

[Billing Code 3290-F0]

**OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE**

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

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

**ACTION:** Notice.

**SUMMARY:** The U.S. Trade Representative has determined that Austria'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 Michael Rogers, Director, Europe and the Middle East at (202) 395-2684.

**SUPPLEMENTARY INFORMATION:**

**I. Austria's DST**

Based on information obtained during the investigation, USTR has prepared a comprehensive report on Austria's DST (Austria DST Report). The Austria 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 Austria's DST. To summarize, Austria's DST imposes a 5% tax on gross revenues from digital advertising services provided in Austria. The DST applies only to companies with annual global revenues of €750 million or more, and annual revenues from digital advertising services in Austria of €25 million or more.

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

On June 2, 2020, the U.S. Trade Representative initiated an investigation of Austria'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 Austria'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 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 Austria regarding the issues involved in the investigation. Consultations were held on December 21, 2020.

As noted, based on information obtained during the investigation, USTR has prepared and published the Austria 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 Austria DST Report supports findings that Austria'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 Austria's DST, is unreasonable or discriminatory and burdens or restricts U.S. commerce, and thus is actionable under section 301(b) of the Trade Act. In particular:

1. Austria's DST, by its structure and operation, discriminates against U.S. digital companies.
2. Austria's DST is unreasonable because it is inconsistent with principles of international taxation.
3. Austria's DST burdens or restricts U.S. commerce.

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

Sections 301(b) and 304(a)(1)(B) of the Trade Act provide 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.