

[Billing Code 3290-F1]

OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

Docket Number USTR–2021–0007

Proposed Action in Section 301 Investigation of the United Kingdom’s Digital Services Tax

AGENCY: Office of the United States Trade Representative.

ACTION: Request for comments and notice of public hearing.

SUMMARY: The Office of the United States Trade Representative (USTR) requests written comments regarding a potential trade action in connection with the Section 301 investigation of the United Kingdom’s Digital Services Tax (DST). USTR also will convene virtual public hearings and accept rebuttal comments in relation to the potential action.

DATES:

April 21, 2021: To be assured of consideration, submit requests to appear at a hearing, along with a summary of the testimony, by this date.

April 30, 2021: To be assured of consideration, submit written comments by this date.

May 3, 2021: Multi-jurisdictional virtual hearing on proposed actions.

May 4, 2021 at 9:30 a.m.: Virtual hearing on the United Kingdom DST proposed action.

May 10, 2021: To be assured of consideration, submit multi-jurisdictional hearing rebuttal comments by this date.

May 11, 2021: To be assured of consideration, submit the United Kingdom DST hearing rebuttal comments by this date.

ADDRESSES: Submit documents in response to this notice, including written comments and hearing appearance requests, through the online USTR portal:

<https://comments.ustr.gov/s/>.

FOR FURTHER INFORMATION CONTACT: For questions concerning the investigation, please contact Ben Allen or Patrick Childress, Assistant General Counsels at (202) 395-9439 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. For issues with on-line submissions, please contact the USTR Section 301 line at (202) 395-5725.

SUPPLEMENTARY INFORMATION:

I. Proceedings in the Investigation

The United Kingdom's has adopted a DST that applies a two percent tax on the revenues of certain search engines, social media 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.

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). *See* 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. 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.

Based on information obtained during the investigation, USTR prepared a comprehensive report on the United Kingdom’s DST (United Kingdom DST Report). The United Kingdom DST Report is posted on the USTR website at <https://ustr.gov/issue-areas/enforcement/section-301-investigations/section-301-digital-services-taxes>. The report includes a full description of the United Kingdom’s DST, and supports findings that the United Kingdom’s DST is unreasonable and discriminatory and burdens or restricts U.S. commerce.

On January 14, 2021, based on the information obtained during the investigation and the advice of the Section 301 Committee, the U.S. Trade Representative determined that the United Kingdom’s DST is unreasonable or discriminatory and burdens or restricts U.S. commerce, and therefore is actionable under sections 301(b) and 304(a) of the Trade Act (19 U.S.C. 2411(b) and 2414(a)). *See* 86 FR 6406 (January 21, 2021).

II. Proposed Action

Section 301(b) provides that upon determining that the acts, policies, and practices under investigation are actionable and that action is appropriate, the U.S. Trade Representative shall take all appropriate and feasible action authorized under section

301(c), subject to the specific direction, if any, of the President regarding such action, and all other appropriate and feasible action within the power of the President that the President may direct the U.S. Trade Representative to take under section 301(b), to obtain the elimination of that act, policy, or practice.

Section 301(c)(1)(B) of the Trade Act authorizes the U.S. Trade Representative to impose duties on the goods of the foreign country subject to the investigation. Pursuant to sections 301(b) and (c), USTR proposes that the U.S. Trade Representative should determine that action is appropriate and that appropriate action would include the imposition of additional *ad valorem* tariffs on certain products of the United Kingdom.

In particular, USTR proposes to impose additional tariffs of up to 25 percent *ad valorem* on an aggregate level of trade that would collect duties on goods of the United Kingdom in the range of the amount of the DST that the United Kingdom is expected to collect from U.S. companies. Initial estimates indicate that the value of the DST payable by U.S.-based company groups to the United Kingdom will be up to approximately \$325 million per year.

USTR further proposes that the goods of the United Kingdom subject to additional tariffs would be drawn from the preliminary list of products in the Annex to this notice, as specified by the listed eight-digit tariff subheadings.

III. Request for Public Comments

In accordance with section 304(b) of the Trade Act (19 U.S.C. 2414(b)), USTR invites comments from interested persons with respect to whether action is appropriate, and if so, the appropriate action to be taken.

USTR requests comments with respect to any issue related to the action to be taken in this investigation. With respect to the proposed tariff action outline above, USTR specifically invites comments regarding:

- The level of the burden or restriction on U.S. commerce resulting from the United Kingdom's DST, including the amount of DST payments owed by U.S. companies, the annual growth rate of such payments, and other effects, such as compliance costs.
- The appropriate aggregate level of trade to be covered by additional duties.
- The level of the increase, if any, in the rate of duty.
- The specific products to be subject to increased duties, including whether the tariff subheadings listed in the Annex should be retained or removed, or whether tariff subheadings not currently on the list should be added.

In commenting on the inclusion or removal of particular products on the preliminary list of products subject to the proposed additional duties, USTR requests that commenters specifically address whether imposing increased duties on a particular product would be practicable or effective to obtain the elimination of the United Kingdom's acts, policies, and practices, and whether imposing additional duties on a particular product would cause disproportionate economic harm to U.S. interests, including small- or medium-size businesses and consumers.

Simultaneously with this notice, USTR also is requesting public comments on proposed trade actions in five other DST investigations initiated at the same time as the United Kingdom DST investigation. Certain interested persons may wish to provide written comments or oral testimony on multi-jurisdictional issues common to two or more investigations. To avoid duplication, the USTR portal will have a separate docket

for multi-jurisdictional submissions, and USTR will hold a separate multi-jurisdictional hearing.

To be assured of consideration, you must submit written comments on the proposed action by April 30, 2021, and post-hearing rebuttal comments by May 10, 2021 for the multi-jurisdictional hearing, and by May 11, 2021 for the United Kingdom DST hearing.

IV. Hearing Participation

The Section 301 Committee will convene a virtual public hearing for comments pertaining to the United Kingdom DST proposed action on May 4, 2021, beginning at 9:30 am. Those requesting to appear at this hearing should have comments applicable only to the United Kingdom DST proposed action.

The Section 301 Committee will convene a virtual public hearing for comments pertaining to multiple jurisdictions on May 3, 2021, beginning at 9:30 am. Those requesting to appear at the multi-jurisdictional hearing should have comments that are applicable to two or more DST investigations.

For either hearing, you must submit a request to appear at the specific hearing using the electronic portal at <https://comments.ustr.gov/s/>. You will be able to view a docket entitled ‘Request to Appear at Hearing on Proposed Action in Section 301 Investigation of the United Kingdom’s Digital Services Tax.’ Requests to appear must include a summary of testimony, and may be accompanied by a pre-hearing submission. Remarks at the hearing are limited to five minutes to allow for possible questions from the Section 301 Committee. All submissions must be in English. To be assured of consideration, USTR must receive your request to appear by April 21, 2021.

V. Procedures for Written Submissions

You must submit written comments, rebuttal comments, and requests to appear at the hearing using the electronic portal at <https://comments.ustr.gov/s>. You will be able to view a docket entitled ‘Comments Concerning Proposed Action in Section 301 Investigation of the United Kingdom’s Digital Services Tax’ on the portal, docket number USTR-2021-0007.

You do not need to establish an account to submit comments. Fields with a gray (BCI) notation are for Business Confidential Information and the information entered will not be publicly available. Required fields are marked ‘Required’ and will have a red asterisk (*). Fields with a green (Public) notation will be viewable by the public.

The first screen of the portal requires you to enter identification and contact information. Third party organizations such as law firms, trade associations, or customs brokers, should identify the full legal name of the organization they represent, and identify the primary point of contact for the submission. The remaining fields of the form are optional.

After entering the identification and contact information, you can complete the remainder of the questionnaire, or any portion of it by clicking ‘Next.’ You can comment on multiple products in a single entry, or submit multiple comments. You will be able to navigate through each screen of the form by clicking ‘Next,’ with or without entering a response to each field on an individual screen or page. Additionally, you will be able to upload documents at the end of the form and designate whether USTR should treat the documents as business confidential or public information.

For uploads containing BCI, the file name of the business confidential version should begin with the characters 'BCI'. Any page containing BCI must be clearly marked 'BUSINESS CONFIDENTIAL' on the top of that page and the submission should clearly indicate, 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. Parties uploading attachments containing BCI also must submit a public version of their comments. The file name of the public version, which must be uploaded on <https://comments.ustr.gov/s/>, should begin with the character 'P'. The 'BCI' and 'P' should be followed by the name of the person or entity submitting the comments or rebuttal comments. If these procedures are not sufficient to protect BCI or otherwise protect business interests, please contact the USTR Section Hotline 301 line at (202) 395-5725 to discuss whether alternative arrangements are possible. USTR will post attachments uploaded to the docket for public inspection, except for attachments marked as business confidential.

You can view all public submissions on the USTR portal at <https://comments.ustr.gov/s/>.

Greta Peisch
General Counsel
Office of the United States Trade Representative.

Annex

Note: All products that are classified in the eight-digit subheadings of the Harmonized Tariff Schedule of the United States (HTSUS) that are listed in this Annex are covered by the proposed action. The product descriptions that are contained in this Annex are provided for informational purposes only, and are not intended to delimit in any way the scope of the proposed action. Any questions regarding the scope of a particular HTSUS subheading should be referred to U.S. Customs and Border Protection. In the product descriptions, the abbreviation "nesoi" means "not elsewhere specified or included".

HTSUS Subheading	Product Description
3213.90.00	Artists', students' or signboard painters' colors, in tablets, tubes, jars, bottles, pans or in similar packings, not in sets
3303.00.10	Floral or flower waters, not containing alcohol
3303.00.20	Perfumes and toilet waters, other than floral or flower waters, not containing alcohol
3303.00.30	Perfumes and toilet waters, containing alcohol
3304.10.00	Lip make-up preparations
3304.20.00	Eye make-up preparations
3304.30.00	Manicure or pedicure preparations
3304.91.00	Beauty or make-up powders, whether or not compressed
3304.99.10	Petroleum jelly put up for retail sale
3304.99.50	Beauty or make-up preparations & preparations for the care of the skin, excl. medicaments but incl. sunscreen or sun tan preparations, nesoi
3305.10.00	Shampoos
3305.20.00	Preparations for permanent waving or straightening the hair
3305.30.00	Hair lacquers
3305.90.00	Preparations for use on the hair, nesoi
3306.90.00	Preparations for oral or dental hygiene, including denture fixative pastes and powders, excluding dentifrices
3307.10.10	Pre-shave, shaving or after-shave preparations, not containing alcohol
3307.10.20	Pre-shave, shaving or after-shave preparations, containing alcohol
3307.30.10	Bath salts, whether or not perfumed
3307.30.50	Bath preparations, other than bath salts
3307.49.00	Preparations for perfuming or deodorizing rooms, including odoriferous preparations used during religious rites, nesoi
3307.90.00	Depilatories and other perfumery, cosmetic or toilet preparations. nesoi
4201.00.60	Saddlery and harnesses for animals nesoi, (incl. traces, leads, knee pads, muzzles, saddle cloths and bags and the like), of any material
6104.43.20	Women's or girls' dresses, knitted or crocheted, of synthetic fibers, nesoi

HTSUS Subheading	Product Description
6201.12.20	Men's or boys' overcoats, carcoats, capes, & similar coats of cotton, not knit or crocheted, not containing 15% or more by wt of down, etc
6201.92.45	Men's or boys' anoraks, windbreakers & sim articles nesoi, not knit/crochet, cotton, not cont. 15% or more by wt of down, etc, o/than rec perf outerwear
6202.12.20	Women's or girls' overcoats, carcoats, etc, not knitted or crocheted, of cotton, not containing 15% or more by weight of down, etc
6202.13.40	Women's or girls' overcoats, carcoats, capes, cloaks and similar articles, not knitted or crocheted, of man-made fibers, nesoi
6202.92.90	Women's/girls' anoraks, windbreakers & similar articles, nt knit/crochet, cotton, nt cont. 15% or more by wt of down, etc, o/than rec perf outerwear
6204.43.40	Women's or girls' dresses, not knitted or crocheted, of synthetic fibers, nesoi
6204.44.40	Women's or girls' dresses, not knitted or crocheted, of artificial fibers, nesoi
6204.49.10	Women's or girls' dresses, not knitted or crocheted, containing 70% or more by weight of silk or silk waste
6205.20.20	Men's or boys' shirts, not knitted or crocheted, of cotton, nesoi
6215.10.00	Ties, bow ties and cravats, not knitted or crocheted, of silk or silk waste
6403.59.30	Footwear w/outer soles and uppers of leather, not covering the ankle, welt, nesoi
6403.59.90	Footwear w/outer soles and uppers of leather, not cov. ankle, n/welt, for persons other than men, youths and boys
6403.91.30	Footwear w/outer soles of rubber/plastics/composition leather & uppers of leather, covering the ankle, welt
6403.99.60	Footwear w/outer soles of rubber/plastics/comp. leather & uppers of leather, n/cov. ankle, n/welt, for men, youths and boys, nesoi
6404.20.40	Footwear w/outer soles of leather/comp. leath., n/o 50% by wt. rub./plast. or rub./plast./text. & 10%+ by wt. rub./plast., val. o/\$2.50/pr
6903.90.00	Refractory ceramic goods (o/than of siliceous fossil meals or earths), nesoi
6907.23.90	Glazed ceramic tiles nesoi, of a H2O absorp coeff by wt >10%
6907.30.90	Glazed ceramic mosaic cubes nesoi, o/t subheading 6907.40
6909.19.50	Ceramic wares for laboratory, chemical or other technical uses (o/than of porcelain or china), nesoi
6910.90.00	Ceramic (o/than porcelain or china) sinks, washbasins, baths, bidets, water closet bowls, urinals & siml. sanitary fixtures
7113.11.50	Silver articles of jewelry and parts thereof, nesoi, valued over \$18 per dozen pieces or parts
7113.19.29	Gold necklaces and neck chains (o/than of rope or mixed links)

HTSUS Subheading	Product Description
7113.19.50	Precious metal (o/than silver) articles of jewelry and parts thereof, whether or not plated or clad with precious metal, nesoi
7116.20.50	Precious stone articles, nesoi
7117.19.90	Imitation jewelry (o/than toy jewelry & rope, curb, cable, chain, etc.), of base metal (wheth. or n/plated w/prec. metal), nesoi
8415.82.01	Air conditioning machines incorporating a refrigerating unit, nesoi
8418.40.00	Freezers of the upright type, not exceeding 900 liters capacity, electric or other
8418.50.00	Refrigerating or freezing display counters, cabinets, showcases and similar refrigerating or freezing furniture
8418.69.01	Refrigerating or freezing equipment nesoi
8479.50.00	Industrial robots, not elsewhere specified or included
8532.24.00	Ceramic dielectric fixed capacitors, multilayer
9001.10.00	Optical fibers, optical fiber bundles and cables, other than those of heading 8544
9401.71.00	Seats nesoi, w/metal frame (o/than of heading 9402), upholstered
9403.10.00	Furniture (o/than seats) of metal nesoi, of a kind used in offices
9403.20.00	Furniture (o/than seats) of metal nesoi, o/than of a kind used in offices
9403.40.90	Furniture (o/than seats) of wood (o/than bentwood) nesoi, of a kind used in the kitchen & not design. for motor vehicl. use
9403.60.80	Furniture (o/than seats & o/than of 9402) of wooden (o/than bentwood) nesoi
9403.89.60	Furniture (o/than seats & o/than of 9402) of materials nesoi
9503.00.00	Toys, including riding toys o/than bicycles, puzzles, reduced scale models
9504.50.00	Video game consoles and machines, other than those of heading 9504.30
9504.90.40	Game machines (o/than coin- or token-operated) and parts and accessories thereof
9504.90.60	Chess, checkers, backgammon, darts and o/table and parlor games played on boards of a special design and parts thereof; poker chips and dice
9504.90.90	Articles nesoi for arcade, table or parlor games & parts & access.; automatic bowling alley equipment & parts and accessories thereof
9508.10.00	Traveling circuses and traveling menageries; parts and accessories thereof
9508.90.00	Merry-go-rounds, boat-swings, shooting galleries and other fairground amusements; traveling theaters; parts and accessories thereof
9603.29.80	Shaving brushes, hair brushes, nail brushes, eyelash and other toilet brushes (o/than tooth brushes), valued o/40 cents each