

[Billing Code 3290-F0]

OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

Notice of Determination Pursuant to Section 301: The United Kingdom's Digital Services Tax

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

ACTION: Notice.

SUMMARY: The U.S. Trade Representative has determined that the United Kingdom'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. The United Kingdom's DST

Based on information obtained during the investigation, USTR has prepared a comprehensive report on the United Kingdom's DST (UK DST Report). The UK 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 the United Kingdom's DST. To summarize, the United Kingdom's DST was introduced as part of the Finance Bill 2020 and adopted on July 22, 2020. The United Kingdom's DST applies a two percent tax on the revenues of certain search

engines, social medial platforms and online marketplaces. The United Kingdom’s DST applies only to companies with digital services revenues exceeding £500 million and United Kingdom digital services revenues exceeding £25 million. Companies became liable for the DST on April 1, 2020.

II. Proceedings in the Investigation

On June 2, 2020, the U.S. Trade Representative initiated an investigation of the United Kingdom’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 the United Kingdom’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 the United Kingdom regarding the issues involved in the investigation. Consultations were held on December 4, 2020.

As noted, based on information obtained during the investigation, USTR has prepared and published the UK 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 UK DST Report supports findings that the United Kingdom'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 the United Kingdom'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. The United Kingdom'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. The United Kingdom's DST is unreasonable because it is inconsistent with principles of international taxation, including due to application to revenue rather than income, extraterritoriality, and retroactivity.
3. The United Kingdom'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.