



OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

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

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

ACTION: Notice.

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

Based on information obtained during the investigation, USTR has prepared a comprehensive report on Italy's DST (Italy DST Report). The Italy 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 Italy's DST. To summarize, Italy adopted the operative form of its DST on December 27, 2019. The DST applies to companies that, during the previous calendar year, generated €750 million or more in worldwide revenues and €5.5 million or more in revenues deriving from the provision of digital services in Italy. The tax applies as of January 1, 2020.

II. Proceedings in the Investigation

On June 2, 2020, the U.S. Trade Representative initiated an investigation of Italy'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 Italy'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 diverges 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 Italy regarding the issues involved in the investigation. Consultations were held on November 10, 2020.

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