



April 30, 2021

The Honorable Katherine Tai  
United States Trade Representative  
600 17th Street NW  
Washington, DC 20508

**RE: Proposed Actions in Section 301 Investigations of Digital Services Taxes – Multijurisdictional Issues (USTR-2021-0008)**

Dear Ambassador Tai,

The National Retail Federation is submitting these comments on behalf of our members in response to the Office of the U.S. Trade Representative's (USTR) request for public comments concerning proposed tariffs of up to 25 percent, to be applied to selected products in response to the above-referenced Section 301 investigations that concluded that the digital services taxes (DSTs) of Austria, India, Italy, Spain, Turkey and the United Kingdom are unreasonable or discriminatory and burden or restrict U.S. commerce.

The National Retail Federation, the world's largest retail trade association, passionately advocates for the people, brands, policies and ideas that help retail thrive. From its headquarters in Washington, D.C., NRF empowers the industry that powers the economy. Retail is the nation's largest private-sector employer, contributing \$3.9 trillion to annual GDP and supporting one in four U.S. jobs — 52 million working Americans. For over a century, NRF has been a voice for every retailer and every retail job, educating, inspiring and communicating the powerful impact retail has on local communities and global economies.

USTR proposes to impose duties of up to 25 percent on lists of goods from Austria, India, Italy, Spain, Turkey and the United Kingdom (among others) and is seeking comments on this action. Specifically, USTR is seeking comments about which products in the annex to the Federal Register notices should be subject to increased duties, the amount of the increased duties, the level of the burden or restriction on the U.S. economy resulting from the DST, and the appropriate level of trade to be covered by the additional duties. In addition, USTR requests input on whether imposing increased duties on a particular product would be practicable or effective to obtain the elimination of each country's DST, and whether increasing duties on particular products might have an adverse effect upon U.S. stakeholders, including small businesses and consumers. However, we note that the Section 301 statute authorizes USTR to pursue a range of trade actions, which may be more targeted and persuasive, as well as less economically harmful to U.S. retail business than the imposition of tariffs.

As a threshold point, NRF believes that the DSTs imposed by Austria, India, Italy, Spain, Turkey and the United Kingdom discriminate against U.S. companies and constitute unreasonable burdens on U.S. commerce. We thus support the finding of USTR and the Section

301 Committee that their DSTs are “actionable under section 301(b) of the Trade Act”. However, NRF believes that the ultimate goal should be the removal of the DSTs through the OECD’s inclusive framework process, extended as appropriate to non-OECD countries like India. **We urge that full efforts to achieve a negotiated solution be pursued before imposition of any retaliatory measures and commend the administration for leading the global effort toward such a solution.**

NRF supports the Administration’s continued efforts to engage in constructive dialogue with the six countries to negotiate an acceptable outcome which includes the elimination of the DSTs, including through multilateral negotiations that are taking place at the OECD concerning the taxation of the digital economy. NRF believes that changes to the international tax system should be achieved through a broad-based consensus on taxing income where value is created. This process should move forward without delay, and countries should not resort to unilateral measures while that process is ongoing.

NRF’s further comments below focus on USTR’s request for information about the economic impacts of the proposed tariffs on U.S. retailers and the consumers they serve. In this case, the proposed retaliation will have the potential to negatively impact retailers of all sizes, including small- to medium-sized retailers and their workers, at a time when the industry is reeling from the impacts of the coronavirus pandemic. A large share – 48 percent – of American retail workers are women, and 36 percent are minorities, groups that have been disproportionately negatively impacted by the pandemic. It will also have ripple effects through the economy and on the local communities in which they operate.

The targeted products depend on extensive supply chains that include third party importers, brokers, shippers, warehouse personnel and other such workers, in many cases represented by small and medium-sized businesses and diverse employees. Similarly, at the wholesale level many downstream customers are family-owned retail shops that are highly vulnerable to supply chain disruptions. In addition, large numbers of employees in the marketing and advertising fields depend in particular on the retail products on the targeted List. Taken together, the targeted products form the core of an ecosystem that employs U.S. workers far beyond the exporting companies. Many of these workers are currently unemployed due to the pandemic; higher costs for the products they might sell if called back to work when the economy further opens would deliver another blow to them.

The individual items targeted for retaliation and about which NRF members are most concerned are listed in Appendix A.

### **Perfumes, Footwear, Apparel and Accessories and Handbags Should Be Removed from the Proposed Retaliation Lists**

NRF strongly opposes the imposition of punitive duties on imports from Italy, Spain and the United Kingdom of perfumes, footwear, apparel and handbags listed in Appendix A. Our comments presume that the U.S. retail economy will fully re-open post-pandemic to in-store sales – an assumption that may be more appropriate for the end of 2021 than it would be for the

present. In the shorter term, our comments reflect the impacts on online sales of goods sold out of U.S.-based supplies of the targeted goods imported from Italy, Spain and the United Kingdom.

The imposition of tariffs of up to 25 percent on the products in Annex A would have at least three specific impacts. It would:

- *Negatively impact local communities tied to retail activity.* Over the past decade, retailers have contributed to the health of the U.S. economy by steadily expanding their physical store footprints. Prior to the pandemic, luxury retailers largely shielded themselves from store closures and sustained the commercial leasing landscape by maintaining a mix of flagship stores with smaller-format, experiential stores in premier mall and street-level spaces. Many of these smaller-format stores and department store concession boutiques are dedicated exclusively or primarily to the sale of cosmetics, apparel, and leather goods like handbags and footwear. In these stores, landlords depend on collecting percentage rent (i.e., portion of gross sales) in addition to minimum rent. The imposition of high tariffs on a significant percentage of their product mix would adversely impact sales and likely lead to store closures (both directly and as a consequence of the loss of anchor tenants), with attendant lost jobs, and other spill-over impacts in the communities in which the malls or stores are located. All of this could significantly harm the post-pandemic economic recovery in local communities throughout the United States.
- *Further slow the economically-important tourist economy.* The proposed tariffs have the potential to significantly and adversely impact tourist spending, once tourism resumes, which in turn negatively impacts retailers, their employees and the communities in which they are located. Prior to the pandemic, many tourists came to the United States specifically to shop, especially for luxury items. Unfortunately, the imposition of tariffs will dissuade many of these tourists from traveling to the United States post-pandemic to shop for luxury goods imported from Italy and the UK, in particular. These tourists may choose instead to visit Canada or other European countries to shop for these products where they will not be subject to a 25 percent tariff.
- *Boost the sale of counterfeit products.* NRF appreciated that mitigating the importation of counterfeit goods into the U.S. is a high priority for the administration. An increase in prices that would likely follow from the imposition of 25 percent duties would worsen the already chronic counterfeiting of major retail brand products. The products on the proposed lists – perfumes, handbags, apparel, footwear and accessories – are already the most counterfeited, primarily coming from China. The owners of many major retail brands employ extensive anti-counterfeiting programs that are under constant threat. The imposition of significant tariffs on these branded products would potentially result in an increase in counterfeits, which would be inconsistent with the Administration’s efforts to combat the importation of counterfeit goods.

Many of the products on USTR’s proposed tariff list have a low barrier to entry into the United States for counterfeits and the problem has grown exponentially due to e-commerce. The negative effects of these counterfeit products on consumers include: (a) unregulated products having no supply line integrity or customer support and service; (b)

adulterated products posing serious risks to public health and safety, and (c) rising black market activities that feed organized crime and expose U.S. consumers to inconsistent and inferior products. For many of the targeted products, brand strength and goodwill have been built over decades and include meticulous quality control and supply chain integrity. Once lost, goodwill and consumer confidence cannot be restored quickly, if at all. As a result, when the present trade disputes are resolved, the harm to these brand owners would remain, potentially indefinitely.

This movement from genuine products to counterfeits would also deprive state and local governments of important tax revenues and threaten the jobs of the many businesses, including small and mid-sized entities for which demand has been seriously reduced.

## **Carpets**

NRF opposes the imposition of duties of up to 25 percent on carpets imported from Turkey. While Turkey has long been a strong manufacturer of carpets and rugs, the imposition of tariffs on imports of carpets from China shifted more of that trade to Turkey. Imposition of new duties on imports from Turkey will unfairly punish retailers and others who made this important shift.

## **Stone, Tiles, and Bathroom Ceramics**

NRF opposes the imposition of duties of up to 25 percent on stone, tiles and bathroom ceramics imported from Turkey and the United Kingdom. These products are sold by home building retailers, one of the few bright spots over the last year in retailing. Raising their costs would deal a blow to that segment of retailing at a time we can least afford it. Moreover, such tariffs would have a disproportionate impact on regular American homeowners and homebuyers, and the many small businesses that rely on a stable supply of building material products.

## **Other Products**

Other consumer goods on the proposed retaliation lists, like shrimp and jewelry, are sold to cost-conscious consumers. Raising the prices of these goods by as much as 25 percent would hit these households hard at a time they can least afford it. These households are often headed by women and minorities, so the Administration would be striking at a segment of the working population it has promised to look out for. Additional tariffs on imports of shrimp would also strike a blow at America's restaurants, for which this is a staple product on many menus. Also due to the pandemic, this is not the time to impose additional costs on these retailers.

## **USTR Should Impose Fees or Restrictions on ICT or Potentially ICT-Enabled Services from DST-Imposing Countries**

As noted above, the USTR is authorized to pursue a range of trade actions under Section 301, beyond tariffs. NRF respectfully submits that because the subject act, policy, or practice of Austria, India, Italy, Spain, Turkey and the United Kingdom involves a tax on U.S. service providers, it would be appropriate for the remedy imposed by the United States – presuming an

unsuccessful conclusion to multilateral negotiations – to include fees or restrictions on services from those countries, not goods. Indeed, a fee or restriction imposed against the tax-imposing country’s provision of services to the U.S. market is more justifiable than a tariff remedy imposed on goods which are wholly unrelated to the underlying harm.

Because USTR found Austria’s, India’s, Italy’s, Spain’s, Turkey’s and the UK’s acts, policies or practices unfairly targeted U.S. digital services companies, NRF submits that those countries’ ICT services<sup>1</sup> and “potentially ICT enabled” services<sup>2</sup> should be the focus of such fees or restrictions. For example, according to publicly available statistics released by the U.S. Bureau of Economic Analysis, the U.S. imported \$2.8 billion in ICT services and potentially ICT-enabled services from Italy in 2018, the latest year data are available; \$2.1 billion from Spain; and \$4.7 billion in ICT services alone from the UK (potentially ICT-enabled services data are not available).

NRF urges USTR to review all data available to the U.S. government (including confidential data) regarding the provision of digital services from the six countries to the United States to identify targets for remedial fees under Section 301 that would be more appropriate than imports of goods, and only after a full and good-faith effort to resolve the issue in multilateral talks does not succeed.

## Conclusion

We thank the Administration for the opportunity to provide comments on potential trade actions. We strongly recommend that the Administration refrain from imposing these proposed tariffs and seek to achieve a multilateral solution at the OECD.

Sincerely,



David French  
Senior Vice President  
Government Relations

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<sup>1</sup> ICT services are those services that are "intended to enable and/or fulfill the function of information processing and communication."

<sup>2</sup> ICT-enabled services are "services that are delivered remotely over ICT networks" and "include activities that can be specified, performed, delivered, evaluated and consumed electronically." Because many services may be delivered via ICT networks or via conventional means, the BEA reports services trade statistics for a broader category of services which may *potentially* be delivered via ICT networks. See Table 3.3: U.S. Trade in ICT and Potentially ICT-Enabled Services, by Country or Affiliation, International Transactions, International Services, and International Investment Position Tables, International Data, <https://apps.bea.gov/iTable/iTable.cfm?reqid=62&step=9&isuri=1&6210=4>.

**National Retail Federation Submission**  
**Docket No. USTR-2021-0008**  
**Appendix A**  
**Priority Consumer Goods to Be Deleted from the Proposed Lists**

**Shrimp**

0306.16.00	Cold-water shrimps and prawns, cooked in shell or uncooked, dried, salted or in brine, frozen
0306.17.00	Other shrimps and prawns, cooked in shell or uncooked, dried, salted or in brine, frozen.
0306.35.00	Cold water shrimps and prawns, shell-on or peeled, live, frozen, or chilled
0306.95.00	Other shrimps and prawns, shell-on or peeled

**Perfumes**

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

**Fashion and leather goods**

4202.21.90	Handbags, with or without shoulder strap or without handle, with outer surface of leather, composition or patent leather, nesoi, over \$20 ea.
4202.22.15	Handbags, with or without shoulder straps or without handle, with outer surface of sheeting of plastics.
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.
4202.31.30	Articles of a kind normally carried in the pocket or handbag, with outer surface of reptile leather.
4203.29.30	Men's gloves, mittens and mitts of leather or composition leather, nesoi, seamed.
4203.29.40	Gloves, mittens and mitts of leather or composition leather, nesoi, not lined, for persons other than men.
4203.29.50	Gloves, mittens and mitts of leather or composition leather, nesoi, lined, for persons other than men.
4203.30.00	Belts and bandoliers with or without buckles, of leather or of composition leather.
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.
6104.31.00	Women's or girls' suit-type jackets and blazers, knitted or crocheted, of wool or fine animal hair.
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.
6104.43.20	Women's or girls' dresses, 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.
6117.80.95	Made up clothing accessories (excl shawl, scarve, and like, tie, cravat, headband, ponytail holder and like), cont < 70% wt of silk, k/c.
6201.12.20	Men's or boys' overcoats, carcoats, capes, & similar coats of cotton, not knit or crocheted, not containing 15% or more by wt of down, etc.
6201.92.45	Men's or boys' anoraks, windbreakers & sim articles nesoi, not knit/crochet, cotton, not cont. 15% or more by wt of down, etc, o/than rec perf outwear.
6202.12.20	Women's or girls' overcoats, carcoats, etc, not knitted or crocheted, of cotton, not containing 15% or more by weight of down, etc.
6202.13.40	Women's or girls' overcoats, carcoats, capes, cloaks and similar articles, not knitted or crocheted, of man-made fibers, nesoi.
6202.92.90	Women's/girls' anoraks, windbreakers & similar articles, nt knit/crochet, cotton, nt cont. 15% or more by wt of down, etc, o/ than rec perf outwear.
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.
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 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.
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 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
6204.39.60	Women's or girls' suit-type jackets and blazers, not knitted/crocheted, of textile materials nesoi, cont. 70% + 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.
6204.43.40	Women's or girls' dresses, not knitted or crocheted, of synthetic fibers, nesoi.
6204.44.40	Women's or girls' dresses, not knitted or crocheted, of artificial fibers, nesoi.
6204.49.10	Women's or girls' dresses, not knitted or crocheted, containing 70% or more by weight of silk or silk waste.
6205.20.20	Men's or boys' shirts, not knitted or crocheted, of cotton, nesoi.
6211.39.03	Rec perf outwear, men's or boys' track suits or other garments nesoi, not knitted or crocheted, of wool or fine animal hair.
6211.39.30	Men's or boys' track suits or other garments nesoi, not knitted or crocheted, of wool or fine animal hair, o/than rec perf outwear.
6215.10.00	Ties, bow ties and cravats, not knitted or crocheted, of silk or silk waste.
6215.20.00	Ties, bow ties and cravats, not knitted or crocheted, of man-made fibers.
6215.90.00	Ties, bow ties and cravats, not knitted or crocheted, of textile materials nesoi.
6302.22.20	Bed linen, not knitted or crocheted, printed, of manmade fibers, nesoi.
6303.91.00	Curtains (including drapes), interior blinds and valances of cotton, not knitted or crocheted.



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.
6404.20.40	Footwear w/outer soles of leather/comp. leath., n/o 50% by wt. rub./plast. or rub./plast./text. & 10%+ by wt. rub./plast., val. o/\$2.50/pr.
7113.11.50	Silver articles of jewelry and parts thereof, nesoi, valued over \$18 per dozen pieces or parts.
7113.19.29	Gold necklaces and neck chains (o/than of rope or mixed links).
7116.20.05	Jewelry articles of precious or semiprecious stones, valued not over \$40 per piece.

### **Carpets**

5701.10.40	Carpets and other textile floor coverings, of wool or fine animal hair, hand-hooked (tufts were inserted and knotted by hand or hand tool).
	Kelem, Schumacks, Karamanie and similar hand-woven rugs, other than certified
5702.10.90	hand-loomed and folklore products.
	Carpet & other textile floor coverings, not of pile construction, woven, made up, of
5702.92.90	man-made textile materials, nesoi.
	Hand-loomed carpets and other textile floor coverings, not of pile construction,
5702.99.05	woven, made up, of cotton.
	Carpets and other textile floor coverings, tufted, whether or not made up, of nylon or
5703.20.20	other polyamides, nesoi.
5703.30.80	Carpets & other textile floor coverings, tufted, whether or not made up, of man-made textile materials (not nylon/other polyamides), nesoi

### **Stone, Tiles, Ceramic Bathroom Fixtures**

6802.10.00	Tiles/cubes/similar arts. of natural stone, enclosable in a sq. w/a side less than 7 cm; artificially colored granules, chippings & powder.
6802.21.10	Monumental or building stone & arts. thereof, of travertine, simply cut/sawn, w/flat or even surface.
6802.21.50	Monumental or building stone & arts. thereof, of marble & alabaster, simply cut/sawn, w/flat or even surface.
6802.92.00	Monumental or building stone & arts. thereof, of calcareous stone, nesoi, further worked than simply cut/sawn, nesoi.
6907.21.10	Unglazed ceramic tiles, other than those of subheading 6907.30 and 6907.40, of H2O absorp coeff by wt <=0.5%.
6907.21.40	Glazed ceramic tiles having surface area >=38.7cm <sup>2</sup> , , surf area in sq w/side <7cm, of a H2O absorp coeff by wt <=0.5%.

6907.21.90	Glazed ceramic tiles nesoi, of a H2O absorp coeff by wt $\leq 0.5\%$ .
6907.23.90	Glazed ceramic tiles nesoi, of a H2O absorp coeff by wt $> 10\%$ .
6907.30.20	Glazed ceramic mosaic cubes having $\leq 3229$ tiles per m <sup>2</sup> , surf area in sq w/side $< 7$ cm.
6907.30.30	Glazed ceramic mosaic cubes having surface area $< 38.7$ cm <sup>2</sup> , surf area in sq w/side $< 7$ cm.
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.
6910.90.00	Ceramic (o/than porcelain or china) sinks, washbasins, baths, bidets, water closet bowls, urinals & siml. sanitary fixtures.
6910.90.00	Ceramic (o/than porcelain or china) sinks, washbasins, baths, bidets, water closet bowls, urinals & siml. sanitary fixtures.