tax went into effect on April 1, 2020.

Indonesia: Earlier this year, Indonesia adopted an electronic transaction tax that targets cross-border, digital transactions. Further implementing measures are required for the new tax to go into effect.

Italy: Italy has adopted a DST. The measure includes a 3% tax on revenues from targeted advertising and digital interface services. This tax applies only to companies generating at least €750 million in global revenues for all services and €5.5 million in in-country revenues for covered digital services. The tax applies as of January 1, 2020.

Spain: Spain is considering a draft DST. The measure would apply a 3% tax to revenues from targeted advertising and digital interface services. This tax would apply only to companies generating at least €750 million in global revenues for all services and €3 million in in-country revenues for covered digital services.

Turkey: Turkey has adopted a DST. The measure applies a 7.5% tax to revenues from targeted advertising, social media and digital interface services. The tax applies only to companies generating €750 million in global revenues from covered digital services and TL20 million in in-country revenues from covered digital services. The Turkish President has authority to increase the tax rate up to 15%. The law went into effect on March 1, 2020.

The United Kingdom: The United Kingdom is considering a DST proposal as part of its Finance Bill 2020. The measure would apply a 2% tax on revenues above £25 million to internet search engines, social media, and online marketplaces. The tax applies only to companies generating at least £500 million in global revenues from covered digital services and £25 million in in-country revenues from covered digital services. The bill is in the final stages of adoption by Parliament, and if passed, payments would be due from affected companies in 2021.

II. Initiation of Section 301 Investigations

Section 302(b)(1)(A) of the Trade Act of 1974, as amended (Trade Act), authorizes the U.S. Trade Representative to initiate an investigation to determine whether an act, policy, or practice of a foreign country is actionable under section 301 of the Trade Act. Actionable matters under section 301 include, *inter alia*, acts, polices, and practices of a foreign country that are unreasonable or discriminatory and burden or restrict U.S. commerce. An act, policy, or practice is unreasonable if the act, policy, or practice, while not necessarily in violation of, or inconsistent with, the international legal rights of the United States, is otherwise unfair and inequitable.

Pursuant to section 302(b)(1)(B), USTR has consulted with appropriate advisory committees. USTR also has consulted with agencies on the Section 301 Committee.

In light of concerns with the DSTs adopted or under consideration by the jurisdictions discussed above, the U.S. Trade Representative has initiated Section 301 investigations with respect to DSTs adopted or under consideration by Austria, Brazil, the Czech Republic, the European Union, India, Indonesia, Italy, Spain, Turkey, and the United Kingdom. Pursuant to section 303(a) of the Trade Act, the U.S. Trade Representative has requested consultations with the governments of these jurisdictions.

Pursuant to section 304 of the Trade Act, the U.S. Trade Representative must determine whether the act, policy, or practice under investigation is actionable under Section 301. If that determination is affirmative, the U.S. Trade Representative must determine what action to take.

The investigation initially will focus on the following concerns with DSTs: discrimination against U.S. companies; retroactivity; and possibly unreasonable tax policy. With respect to tax policy, the DSTs may diverge from norms reflected in the U.S. tax system and the international tax system in several respects. These departures may include: extraterritoriality; taxing revenue not income; and a purpose of penalizing particular technology companies for their commercial success.

In addition to these areas of concern with DSTs, USTR invites comments on other aspects that may warrant a finding that one or more of the covered DSTs are actionable under Section 301.

III. Request for Public Comments

You may submit written comments on any issue covered by the investigations. In particular, USTR invites comments with respect to:

- Concerns with one or more of the DSTs adopted or under consideration by the jurisdictions covered in these investigations.
- Whether one or more of the covered DSTs is unreasonable or discriminatory.
- The extent to which one or more of the covered DSTs burdens or restricts U.S. commerce.
- Whether one or more of the covered DSTs is inconsistent with obligations under the WTO Agreement or any other international agreement.
- The determinations required under section 304 of the Trade Act, including what action, if any, should be taken.

In light of the uncertainties arising from COVID-19 restrictions, USTR is not at this time scheduling a public hearing in these investigations. USTR will provide further information in a subsequent notice if a hearing is to be held in these investigations.

IV. Procedures for Written Submissions

All submissions must be in English and sent electronically via Regulations.gov. To submit comments via Regulations.gov, enter docket number USTR-2020-0022. Find a reference to this notice and click on the link entitled ‘comment now!’ For further information on using the Regulations.gov website, please consult the resources provided on the website by clicking on 'how to use regulations.gov' on the bottom of the www.regulations.gov home page. USTR will not accept hand-delivered submissions.

The Regulations.gov website allows users to submit comments by filling in a 'type comment' field or by attaching a document using an 'upload file' field. USTR prefers that you submit comments in an attached document. If you attach a document, it is sufficient to type 'see attached in the 'type comment' field. USTR strongly prefers submissions in Adobe Acrobat (.pdf). If you use an application other than Adobe Acrobat or Word (.doc), please indicate the name of the application in the 'type comment' field.

File names should reflect the name of the person or entity submitting the comments. Please do not attach separate cover letters to electronic submissions; rather, include any information that might appear in a cover letter in the comments themselves. Similarly, to the extent possible, please include any exhibits, annexes, or other attachments in the same file as the comment itself, rather than submitting them as separate files.

For any comments submitted electronically that contain business confidential information (BCI), the file name of the business confidential version should begin with the characters 'BCI.' You must clearly mark any page containing BCI by including 'BUSINESS CONFIDENTIAL' on the top of that page and clearly indicating, 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. Filers of submissions containing BCI also must submit a public version of their comments. The file name of the public version should begin with the character ‘P.’ Follow the ‘BCI’ and ‘P’ with the name of the person or entity submitting the comments. If these procedures are not sufficient to protect BCI or otherwise protect business interests, please contact the USTR Section 301 line at 202-395-5725 to discuss whether alternative arrangements are possible.

USTR will post submissions in the docket for public inspection, except BCI. You can view submissions on the Regulations.gov website by entering docket number USTR-2020-0022 in the search field on the home page.

Joseph Barloon,
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Office of the United States Trade Representative.

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