

Does Digital Service Tax Matter To You? New Section 301 Investigation – Comment Period Now Open

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On June 2, the Office of the US Trade Representative (USTR) announced that it would be initiating new Section 301 investigations examining digital services taxes (DSTs) adopted or under consideration by Austria, Brazil, the Czech Republic, the European Union, India, Indonesia, Italy, Spain, Turkey and the United Kingdom. USTR is requesting comments to inform their investigations into the various DSTs, and their impacts on US-based technology companies. Stakeholders impacted by the DSTs should submit comments to help guide the USTR investigation, but companies engaged in bilateral goods trade must also prepare for potential retaliatory tariffs to follow. **Comments are due by July 15.**

Over 135 countries and jurisdictions are engaged in multilateral talks aimed at securing an agreement on tax policies regarding online sales by multinationals, an issue of particular import to tech and media companies that are more deeply affected. DSTs are of increasing interest to governments under pressure to raise revenue to support COVID-19 economic relief measures. The United States is particularly opposed to these tax actions, arguing they are discriminatorily designed to apply mainly to major US tech companies.

As a first step, USTR will conduct an investigation into whether these DSTs are actionable under Section 301 (i.e., whether they “are unreasonable or discriminatory and burden or restrict US commerce. An act, policy, or practice is unreasonable if the act, policy, or practice, while not necessarily in violation of, or inconsistent with, the international legal rights of the United States, is otherwise unfair and inequitable.”). If USTR decides to proceed, it will likely hold a second comment period regarding potential goods that could be subject to tariffs from these jurisdictions, or other actions the United States may take in response.

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National Law Review, Volumess X, Number 155

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