



# The Bottom Line

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## DIGITAL TRADE WAR IS ON THE HORIZON

### Summary

On June 2, 2021, United States Trade Representative (USTR) Katherine Tai announced the conclusion of the one-year investigations of Digital Service Taxes (DSTs) adopted by Austria, India, Italy, Spain, Turkey, and the United Kingdom. The final determination is to impose additional tariffs of 25% on certain goods from these countries. These tariffs have been immediately suspended for up to 180 days (November 29, 2021) to provide additional time to complete the ongoing multilateral negotiations.

### Background

Under current international tax rules, multinationals generally pay corporate income tax where production occurs rather than where consumers or users are located. Through the digital economy, businesses derive income from users abroad but, without a physical presence, are not subject to corporate income tax in that foreign country. Multinationals contend that taxing profits based on where users reside would effectively tax their income more than once. The Organization for Economic Cooperation and Development (OECD) has been in negotiations with over 130 countries to adapt international tax law as it applies to these digital service providers. Their current proposal would require multinational businesses to pay some of their income taxes where their consumers or users are located, a project referred to as Base Erosion and Profit Shifting (BEPS). However, despite these ongoing multilateral negotiations, several countries have decided to move ahead with unilateral measures to tax the digital economy. These measures target specific multinationals in a narrow range of business models meant to reflect the claimed sources of user value.

The countries that have decided to proceed with the Digital Services Taxes have proposals that would only cover profits from three business models: (1) those placing ads targeting users of a digital interface based on their data profiles; (2) those providing a multisided digital platform that allows users on one side of a transaction to interact with users on other sides, including the purchase of goods and services; and (3) those selling users' data. The United States strenuously objects to these taxes because the only targets would be American companies (Amazon, Google, Facebook, and Apple). Although these DSTs are generally considered to be interim measures until an agreement is reached at the OECD level, it is unclear whether all will be repealed at that point.

### Current Status

The proposed Section 301 duties are based on the aggregate level of trade in the products and the DST expected to be collected from U.S. companies. The proposed product lists include products with significant U.S. markets, such as:

- Austria: Leather articles, ceramics, glassware, printed circuit assemblies, radar apparatus, telescopes, and pianos (23 tariff subheadings)
- India: Shrimp, bamboo articles, silk brassieres, precious and semi-precious stones, and furniture (26 tariff subheadings)
- Italy: Perfume, gloves, handbags, suits, jackets, blazers, ties, leather footwear, and lenses (44 tariff subheadings)
- Spain: Footwear, hats, glassware, and handbags (27 tariff subheadings)
- Turkey: Certain textiles, carpets, bed linens, ceramic tiles, and jewelry (32 tariff subheadings)
- UK: Perfumes, overcoats, dresses, footwear, makeup, tiles, ceramic fixtures, brushes, industrial robots, jewelry, and furniture (67 tariff subheadings)

USTR has previously terminated investigations involving Brazil, the Czech Republic, the European Union, and Indonesia after determining that they had not implemented the DSTs under consideration. USTR has also indefinitely suspended tariffs on imports from France aimed at responding to its DST.

### Impact

The United States, under the Biden administration, is working with the OECD to advance their negotiations. The USTR has indicated that the tariff suspension is aimed at allowing additional time for these talks to reach a successful conclusion.

#### REFERENCES

[What European OECD Countries Are Doing about Digital Services Taxes](#) (Tax Foundation)

[Biden Removes Trump's MAGA Roadblock to a Global Digital Services Tax](#) (Diginomica)

[Digital Services Tax \(DST\) Investigations](#) (Miller & Co. P.C.)

[US-USTR Announces Tariffs in Section 301 Digital Services Taxes Investigation](#) (Baker McKenzie)