

[Billing Code 3290-F1]

OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

Docket Number USTR–2021–0004

Notice of Action in the Section 301 Investigation of Italy’s Digital Services Tax

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

ACTION: Notice.

SUMMARY: On January 6, 2021, the U.S. Trade Representative announced a determination that Italy’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 the products of Italy 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:

June 2, 2021: The U.S. Trade Representative determined to take action in the form of additional duties of 25 percent on products of Italy specified in Annex A.

November 29, 2021: The end of the 180-day suspension period for the additional duties.

FOR FURTHER INFORMATION CONTACT: For questions concerning the investigation, please contact Benjamin Allen, Thomas Au, or Patrick Childress, Assistant General Counsels at: (202) 395-9439, (202) 395-0380, and (202) 385-9531, respectively; Robert Tanner, Director, Services and Investment at (202) 395-6125; or Michael Rogers, Director for Europe and the Middle East at (202) 395-2684. For specific questions on

customs classification or implementation of additional duties on products, contact traderemedy@cbp.gov.

SUPPLEMENTARY INFORMATION:

I. Proceedings in the Investigation

Italy has adopted a DST that 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. 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). *See* 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 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 Italy regarding the issues involved in the investigation. Consultations were held on November 10, 2020. Based on information obtained during the investigation, USTR prepared a comprehensive report on Italy's DST, which 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 Italy's DST, and supports findings that Italy's DST is unreasonable and discriminatory and burdens or restricts U.S. commerce. On January 6, 2021, based on the information obtained during the investigation and the advice of the Section 301 Committee, the U.S. Trade Representative determined that Italy'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. *See* 86 FR 2477 (January 12, 2021).

On March 31, 2021, USTR issued a notice proposing that appropriate action would include additional *ad valorem* duties of up to 25 percent on products of Italy to be drawn from a list of 59 tariff subheadings of the Harmonized Tariff Schedule of the United States (HTSUS) included in the annex to that notice. The March 31, 2021 notice requested comments on the proposed action as well as on other potential actions in the investigation. Witnesses provided testimony at public hearings on May 3 and May 6, 2021, and interested persons filed written comments. Transcripts from the hearings are available on the USTR website at: <https://ustr.gov/issue-areas/enforcement/section-301-investigations/section-301-digital-services-taxes>. The written public submissions are available at: <https://comments.ustr.gov/s/docket?docketNumber=USTR-2021-0004> and <https://comments.ustr.gov/s/docket?docketNumber=USTR-2021-0008>.

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)(2)(B) 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 June 2, 2021.

Pursuant to sections 301(b) and (c) of the Trade Act, and in accordance with the advice of the Section 301 Committee, the U.S. Trade Representative has determined that appropriate action is the imposition of *ad valorem* duties of 25 percent on products of Italy specified in Annex A to this notice. Annex A contains a list of 44 tariff subheadings, with an estimated trade value for calendar year 2019 of approximately \$386 million. 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 Italy's DST and the amount of taxes assessed by Italy on U.S. companies. Estimates indicate that the value of the DST payable by U.S.-based company groups to Italy will be up to approximately \$140 million per year. The level of trade covered by the action takes into account estimates of the amount of tariffs to be collected on goods of Italy and the estimates of the amount of taxes assessed by Italy.

Section 305(a) of the Trade Act 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 ... [a] 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 November 29, 2021) to allow additional time for multilateral and bilateral 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 is 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 November 29, 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 9903.90.04 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 12:01 a.m. eastern standard time on November 29, 2021, 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 effect of the trade action, the progress of discussions in the Organisation for Economic Co-operation and Development and G20, the progress of discussions with Italy, and may adopt appropriate modifications. If a modification to the action may be appropriate, the U.S. Trade Representative will consider the comments received in response to the March 31, 2021 notice.

Greta Peisch
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 November 29, 2021, subchapter III of chapter 99 of the Harmonized Tariff Schedule of the United States (HTSUS) is modified:

1. by inserting the following new U.S. notes 25(a) and 25(b) to subchapter III of chapter 99 in numerical sequence:

“25 (a) For the purposes of heading 9903.90.04, products of Italy, as specified in this note, shall be subject to additional duties as provided herein. All products of Italy that are classified in the subheadings enumerated in this note are subject to the additional duties imposed by heading 9903.90.04. The duties imposed by heading 9903.90.04 shall be in addition to the general duty rates provided for in the applicable provisions of the tariff schedule.

Products of Italy 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 9903.90.04, 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 9903.90.04 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 Italy 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 Italy that are provided for in heading 9903.90.04 and classified in one of the subheadings enumerated in note 25(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 9903.90.04 shall apply to all products of Italy that are classified in the subheadings enumerated below:

1604.31.00	6117.80.20	6204.33.10
1604.32.40	6117.80.87	6204.33.40
3303.00.20	6203.19.10	6204.33.50
3307.90.00	6203.31.90	6204.39.20
4202.29.10	6203.32.10	6204.39.30
4202.29.50	6203.32.20	6204.39.60
4202.29.90	6203.33.10	6204.39.80
6103.10.10	6203.33.20	6403.59.60
6103.31.00	6203.39.10	6403.91.60
6103.32.00	6203.39.20	6403.91.90
6103.33.20	6203.39.50	9001.40.00
6103.39.80	6203.39.90	9001.50.00
6104.32.00	6204.31.10	9001.90.40
6104.33.20	6204.31.20	9001.90.90”.
6110.30.10	6204.32.20	

2. by inserting the following new heading 9903.90.04 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	
“9903.90.04	“Articles the product of Italy, as provided for in U.S. note 25(a) to this subchapter and as provided for in the subheadings enumerated in U.S. note 25(b) to this subchapter	The duty provided in the applicable subheading + 25%”.		

Annex B

Note: 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 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
1604.31.00	Caviar
1604.32.40	Caviar substitutes prepared from fish eggs, nesoi
3303.00.20	Perfumes and toilet waters, other than floral or flower waters, not containing alcohol
3307.90.00	Depilatories and other perfumery, cosmetic or toilet preparations. nesoi
4202.29.10	Handbags w. or w/o shld. strap or w/o handle of mat. (o/t leather, shtng. of plas., tex. mat., vul. fib. or paperbd.), paper cov., of plas.
4202.29.50	Handbags w. or w/o shld. strap or w/o handle of mat. (o/t leather, shtng. of plas., tex. mat., vul. fib. or paperbd.), pap.cov.,of mat. nesoi
4202.29.90	Handbags with or without shoulder straps or without handle, with outer surface of vulcanized fiber or of paperboard, not covered with paper
6103.10.10	Men's or boys' suits, knitted or crocheted, of wool or fine animal hair
6103.31.00	Men's or boys' suit-type jackets and blazers, knitted or crocheted, of wool or fine animal hair
6103.32.00	Men's or boys' suit-type jackets and blazers, knitted or crocheted, of cotton
6103.33.20	Men's or boys' suit-type jackets and blazers, knitted or crocheted, of synthetic fibers, nesoi
6103.39.80	Men's or boys' suit-type jackets and blazers, of textile mats, (except wool, cotton, or mmf), cont less than 70% by wt of silk, knitted/croc
6104.32.00	Women's or girls' suit-type jackets and blazers, knitted or crocheted, of cotton
6104.33.20	Women's or girls' suit-type jackets and blazers, knitted or crocheted, of synthetic fibers, nesoi
6110.30.10	Sweaters, pullovers, sweatshirts and similar articles, knitted or crocheted, of man-made fibers, cont. 25% or more by weight of leather
6117.80.20	Ties, bow ties and cravats, containing 70% or more by weight of silk or silk waste, knitted or crocheted
6117.80.87	Ties, bow ties and cravats, containing under 70% by weight of silk or silk waste, knitted or crocheted
6203.19.10	Men's or boys' suits, not knitted or crocheted, of cotton
6203.31.90	Men's or boys' suit-type jackets and blazers, of wool or fine animal hair, not knitted or crocheted
6203.32.10	Men's or boys' suit-type jackets and blazers, not knitted or crocheted, of cotton, containing 36 percent or more of flax fibers
6203.32.20	Men's or boys' suit-type jackets and blazers, not knitted or crocheted, of cotton, under 36% by weight of flax

HTSUS Subheading	Product Description
6203.33.10	Men's or boys' suit-type jackets and blazers, not knitted or crocheted, of synthetic fibers, cont. 36% or more of wool or fine animal hair
6203.33.20	Men's or boys' suit-type jackets and blazers, not knitted or crocheted, of synthetic fibers, under 36% by weight of wool
6203.39.10	Men's or boys' suit-type jackets and blazers, of artificial fibers, containing 36% or more by weight of wool or fine animal hair, not k/c
6203.39.20	Men's or boys' suit-type jackets and blazers, not knitted or crocheted, of artificial fibers, under 36% by weight of wool
6203.39.50	Men's or boys' suit-type jackets and blazers, of textile materials (except wool, cotton or mmf), cont 70% or more by weight of silk, not k/c
6203.39.90	Men's or boys' suit-type jackets and blazers, of text materials (except wool, cotton or mmf), containing under 70% by weight of silk, not k/c
6204.31.10	Women's or girls' suit-type jackets & blazers, of wool or fine animal hair, not knitted or crocheted, cont. 30% or more by weight of silk/silk waste
6204.31.20	Women's or girls' suit-type jackets and blazers, of wool or fine animal hair, not knitted or crocheted, under 30% by weight of silk/silk waste
6204.32.20	Women's or girls' suit-type jackets and blazers, of cotton, not knitted or crocheted, under 36% flax
6204.33.10	Women's or girls' suit-type jackets and blazers, not knitted or crocheted, of synthetic fibers, cont. 30% or more of silk/silk waste
6204.33.40	Women's or girls' suit-type jackets & blazers, not knitted or crocheted, of synthetic fibers, cont. 36% or more of wool or fine animal hair
6204.33.50	Women's or girls' suit-type jackets and blazers, not knitted or crocheted, of synthetic fibers, nesoi
6204.39.20	Women's or girls' suit-type jackets & blazers, not knitted or crocheted, of artificial fibers, cont. 36% or more by weight of wool or fine animal hair
6204.39.30	Women's or girls' suit-type jackets and blazers, not knitted or crocheted, of artificial fibers, under 36% by weight of wool or fine animal hair
6204.39.60	Women's or girls' suit-type jackets and blazers, not knitted/crocheted, of othertextile materials nesoi, cont. 70% + by weight of silk or silk waste
6204.39.80	Women's or girls' suit-type jackets and blazers, not knitted or crocheted, of textile materials nesoi
6403.59.60	Footwear w/outer soles and uppers of leather, not cov. ankle, n/welt, for men, youths and boys
6403.91.60	Footwear w/outer soles of rubber/plastics/composition leather & uppers of leather, covering the ankle, n/welt, for men,youths and boys
6403.91.90	Footwear w/outer soles of rubber/plastics/comp. leather & uppers of leather, cov. ankle, n/welt, for persons other than men/youths/boys
9001.40.00	Spectacle lenses of glass, unmounted
9001.50.00	Spectacle lenses of materials other than glass, unmounted
9001.90.40	Lenses nesoi, unmounted
9001.90.90	Optical elements nesoi, unmounted