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Digital Services Tax: USTR Pauses Section 301 Duties on Products of France; Additional Determinations on Products of Austria, India, Italy, Spain, Turkey, and the UK

Effective Jan. 6, 2021, the Office of United States Trade Representative (USTR) has suspended additional tariffs on products from France that were previously set to go into effect the same day. The tariffs were to be imposed under Section 301 of Trade Act of 1974 following an investigation in which USTR found France's digital services tax (DST) discriminatory to U.S. companies and restricting U.S. commerce. USTR had announced the imposition of an additional 25% duty on specific products from France, including cosmetics, soaps, and handbags.

Digital Services Taxes and 301 Actions by the Trump Administration

Early in 2019 France released a proposal for a 3% tax on revenues generated by companies providing certain digital services to or aimed at French users, a DST. Soon thereafter the Trump administration initiated a Section 301 investigation of the DST. Section 301, which has been a favorite tool of the Trump administration, allows USTR to investigate whether an act, policy, or practice of a foreign country is unreasonable or discriminatory and a burden or restriction on U.S. commerce. USTR may then present a report of its findings to the president, including a proposed list of actions, such as additional tariffs, to take in response to any actionable discriminatory practices.

USTR presented its report on France's DST to the president on Dec. 2, 2019, finding that the French DST was discriminatory to U.S. commerce. France then suspended the DST for the remainder of 2020 in the hopes that a global compromise on rules on DSTs would be established via talks at the Organization for Economic Cooperation and Development (OECD), since a number of countries already have a DST or are contemplating imposing a DST. However, the OECD talks experienced significant delays due to COVID-19. Following several hearings on proposed actions to take in response to the French DST, the USTR determined that the appropriate response was a 25% tariff on specific products from France, effective Jan. 6, 2021. No action was put in place on Jan. 6, and on the next day it was announced the additional duties would be suspended indefinitely.

USTR stated that the suspension would allow it to align any actions which may result from several other investigations on adopted or pending DSTs in other countries, including Austria, Brazil, the Czech Republic, the European Union, India, Indonesia, Italy, Spain, Turkey, and the United Kingdom. On Jan. 12, 2021, the USTR published notices of its determinations regarding DSTs in India, Italy, and Turkey, finding that all the DSTs in all three countries were discriminatory, unreasonable, and restricted U.S. commerce. Additional similar findings were released on Jan. 14, 2021, for Austria, Spain, and the UK.

There was concern that the Trump administration would impose additional tariffs pursuant to Section 301 for the DST on French and other countries' goods prior to leaving office; however, in the Jan. 14 USTR press release, outgoing UTSR Robert Lighthizer announced that "The best outcome would be for countries to come together to find a solution." Clearly, the issue of DSTs needs to be addressed on a global level. Accordingly, the fate of DSTs and whether goods will carry an additional tariff will be addressed by the incoming Biden administration.

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