



[Billing Code 3290-F0]

OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

[Docket No. USTR-2019-0009]

Notice of Action in the Section 301 Investigation of France's Digital Services Tax

AGENCY: Office of the United States Trade Representative.

ACTION: Notice.

SUMMARY: On December 6, 2019, the U.S. Trade Representative announced a determination that France's Digital Services Tax (DST) is unreasonable or discriminatory and burdens or restricts U.S. commerce. This notice announces the U.S. Trade Representative's determination to take action in the form of additional duties of 25 percent on products of France specified in Annex A to this notice. The U.S. Trade Representative has further determined to suspend application of the additional duties for a period of up to 180 days.

DATES: July 10, 2020: The U.S. Trade Representative determined to take action in the form of additional duties of 25 percent on products of France specified in Annex A.

January 6, 2021: The end of the 180-day suspension period for the additional duties.

FOR FURTHER INFORMATION CONTACT: For questions concerning the investigation, please contact Megan Grimball, Associate General Counsel at (202) 395-5725, Robert Tanner, Director, Services and Investment at (202) 395-6125, or Michael Rogers, Director, Europe and the Middle East at (202) 395-2684. For specific questions on customs classification or implementation of additional duties on products identified in Annex A to this notice, contact traderemedyc@cbp.gov.

SUPPLEMENTARY INFORMATION:

I. Proceedings in the Investigation

On July 10, 2019, the U.S. Trade Representative initiated the investigation of France's DST pursuant to section 302(b)(1)(A) of the Trade Act of 1974, as amended (the Trade Act). *See* 84 FR 34042 (July 16, 2019) (July 16 notice). The July 16 notice invited public comment on France's DST, including whether the tax would discriminate against U.S. companies, the retroactive application of the new tax, and whether France's DST diverged from norms reflected in the U.S. and international tax system. The Office of the United States Trade Representative (USTR) and the interagency Section 301 Committee held a hearing on August 19, 2019. Ten witnesses provided testimony, and interested persons filed 36 written submissions. Following a request by the U.S. Trade Representative, consultations were held with the Government of France on November 14, 2019.

USTR published a comprehensive report on France's DST on December 2, 2019, which is available at <https://ustr.gov/issue-areas/enforcement/section-301-investigations/section-301-frances-digital-services-tax>. On December 6, 2019, based on the information obtained during the investigation and the advice of the Section 301 Committee, and as reflected in the December 2 report on the findings in the investigation, the U.S. Trade Representative determined that France'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* 84 FR 66856 (December 6, 2019) (December 6 notice).

The December 6 notice proposed that appropriate action would include additional *ad valorem* duties of up to 100 percent on products of France to be drawn from a list of

63 tariff subheadings of the Harmonized Tariff Schedule of the United States (HTSUS) included in the annex to that notice. The December 6 notice requested comments on the proposed action, as well as on other potential actions, including the imposition of fees or restrictions on services of France.

USTR and the Section 301 Committee held a hearing regarding the proposed action on January 7 and 8, 2020. Thirty-seven witnesses provided testimony, and interested persons filed nearly 3,800 written comments. Transcripts from the August 2019 and January 2020 hearings are available on the USTR website at <https://ustr.gov/issue-areas/enforcement/section-301-investigations/section-301-frances-digital-services-tax>. The written public submissions are available on www.regulations.gov under docket number USTR-2019-0009.

II. Determination of Action to Be Taken in the Investigation

In accordance with section 301(b) of the Trade Act, the U.S. Trade Representative has determined that action is appropriate in this investigation. 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) of the Trade Act, 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 304(a)(1)(B)(2) provides that the U.S. Trade Representative shall make the determination of what action to take on or before the

date that is 12 months after the date on which the investigation was initiated, or in this case, by July 10, 2020.

Pursuant to sections 301(b) and (c) of the Trade Act, and in accordance with the advice of the Trade Policy Staff Committee, the U.S. Trade Representative has determined that appropriate action is the imposition of *ad valorem* duties of 25 percent on products of France specified in Annex A to this notice. Annex A contains a list of 21 tariff subheadings, with an estimated trade value for calendar year 2019 of approximately \$1.3 billion. In making this determination, the U.S. Trade Representative considered the public comments submitted in the investigation, as well as advice of advisory committees.

In determining the level of trade covered by the additional duties, the U.S. Trade Representative considered the value of digital transactions covered by France's DST and the amount of taxes assessed by France on U.S. companies. France's 3 percent DST covers transactions of U.S. companies with estimated revenues of approximately \$15 billion in 2020, with expected collections of approximately \$450 million in taxes from U.S. companies for activities during 2020, and over \$500 million for activities during 2021. Additional duties of 25 percent on the products of France covered by the trade action should result in the collection of tariffs on goods of France at comparable, though somewhat lower amounts. The U.S. Trade Representative will continue to monitor the effect of the trade action and the progress of discussions with France, and may adopt appropriate modifications.

Section 305(a) of the Trade Act (19 U.S.C. 2415(a)), provides, in pertinent part, that the U.S. Trade Representative may delay implementation of the action to be taken for

up to 180 days “if the Trade Representative determines that substantial progress is being made, or that a delay is necessary or desirable to obtain United States rights or satisfactory solution with respect to the acts, policies, or practices that are the subject of the action.” Pursuant to section 305(a), the U.S. Trade Representative has determined to suspend the additional duties for up to 180 days (that is, up to January 6, 2021) to allow additional time for bilateral and multilateral discussions that could lead to a satisfactory resolution of this matter.

In order to implement this determination, subchapter III of chapter 99 of the HTSUS is modified by Annex A of this notice. Annex A has an effective date of January 6, 2021, which is 180 days after the determination of action. In the event the U.S. Trade Representative determines that the suspension of the additional duties should be for less than a period of 180 days, USTR will issue a subsequent notice amending the effective date.

For informational purposes, Annex B contains a list of the tariff subheadings covered by the tariff action along with short product descriptions. In all cases, the formal language in Annex A governs the tariff treatment of products covered by the action.

As specified in Annex A, products provided for in new HTSUS heading 9903.90.01, will be subject to an additional *ad valorem* duty of 25 percent. The additional duties provided for in the new HTSUS heading established by Annex A apply in addition to all other applicable duties, fees, exactions, and charges. Any product listed in Annex A, except any product that is eligible for admission under ‘domestic status’ as defined in 19 CFR 146.43, which is subject to the additional duty imposed by this determination, and is admitted into a U.S. foreign trade zone on or after the effective date of the

additional duties only may be admitted as ‘privileged foreign status’ as defined in 19 CFR 146.41. Such products will be subject upon entry for consumption to any *ad valorem* rates of duty or quantitative limitations related to the classification under the applicable HTSUS subheading.

The U.S. Trade representative will continue to monitor the effects of the trade action and the progress made toward resolution of this matter. If a modification to the action may be appropriate, the U.S. Trade Representative will consider the comments received in response to the December 6 notice.

Joseph Barloon,
General Counsel,
Office of the United States Trade Representative.

ANNEX A

Effective with respect to goods entered for consumption, or withdrawn from warehouse for consumption, on or after 12:01 a.m. eastern standard time on January 6, 2021, subchapter III of chapter 99 of the Harmonized Tariff Schedule of the United States is modified:

1. by inserting the following new U.S. notes 22(a) and 22(b) to subchapter III of chapter 99 in numerical sequence:

“22 (a) For the purposes of heading 9903.90.01, products of France, as specified in this note, shall be subject to additional duties as provided herein. All products of France that are classified in the subheadings enumerated in this note are subject to the additional duties imposed by heading 9903.90.01. The duties imposed by heading 9903.90.01 shall be in addition to the general duty rates provided for in the applicable provisions of the tariff schedule.

Products of France that are classified in the subheadings enumerated in this note and that are eligible for temporary duty exemptions or reductions under subchapter II to chapter 99 shall be subject to the additional duties imposed by heading 9903.90.01, and any such duty exemption or reduction shall apply only to the permanent general rate prescribed in provisions of chapters 1 through 97 of the tariff schedule.

The additional duties imposed by heading 9903.90.01 do not apply to goods for which entry is properly claimed under a provision of chapter 98 of the HTSUS, except for goods entered under subheadings 9802.00.40, 9802.00.50 and 9802.00.60 and heading 9802.00.80. For subheadings 9802.00.40, 9802.00.50 and 9802.00.60, the additional duties apply to the value of repairs, alterations or processing performed in France and as described in the applicable subheading. For heading 9802.00.80, the additional duties apply to the value of the article less the cost or value of such products of the United States, as described in heading 9802.00.80.

Products of France that are provided for in heading 9903.90.01 and classified in one of the subheadings enumerated in note 22(b) to this subchapter shall continue to be subject to antidumping, countervailing or other duties (including duties imposed by other provisions of subchapter III of this chapter and safeguard duties set forth in provisions of subchapter IV of this chapter), fees, exactions and charges that apply to such products, as well as to the additional duties imposed herein.

- (b) Heading 9903.90.01 shall apply to all products of France that are classified in the subheadings enumerated below:

3304.10.00	3304.99.50	3401.20.00
3304.20.00	3401.11.10	3401.30.10
3304.30.00	3401.11.50	3401.30.50
3304.91.00	3401.19.00	4202.21.30

4202.21.60
 4202.21.90
 4202.22.15

4202.22.40
 4202.22.45
 4202.22.60

4202.22.70
 4202.22.81
 4202.22.89”

2. by inserting the following new heading 9903.90.01 in numerical sequence, with the material in the new heading inserted in the columns of the HTSUS labeled “Heading/Subheading”, “Article Description”, and “Rates of Duty 1-General”, respectively:

Heading/ Subheading	Article description	Rates of Duty		
		1		2
		General	Special	
“9903.90.01	“Articles the product of France, as provided for in U.S. note 22(a) to this subchapter and as provided for in the subheadings enumerated in U.S. note 22(b) to this subchapter	The duty provided in the applicable subheading + 25%”		

Annex B

Note: The product descriptions that are contained this Annex are provided for informational purposes only, and are not intended to delimit in any way the scope of the action. In all cases, the formal language in Annex A governs the tariff treatment of products covered by the action. Any questions regarding the scope of particular HTSUS subheadings 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
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
3304.99.50	Beauty or make-up preparations & preparations for the care of the skin, excl. medicaments but incl. sunscreen or sun tan preparations, nesoi
3401.11.10	Castile soap in the form of bars, cakes or molded pieces or shapes
3401.11.50	Soap, nesoi; organic surface-active products used as soap, in bars, cakes, pieces, soap-impregnated paper, wadding, felt, for toilet use
3401.19.00	Soap; organic surface-active products used as soap, in bars, cakes, pieces; soap-impregnated paper, wadding, felt, not for toilet use
3401.20.00	Soap, not in the form of bars, cakes, molded pieces or shapes
3401.30.10	Organic surface-active products for wash skin, in liquid or cream, contain any aromatic/mod aromatic surface-active agent, put up for retail
3401.30.50	Organic surface-active products and preparations for washing the skin, in liquid or cream form, put up for retail sale, nesoi
4202.21.30	Handbags, with or without shoulder strap or without handle, with outer surface of reptile leather
4202.21.60	Handbags, with or without shoulder strap or without handle, with outer surface of leather, composition or patent leather, nesoi, n/o \$20 ea.
4202.21.90	Handbags, with or without shoulder strap or without handle, with outer surface of leather, composition or patent leather, nesoi, over \$20 ea.
4202.22.15	Handbags, with or without shoulder straps or without handle, with outer surface of sheeting of plastics
4202.22.40	Handbags with or without shoulder strap or without handle, with outer surface of textile materials, wholly or in part of braid, nesoi
4202.22.45	Handbags with or without shoulder strap or without handle, with outer surface of cotton, not of pile or tufted construction or braid
4202.22.60	Handbags with or w/o shoulder strap or w/o handle, outer surface of veg. fibers, exc. cotton, not of pile or tufted construction or braid
4202.22.70	Handbags with or w/o shoulder strap or w/o handle, with outer surface containing 85% or more of silk, not braided
4202.22.81	Handbags with or without shoulder strap or without handle, with outer surface of MMF materials
4202.22.89	Handbags with or without shoulder strap or without handle, with outer surface of textile materials nesoi

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