

[Billing Code 3290-F0]

OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

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

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

ACTION: Notice.

SUMMARY: The U.S. Trade Representative has determined that Spain'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. Spain's DST

Based on information obtained during the investigation, USTR has prepared a comprehensive report on Spain's DST (Spain DST Report). The Spain 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 Spain's DST. To summarize, Spain introduced a legislative proposal to establish a DST on February 28, 2020 and adopted the DST on October 7, 2020. The DST 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 tax. The tax is expected to take effect on January 15, 2021.

II. Proceedings in the Investigation

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 to the notice of initiation. 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.

As noted, based on information obtained during the investigation, USTR has prepared and published the Spain 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 Spain DST Report supports findings that Spain'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 Spain'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. Spain's DST, by its structure and operation, discriminates against U.S. digital companies, including due to the selection of covered services and the revenue thresholds.
2. Spain's DST is unreasonable because it is inconsistent with principles of international taxation.
3. Spain'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
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Office of the United States Trade Representative.