

[Billing Code 3290-F1]

OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

Docket Number USTR–2021–0006

Notice of Action in the Section 301 Investigation of Turkey’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 Turkey’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 Turkey 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 Turkey 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

Turkey has adopted a DST that applies to companies that during the previous calendar year, generated €750 million or more in worldwide revenues and TRY 20 million or more in revenues deriving from the provision of digital services in Turkey. On June 2, 2020, the U.S. Trade Representative initiated an investigation of Turkey'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 Turkey'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 Turkey regarding the issues involved in the investigation. Consultations were held on September 29, 2020. Based on information obtained during the investigation, USTR prepared a comprehensive report on Turkey'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 Turkey's DST, and supports findings that Turkey'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 Turkey'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 2480 (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 Turkey to be drawn from a list of 45 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 held on May 3 and May 7, 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-2021-0006> 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 Turkey specified in Annex A to this notice. Annex A contains a list of 32 tariff subheadings, with an estimated trade value for calendar year 2019 of approximately \$310 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 Turkey's DST and the amount of taxes assessed by Turkey on U.S. companies. Estimates indicate that the value of the DST payable by U.S.-based company groups to Turkey will be up to approximately \$160 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 Turkey and the estimates of the amount of taxes assessed by Turkey.

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 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 9903.90.06 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 Turkey, 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 27(a) and 27(b) to subchapter III of chapter 99 in numerical sequence:

“27 (a) For the purposes of heading 9903.90.06, products of Turkey, as specified in this note, shall be subject to additional duties as provided herein. All products of Turkey that are classified in the subheadings enumerated in this note are subject to the additional duties imposed by heading 9903.90.06. The duties imposed by heading 9903.90.06 shall be in addition to the general duty rates provided for in the applicable provisions of the tariff schedule.

Products of Turkey 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 9903.90.06, 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 9903.90.06 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 Turkey 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 Turkey that are provided for in heading 9903.90.06 and classified in one of the subheadings enumerated in note 27(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 9903.90.06 shall apply to all products of Turkey that are classified in the subheadings enumerated below:

| | | |
|------------|------------|--------------|
| 5701.10.16 | 6302.32.20 | 6910.10.00 |
| 5701.10.90 | 6802.21.10 | 6913.10.50 |
| 5701.90.10 | 6802.21.50 | 6913.90.50 |
| 5702.31.20 | 6802.92.00 | 7113.11.20 |
| 5702.42.10 | 6907.21.10 | 7113.19.50 |
| 5702.92.10 | 6907.21.90 | 7113.20.29 |
| 5702.99.05 | 6907.23.90 | 7113.20.50 |
| 5702.99.15 | 6907.30.20 | 7116.20.05 |
| 5703.20.20 | 6907.30.30 | 7117.19.90 |
| 5703.90.00 | 6907.30.90 | 7117.90.90". |
| 6302.22.20 | 6907.40.90 | |

2. by inserting the following new heading 9903.90.06 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 | |
| "9903.90.06 | "Articles the product of Turkey, as provided for in U.S. note 27(a) to this subchapter and as provided for in the subheadings enumerated in U.S. note 27(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 |
|---------------------|---|
| 5701.10.16 | Carpets & other textile floor coverings, hand-knotted or hand-inserted, w/ov 50% by weight of the pile of fine animal hair, nesoi |
| 5701.10.90 | Carpets and other textile floor coverings, of wool or fine animal hair, not hand-hooked, not hand knotted during weaving |
| 5701.90.10 | Carpet and other textile floor covering, knotted, of text. materials (not wool/hair), pile inserted & knotted during weaving or knitting |
| 5702.31.20 | Carpets and other textile floor coverings of pile construction, woven, not tufted or flocked, not made up, of wool/fine animal hair, nesoi |
| 5702.42.10 | Wilton, velvet and like floor coverings of pile construction, woven, not tufted or flocked, made up, of man-made textile materials |
| 5702.92.10 | Hand-loomed carpet & other textile floor coverings, not of pile construction, woven, made up, of man-made textile materials |
| 5702.99.05 | Hand-loomed carpets and other textile floor coverings, not of pile construction, woven, made up, of cotton |
| 5702.99.15 | Carpets and other textile floor coverings, not of pile construction, woven, made up, of cotton, nesoi |
| 5703.20.20 | Carpets and other textile floor coverings, tufted, whether or not made up, of nylon or other polyamides, nesoi |
| 5703.90.00 | Carpets and other textile floor coverings, tufted, whether or not made up, of other textile materials nesoi |
| 6302.22.20 | Bed linen, not knitted or crocheted, printed, of manmade fibers, nesoi |
| 6302.32.20 | Bed linen, not knitted or crocheted, not printed, of manmade fibers, nesoi |
| 6802.21.10 | Worked monumental or building stone & arts. thereof, of travertine, simply cut/sawn, w/flat or even surface |
| 6802.21.50 | Worked monumental or building stone & arts. thereof, of marble or alabaster, simply cut/sawn, w/flat or even surface |
| 6802.92.00 | Worked monumental or building stone & arts. thereof, of calcareous stone, nesoi, further worked than simply cut/sawn |
| 6907.21.10 | Unglazed ceramic flags and paving, hearth or wall tiles, other than those of subheading 6907.30 and 6907.40, of H2O absorp coeff by wt <=0.5% |
| 6907.21.90 | Glazed ceramic flags and paving, hearth or wall tile, o/t subheading 6907.30 and 6907.40, of a H2O absorp coeff by wt <=0.5%, nesoi |
| 6907.23.90 | Glazed ceramic flags and paving, hearth or wall tiles, o/t subheading 6907.30 and 6907.40, of a H2O absorp coeff by wt >10%, nesoi |
| 6907.30.20 | Glazed ceramic mosaic cubes, o/t subheading 6907.40, having <=3229 cubes per m2, surf area in sq w/ side <7cm |

| HTSUS Subheading | Product Description |
|-------------------------|--|
| 6907.30.30 | Glazed ceramic mosaic cubes, o/t subheading 6907.40, having surface area <38.7cm ² , surf area in sq w/ side <7cm |
| 6907.30.90 | Glazed ceramic mosaic cubes nesoi, o/t subheading 6907.40 |
| 6907.40.90 | Glazed finishing ceramics nesoi |
| 6910.10.00 | Porcelain or china ceramic sinks, washbasins, baths, bidets, water closet bowls, urinals & siml. sanitary fixtures |
| 6913.10.50 | Porcelain or china (o/than bone china) ornamental articles, nesoi |
| 6913.90.50 | Ceramic (o/than porcelain, china, ceramic tile or earthenware) ornamental articles, nesoi |
| 7113.11.20 | Silver articles of jewelry and parts thereof, nesoi, valued not over \$18 per dozen pieces or parts |
| 7113.19.50 | Precious metal (o/than silver) articles of jewelry and parts thereof (o/t necklaces of gold, and clasps and parts thereof), whether or not plated or clad with precious metal, nesoi |
| 7113.20.29 | Base metal clad w/gold necklaces and neck chains, nesoi |
| 7113.20.50 | Base metal clad w/precious metal articles of jewelry and parts thereof (o/t necklaces of gold, and clasps and parts thereof), nesoi |
| 7116.20.05 | Jewelry articles of precious or semiprecious stones, valued not over \$40 per piece |
| 7117.19.90 | Imitation jewelry (o/than cuff links and studs, toy jewelry, religious articles & rope, curb, cable, chain, etc.), of base metal (wheth. or n/plated w/prec.metal), nesoi |
| 7117.90.90 | Imitation jewelry not of base metal or plastics, nesoi, over 20 cents/dozen pcs or pts, o/t toy jewelry or of plastics |