UNITED STATES OF AMERICA
UNITED STATES TRADE REPRESENTATIVE

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SECTION 301
FRANCE'S DIGITAL SERVICES

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PUBLIC HEARING

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WEDNESDAY
JANUARY 8, 2020

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The Hearing convened in Main Commission Hearing Room of the U.S. International Trade Commission Headquarters, 500 E Street, S.W., Washington, D.C., at 10:00 a.m., Megan Grimball, Chair, presiding.

PRESENT:

MEGAN GRIMBALL, USTR, Chair
SARAH BONNER, Small Business Administration
WON CHANG, Department of Treasury
JESSICA HUANG, Department of Commerce
MICHAEL ROGERS, USTR Europe
BOB SPITZER, Department of Agriculture
ARI SULBY, Department of State

STAFF PRESENT:

WILLIAM BISHOP, International Trade Commission

PANEL 5:
KYLE GILSTER, Gellert Global Group
ERIC FABER, Cutting Edge Selections
TIMOTHY GAGNON, Selection Massale
MICHAEL DANIELS, Vintage >59
CHRISTY FRANK, Copake Wine Works*
LYLE FASS, Fass Selections*

PANEL 6:
ZEV ROVINE, Zev Rovine Collections (on behalf of Devenish Wines)
EBEN LILLIE, Chambers Street Wines
JESSICA WASSERMAN, Bel Brands USA
MARK BAUMGARTEN, Materne North America
PETER VITALIANO, National Milk Producers Federation
EMILY LYONS, Cheese Importers Association of America

*via telephone

CONTENTS

P-R-O-C-E-E-D-I-N-G-S

(10:02 a.m.)

MS. GRIMBALL: Good morning, and welcome to those in the audience and to those who are joining us over the phone. After the disruption in our hearing yesterday, we are going to continue this morning. And thank you all for being flexible and adjusting to the OPM announcement from yesterday.

I will do a brief introduction, and then we will also introduce the interagency representatives today.

The Office of the U.S. Trade Representative, in conjunction with the Interagency Section 301 Committee, is holding this public hearing in connection with the 301 investigation of France's digital services tax initiated on July 10, 2019.

On July 6, 2019, the Trade Representative published a notice in the Federal Register that announced a determination that

France's digital services tax is unreasonable or discriminatory and burdens or restricts U.S. commerce and is therefore actionable under Section 301 of the Trade Act of 1974.

Detailed information concerning this investigation is set out in the Federal Register notices published on July 16, 2019, at 84 FR 34042, and December 6, 2019, at 84 FR 66956. A report detailing the findings in the investigation is also available on the USTR website.

The purpose of today's hearing is to receive public testimony on the proposed action to be taken in this investigation following the Trade Representative's determination of actionability.

The Section 301 Committee will carefully consider the testimony and the written comments, including post-hearing comments. The Section 301 Committee will then make a recommendation to the Trade Representative on the action to be taken.

Before we proceed with testimony this morning, I will provide some procedural and administrative instructions. I will then ask the agency representatives participating in the hearing today to introduce themselves.

This is the second day of the hearing. We will have two panels of witnesses this morning with 12 individuals scheduled to testify. Two individuals will be testifying by phone. We will have a five-minute break between the panels.

Each organization appearing at the hearing today is limited to five minutes of oral testimony. After the testimony from each panel of witnesses, the Section 301 Committee will have an opportunity to ask questions. Committee representatives will direct their questions to one or more specific witnesses.

Post-hearing comments, including any written responses to questions from the Section 301 Committee, are due by Tuesday, January 14, 2020.

The rules and procedures for submissions are set out in the December 6th Federal Register Notice.

In responding to questions, panels should recall that they have an opportunity to provide more detailed or extensive responses in their post-hearing submissions. No cameras, video, or audio recording will be allowed during the hearing.

A written transcript of this hearing will be posted on the USTR website and on the Federal Register docket as soon as possible after the conclusion of this hearing.

We are pleased to have with us today international trade, tax, and economic experts from a wide range of U.S. government agencies. If you could introduce yourselves, please.

MR. SULBY: Ari Sulby, Department of State.

MR. ROGERS: Michael Rogers, USTR's Europe and Middle East Office.

MS. HUANG: Jessica Huang, U.S. Department of Commerce.

MR. SPITZER: Bob Spitzer, U.S. Department of Agriculture.

MS. BONNER: Sarah Bonner, U.S. Small Business Administration.

MS. GRIMBALL: And I am Megan Grimball, Chair of the Section 301 Committee, USTR Office of General Counsel.

MR. BISHOP: Madam Chairman, our first witness on this panel is Kyle Gilster with the Gellert Global Group. Mr. Gilster, you have five minutes.

MR. GILSTER: Good morning. Good morning again. My name is Kyle Gilster. I'm the office managing partner of the law firm of Husch Blackwell. Mr. Gellert unfortunately last night had to head back to New Jersey for some meetings for his company this morning, so he asked if I could testify in his stead, and he sends his best regards. And thank you for this opportunity.

The Gellert Global Group is a third-generation family-run organization that is comprised of five U.S.-based food importing companies. Some of these companies have been importing food products for over 100 years.

The companies import a broad variety of foods into the United States, including butter and value-added and specialty cheeses subject to this proceeding.

On behalf of the Gellert Global Group's over 500 U.S. employees, I thank you for the opportunity to appear before you today to express our strong opposition to the addition of a number of tariff subheadings related to food, which have been proposed for duties as part of the French digital serves tax investigation.

The Gellert Global Group respectfully requests that USTR not impose this tariff on the proposed subheadings related to foods and wine due to the impact the proposed 100 percent tariff has on our business and the jobs we provide. Two, the subheading could be subject to two sets of Section 301 duties. And, three, because these tariffs target foods and other consumer products, they will be ineffective in encouraging France to remove its discriminatory tax.

The proposal of these tariffs on food products from France has significant -- has caused significant uncertainty for the Gellert Global Group's companies and the 500 individuals we employ. Based upon 2018 import data, we anticipate that a 100 percent duty on these goods would result in over $10 million worth of additional duties paid by the Gellert Global Group companies. That amount would have a drastic impact on our ability to invest in our business and employees.

The Gellert Global Group recently made a $12 million investment to update and expand its food manufacturing facility in Lakewood, New Jersey, and was poised to make an expansion of that facility later this year. However, these plans have been placed on hold due to the unpredictability caused by the threat of these tariffs as the company will be forced to divert capital needed for the expansion to pay the additional duties.

We have also instituted a hiring freeze at this time, and we are uncertain whether we will be able to hire new workers if we are forced to retire certain product lines due to these tariffs.

In 2020, our companies intended to begin a marketing campaign for our French product lines, which would have represented an additional 150,000 to 300,000 that would have been spent on hiring U.S. marketing companies to promote these products. Unfortunately, we are not going to be able to do that.

Additionally, many of the foods, especially the butter and cheeses from France, are also proposed to face duties in the Section 301 due to the large civil aircraft dispute. For example, tariff subheading 0406.40.54, which covers blue cheeses and original loaves, are proposed for additional duties in both Section 301 proceedings enacted against goods from the EU and France.

While the Gellert Global Group understands the large civil aircraft dispute and this digital tax proceeding have two separate underlying causes, USTR is considering implementing 100 percent additional tariffs on certain cheese products and goods from France under both proceedings.

If our companies are forced to pay duties on these goods in two separate tariff actions, the product lines of the subject goods will become unsustainable, and we will likely be forced to abandon those product lines as well as determine other necessary cost savings within the company.

In just a two-month time period, we have already incurred approximately $2.6 million in additional duties due to the Section 301 tariffs related to the large civil aircraft duties, in addition to other expenses related to importing product prior to the list of affected goods changes.

Our total expense relating to this action will be closer to three million. Another tariff action targeting the same products will be devastating to the Gellert Global Group companies.

Finally, we believe that USTR should focus these tariffs on the sector that the French are targeting -- digital services.

Section 301 of the Trade Act allows USTR to impose tariffs on goods and/or services. We note that in previous tariff actions against the EU for actions that target specific U.S. industries or businesses, Section 301 duties have targeted the same sector affected by the discriminatory policies.

For example, when the EU threatened to prevent the importation of U.S. beef into the EU due to the use of certain hormones administered to beef cattle for growth promotion purposes, the USTR threatened action specifically against other food products, i.e. products within the same sector.

While we understand the U.S. is not required by Section 301 to only tax goods or services within the same sector, we believe that focusing the tariffs on services or goods more closely aligned to digital services will target the tariffs -- will target the tariffs correctly and more appropriately and encourage France to remove this discriminatory tax.

In conclusion, including the proposed food tariff subheadings will cause severe economic harm to the Gellert Global Group and its employees and not assist in encouraging France to remove this discriminatory tax.

Thank you for your time and this opportunity to testify.

MR. BISHOP: Thank you, Mr. Gilster.

Our next witness is Eric Faber with Cutting Edge Selections. Mr. Faber, you have five minutes.

MR. FABER: Thank you. I would first like to thank the committee for allowing me to speak at the hearing. I run a midsized importer and wholesaler based in Cincinnati, Ohio, that services over 1,800 accounts in Ohio and Kentucky.

We were founded in 1993 and have grown exponentially over the years. From what started as a one-employee company, we have grown to employ 46 people across our territories and have built a comprehensive portfolio of fine wines from all over the world.

Working as both an importer and primarily as a wholesaler, we are able to see all facets of the industry, and I feel we are a good representation of the hundreds of other small businesses across the country that have a similar business model but who were not able to make the trip and come and speak in front of you today.

As a small business who works to promote and sell wine from over 500 producers from around the world, including nearly 100 American wineries, I can say without doubt that were this tariff to be enacted and include sparkling wines, my business would suffer greatly. At best, it would be the loss of a significant amount of revenue, and at worst likely leading to drastic losses in sales, profitability, and potentially leading to layoffs.

Our revenues on French sparkling wine in each of the last two years nears almost one million annually, which equates to roughly five percent of our total revenue. More importantly, this has been a category where we have seen significant growth in the past five years, both in total sales and as a percentage of sales by category.

Across the United States, the sales of sparkling wines have been among the strongest growth areas over the past few years. To reach this level of sales, my company has had -- has invested greatly in these products as a way to successfully grow our business.

These sales are not simply replaceable

by offering other products. And by placing a 100 percent import tax there will be a de facto prohibition on French sparkling wines.

All aspects of the wine industry, from producers to the retailers and restaurants that sell the product to the consumer, work on exceptionally slim margins. In Ohio, laws require a minimum margin to be passed on through the supply chain in order to create tax revenue for state and municipal governments, which means the pricing will have to be passed down to the consumer and cannot feasibly be absorbed at other levels.

To pass an action punitive to the profitability and revenue of these products would certainly lead to closures and layoffs across these industries. It is important to note that these industries are among the largest block of small businesses in the United States, and the hospitality industry is one of our nation's largest employers, providing nearly 16 million jobs or roughly 10 percent of the American workforce. Some of these jobs will certainly be lost if the tariff is passed in its current form.

Clearly, the number of businesses and employees that will be affected is significant. This also comes at a time when we have seen a rebirth of small, family-owned, and independent restaurants in cities across the country. Entire neighborhoods have been revitalized by the growth of this industry, and issuing a tariff that negatively affects the ability for these businesses to continue to operate would be harmful to tourism and local economies.

These businesses have become a vital part of their local economies as well as contributing to the growth of the American economy overall.

The aforementioned low margins they need to work on to be successful mean this tax, along with the previously implemented tariffs as a result of the Airbus dispute, will directly lead to layoffs and closures at all levels of the wine and hospitality industry.

Apart from the obvious and devastating problems that will be traded for mine and many other small businesses and our employees, while these tariffs may be intended to penalize producers in France or the French government for their actions in levying the French digital services tax, the tariffs will lead to more negative repercussions here at home.

As you know, the French government and producers do not pay the tariffs. The importer does. This means we will be forced to raise prices.

Second, the way tariffs are paid, which is at the time of clearing Customs, is financially harmful to the American importers. They are not levied on terms as our payments to producers are. Should we be able to continue selling these affected products, which, again, is almost certainly impossible, this would drastically affect our financial ability to purchase wines from other areas, including the United States.

By not having terms and being forced to pay obscenely high tariffs before we even receive the product, my business, along with hundreds of others like it, will be forced to make very difficult buying decisions due to the amount of capital we have available to purchase.

I have spoken to many domestic producers who have grave concerns over this, meaning the action would now effectively hurt producers of wine here in the United States.

Third, the implementation of these tariffs will do nothing to raise tax revenue for the U.S. And if restaurants, distributors, and retailers fail as a result, the taxes that are levied on alcohol will go down.

These specialized taxes help to fund state and local governments across the country. If there is no product to sell, there will be no tax revenue.

If the goal of tariffs in our trade

policy is to protect the American economy, I would submit that based on my testimony and the expertise and testimony of many others, that this tariff will do the opposite. To paraphrase Ambassador Lighthizer from an op-ed published in The New York Times in March of 2008, conservative statesmen were sometimes protectionist and sometimes leaned toward lowering barriers, but they understood that trade policy was a tool for building a strong and independent country with a prosperous middle class.

Combined with our industry already being unfairly and unjustly subjected to previous and other potential new tariff increases, a large portion of our industry could be lost overnight. Tens of thousands of jobs will be lost. Many companies will close.

I fail to see how that is helping to build a strong and independent country with a prosperous middle class.

In truth, the simple threat of the tariffs has already affected my business greatly, and many others. With no clear effective date having been proposed, my company has had to stop bringing in products that may be affected due to the risk of having them unexpectedly be subject to the tariff.

In regards to the earlier tariffs levied in the Airbus ruling, my company had containers that were ordered and consolidated at European ports well before the effective date was announced, causing us great --

MS. GRIMBALL: Mr. Faber?

MR. FABER: -- financial harm.

MS. GRIMBALL: Please conclude. You have a ways to go, but please find a way to conclude soon.

MR. FABER: Sure. I'll take it down.

In short, I urge this committee and Ambassador Lighthizer to remove sparkling wines and other important products to the hospitality industry. I urge you to consider the negative effects of including these products to small businesses across the country.

If nothing else, I would request that the necessary parties withhold this action until more information can be gathered. And at the very least, I would ask that American businesses that will be affected be given enough time to prepare ourselves, and hopefully to be able to protect ourselves and our employees.

Thank you.

MR. BISHOP: Thank you, Mr. Faber.

Our next witness is Timothy Gagnon with Selection Massale. Mr. Gagnon, you have five minutes.

MR. GAGNON: Good morning. Thank you very much for letting me testify this morning. I run a small U.S.-based wine importing company which has just celebrated its 10-year anniversary of incorporation, and these tariffs are deeply troubling to our stability as a company, as well to the wine, hospitality, and shipping industries as a whole.

We currently employ eight people across three states, many of whom have been with the company for years and rely on us to raise their families and for their healthcare benefits. This is in addition to our retail partnership right here in Washington, D.C., which employs another seven people.

That might seem like a small number, but it's not. Our 15 employees sell the wines of over 100 small farms, breweries, and distilleries, wholesales to 27 small distribution companies and as many states, and sells to largely independently owned wine shops -- at least 1,500 of them -- across the nation.

We are a small business that supports other small businesses. And because of this, we have a unique outlook as to how far-reaching the ripple effect of these potentially catastrophic and blatantly protectionist tariffs could be to hundreds of thousands of Americans.

In 2019, our most successful year yet,

European wines accounted for 75 percent of our total revenue, and sparkling wine 20 percent of that figure. All of those wines are made in small vineyards, often family-owned and ones passed down from generation to generation.

We are not alone. This is what makes us and our peers in this industry successful -- our specialization in hard-to-find small production wines from all over the EU. It takes time, care, and a small business -- small business touch.

It does not take a technicalized lens to see how these tariffs will disproportionately affect small importers across the country who simply do not have the cash flow or credit to shift their focus of their businesses overnight.

Many of us are struggling to conceive of a long-term solution to the recently implemented 25 percent tariffs just two months ago, without passing any of the cost to the American consumer, who are always the helpless victims of tariffs.

Any new tariff puts our entire company in jeopardy and the livelihoods of many who depend on us.

The industry, as a whole, will not benefit from these tariffs. This past year, the U.S. wine market was worth over $70 billion, of which imported wine comprised approximately one-third of that total figure.

Wine importing is a complex and multifaceted process, and the loss of revenue ensuing from these tariffs will be profoundly felt across every level of the supply chain. We are not simply talking about U.S.-based companies that file the paperwork and ship the wine and their salespeople who sell the wine.

We are talking about multinational freight companies who employ thousands of people across the globe. We are talking about distributors who help the network of imported wine to all 50 U.S. states, all of whom employ their own staff.

We are talking about restaurants and

retailers who ostensibly have to close when their cash flow is interrupted by a dearth of imported wine. We are talking about warehouses and trucking companies who are closely in support of the aforementioned parties.

In short, you are putting hundreds of thousands of American jobs, as well as an entire industry, at risk.

For the domestic wine industry, the impact of these tariffs will be felt across the board. Many U.S. wine producers rely on the very same network of trucking, warehousing, and distributors to provide access to their wines in many states.

If these businesses shutter due to the decline in revenue provided by imported wines, U.S. producers will have fewer channels to sell their wines, which could cause many of them to lay off employees of their own or to go out of business, depending on their scale and reliance on distribution to bring their wines to market.

Lastly, the implementation of U.S. tariffs on European wines will most likely result in retaliatory tariffs on American wines, which have begun to gain a foothold in these markets, making for a one-two punch on not only the wineries producing the product for export, but for the U.S. businesses handling the transportation of export of said wines.

Lastly, the proposed tariffs will harm the U.S. trade revenue as a whole for years to come, while producers in the EU rely on exports to sustain their farms and businesses, with the U.S. market responsible for 1.6 billion euros of French export wine market alone, and sparkling wines making up about 20 percent of that total figure in volume.

Many countries view China -- already the second-largest export market -- as the target for growth. Indeed, China and the Asian market as a whole stand to benefit from the restructuring of the EU export market, which may never again focus -- refocus on the U.S. if you are insistent on escalating trade war with key allies.

In other words, these tariffs have the potential to irreparably dismantle an entire source of tax revenue for the U.S. I ask you: why would these producers ever consider working with a country that decides that trade wars are a sound negotiating tactic? How will they reenter the market when these tariffs destroy the entire logistical system we and other importers have worked for years to put in place?

The answer is simple. Once they shift their focus elsewhere for export, they won't and can't. And if it's okay, I will actually diverge from the rest of my written statement, just in the interest of time.

I really just want to ask you one question. Have you ever traveled hundreds of miles to beg a panel of esteemed folks such as yourselves to not destroy everything that you've worked to build? To ask them not to put the livelihoods of employees who rely on you, industry peers, and colleagues all across the country, put their livelihoods in jeopardy?

That is basically what everybody that has spoken over the past two days has done, and I really hope that none of you have to experience that for yourselves.

Thank you very much.

(Applause.)

MR. BISHOP: Thank you, Mr. Gagnon.

Our next witness is Michael Daniels with Vintage '59. Mr. Daniels, you have five minutes.

MR. DANIELS: Good morning, and thank you for the opportunity to offer my comments. My name is Michael Daniels, and I am a partner at Vintage '59 Imports, a firm engaged in the trading of fine wine and spirits from France, Italy, Portugal, and Spain.

I can attest that the proposed tariffs on wine and spirits from the EU are a fundamental threat to our industry and its workforce. The broad-based effect of the proposed tariffs have been very capably detailed in the written comments and testimony delivered yesterday that have been submitted by a diverse set of constituencies.

All agree that the results would be devastating -- devastating to consumer choice and devastating to the $68 billion U.S. wine industry, one-third of which is directly derived from imports.

As a small business owner, a business that I have been involved in building now for 15 years, I can assure the committee that the results of any increased tariff burden -- and, indeed, the 25 percent tariffs that have already been levied on most of our products -- run the risk of putting us out of business.

Here's why. The beverage industry is terrifically dynamic today, with quality products being made around the globe and a complex infrastructure of trade allowing those products to reach the U.S. market at extremely competitive prices.

In practice, that means that the slightest increase in the pricing of our products can lead to dramatic sales declines. The 2016 harvest is a telling case study. Grape yields in France that year were six percent less than average, which led many of our producers to increase prices by five to 10 percent for their finished wines.

The resulting loss of sales for certain wines in our portfolio the next year was over 50 percent. We discontinued stocking items that effectively became unsaleable due to a baseline price increase of 10 percent or less. Demonstrably, small price increases result in significant economic harm to U.S. firms like ours.

Some commentators have suggested that tariffs will be absorbed into the supply chain. This is impossible in our segment of the beverage industry. Nearly all of our suppliers are closely held family farms.

Following the preliminary imposition

of 25 percent tariffs on October 18th of last year, we requested a pricing reduction of 10 percent from all affected producers to allow us to realize sales through the end of the year without disruption. Many were unable to meet this modest request, even for a window of less than three months.

Similarly, the majority of our customers are restaurants -- a notoriously challenging business which does not allow for absorbing even the smallest portion of increased costs. Quite simply, any increased tariff burden levied on wines and spirits from the EU, whether one percent or 100 percent, will force our customers to choose different products and will result in losses for our firm.

To be more specific about the human costs involved, our company has 13 employees. By any measure, we are a small business. Nevertheless, we offer competitive salaries and generous benefits, including retirement, paid parental leave, paid sick leave, and really good health insurance.

Many of our employees opt to have their spouses and children covered under our health plan. Prior to the announcement of the first round of tariffs, we were even considering dental. Any significant sales losses during even a short period would require layoffs. Any extended period of losses could lead to our full-scale collapse.

Finally, more than 50 percent of the business that we do in an average year is based on products that are sold to us on an allocation basis. That is to say that these products are so coveted and irreplaceable, with champagne at the top of the list, that our partners offer us a given amount of product, and we can choose to purchase it in full or not.

In the event that we choose not to take a given allocation, it is swiftly rerouted to other markets. This is an illustration of a fundamental dynamic -- a dynamic which is notably absent from any of the written testimony that I have reviewed in favor of these tariffs.

Targeting fine wine and spirits from the EU will cause more harm to businesses like ours than it will to our EU suppliers. While we are laying off 13 people, our champagne producers will be selling more wine to China.

While I respect that France's digital services tax and Airbus subsidies may both be discriminatory to U.S. firms, the proposed tariffs and those that have already been imposed are misguided.

I would strongly urge you to remove wines and spirits from the list of products for proposed and existing tariffs. To do otherwise would be to subvert the enormous strength of the U.S. Trade Representative's office, to the will of a handful of large corporate interests. A subversion that would come squarely at the expense of small and medium-sized businesses like ours, and the U.S. consumers who value the products we represent.

Thank you.

(Applause.)

MR. BISHOP: Thank you, Mr. Daniels.

Our next witness is Christy Frank with Copake Wine Works. Ms. Frank is participating by telephone. Ms. Frank, you have five minutes.

MS. FRANK: Hi. Thank you very much for I guess not letting me appear before you, but for hearing me remotely. Thank you very much for setting this up, so that I am able to talk to you about my family business and how the proposed tariffs will impact it.

Can everyone hear me?

MR. BISHOP: Yes, we sure can.

MS. FRANK: Okay. All right. My husband and I currently own a small wine shop in Copake, a small town, technically it's a hamlet, in southern Columbia County in New York State.

We opened the shop in 2015 and currently have two full-time-equivalent employees split across three bodies. I previously owned a wine shop in Manhattan but sold it in 2017 in order to focus my attention on the shop upstate in a rural area where wine and spirit shops aren't quite so easy to find.

Prior to my experience as a small business owner, I worked with Moet Hennessy USA, the wines and spirits arm of LVMH, Moet Hennessy Louis Vuitton, a large global importer with a large presence in America. You may have heard of it.

I have also worked as a salesperson at a small distributor also based in New York. So over my 20 years in this industry at all levels of the three-tier system, I have a solid understanding of how these tariffs will impact business throughout the supply chain, especially family-owned small and medium-sized businesses.

I do want to make it very clear that I fully understand that in disputes such as these, symbolic goods such as wines are targeted, and wine, especially targeting wine -- sparkling wine from France, especially champagne, is highly symbolic.

The French take their big champagne brands extremely seriously.

However, these tariffs and the ones proposed under the Airbus dispute will have limited impact on the big French companies. But the impact to small American businesses will be substantial. In terms of volume, much of the U.S. wine industry is dominated by a handful of large suppliers, national distributors, and chain retailers.

However, once you look beyond that or, rather, if you look below that, the industry consists of a vast three-tier system of small and medium-sized family-owned businesses, many of whom who have come here to talk today and yesterday; the importers who have to find the cash to pay the tariffs as soon as the wine hits our American shores; the distributors, there are over 1,000 of them across the country; wine shops, there are about 20,000 of us listed on wine searcher's non-comprehensive database alone; and, of course, many restaurants.

Most of these business owners use the sale of European wines, especially small producers, to pay themselves, their bills, their employees, and their state, local, and federal taxes. My store is one such business.

Simply shifting our inventory to wines from other countries, while it seems like a simple solution, won't work. I already carry a growing selection of wines from across America, from states as diverse as Vermont, from Maryland, from Michigan, which kills me because I'm from Ohio, and, of course, New York.

But our customers want even more diversity, of style, of origin, and of price. With a less diverse range of wines that I can sell at all price points, at the prices that they want to pay, our sales will decline and we could likely wind up closing, quite literally, shop.

As I mentioned, we are a small shop in a small town with just two full-time-equivalent employees. But multiply us by the thousands of other shops across the country, add in the distributors and the importers that will also be affected, consider the truck drivers that deliver the wine, the restaurants that use the profit from wine and spirits to keep their door open and pay their hardworking service and staff, as well as the accountants that we desperately love and need, the total of all -- total all of that up, and, simply put, the impact to small- and medium-sized American businesses throughout the wine industry's three-tier system will be devastating.

Meanwhile, the French and other European producers will simply sell their brands to other markets like China and Japan that are increasingly thirsty for wine. I wish I could compile and cite the specific numbers of jobs, the businesses, and the local tax coffers that will be damaged by the increased tariffs. Unfortunately, I didn't have time because I have a small business to run. Hopefully, I will have the opportunity to continue running it.

Thank you very much for the opportunity to speak today.

MR. BISHOP: Thank you, Ms. Frank.

Our final witness on this panel in Lyle Fass with Fass Selections. Mr. Fass is participating by telephone. Mr. Fass, you have five minutes.

MR. FASS: Thank you very much. Can everybody hear me?

MR. BISHOP: Yes, we sure can.

MR. FASS: Great. Good afternoon. Thank you very much for letting me present my case and allowing me to appear here today.

I have read the testimony of many of my esteemed colleagues in the wine industry and doubt that I can add much to their eloquent portrayal of the damage the tariffs have and will do to the people that work in it.

Today I will be taking a different tack and focusing on which wine tariffs would be most optimal if one assumes that wine should be tariffed.

Because of the constraints of time, I will skip a review of the theoretical underpinnings of optimal tariff policy. These can be found in my written comments, which can be found somewhere on the internet, along with my Social Security number, no doubt.

Before starting, I would like to note the impact of tariffs are particularly severe for companies in the pre-arrival sector of the wine business like mine. Because we charge and pay for wine before it is shipped, we are unable to recoup any tariff amounts that happen after we have made sales and before we ship the wines.

I would respectfully suggest that our policy should either allow for a six-month phase-in or an exception for wine that had been ordered and paid for before any tariff increases are announced.

First, let me state that almost all government decisions that interfere with food trade are bad for consumers. Human beings are generally rational and can decide which products to buy based on their knowledge of their own preferences, which are generally better than the government's knowledge of their preferences. This belief is, I believe, generally shared by Americans, but unfortunately less so by Europeans, who seem to be more open to government meddling in markets than we are.

As such, we are often forced to retaliate against their actions in order to protect our interest and restore free trade. Of course, tariffs harm our business, and our citizenry and consumers as well. It's like cutting one's arm off to bleed on your foes to harm them.

I would, second, like to point out that the tariffs to date have been much less effective than I thought they would be. I had hoped that the French winemakers would riot in the streets, forcing a quick negotiated conclusion to the tariffs. This has not happened, and it should force us to consider why the tariffs have been ineffective.

I believe that one main reason is that a large percentage of the dollar amount of the wine affected by the tariffs is made up of wine that is in fixed supply because it can only be made in small areas. Winemakers have demand for this wine in other areas such as Europe and Asia and have sold it there instead.

As I have noted, it is my preference that there be no tariffs at all, and certainly not on wine of any kind. But if the industry I've spent my life in is going to be the one to shoulder this burden, I do have a better idea of how to do it. That is to limit tariffs to large brand champagne.

This would include well-known brands like Veuve Clicquot, Moet Chandon, et cetera. A threshold can be set by global sales of historical U.S. imports of these wines.

There are several reasons why this would be a better policy. One, LVMH is controlled by the wealthiest Frenchman, Bernard Arnault. LVMH happens to own Moet Chandon, Dom Perignon, Veuve Clicquot, Krug Ruinart, and Mercier.

If you want to set a fire under someone powerful, he's a great choice. Putting tariffs on a bunch of products that they would affect 10,000 people losing a dollar a day is not as effective as putting a $50 million tariff on the richest man in France.

Two, prestige. Champagne is a prestige product for the French. Emmanuel Macron does not want to go down in history as the man who killed champagne.

Three, profits. Champagne is very profitable for these large companies. Arguably, they are the most profitable wine brand in the world. They have spent years building their brands and charge healthy premiums for these wines. Margins are massive, and they collect significant economic rents.

Four, actual diminution in wine sales. Most prestige French wines are limited in terms of the volume that can be produced because they are limited to a particular small vineyard or vineyard area. There is only so much La Tache, which is a famous Burgundy, that can be produced because the vineyard is a certain size and will never get any bigger. If Americans do not buy these wines, other countries will.

This is not the case with the entry-level champagnes from the large houses. They buy grapes from the entire large nation of Champagne, and can always buy more as they grow. They stand to lose the most from retaliatory tariffs as they are already making as much as they can sell.

Five, minimal harm to U.S. distributors. Most distributors and importers maybe have five to 10 percent of their offerings that are champagne. There are a few exceptions, but you're not destroying businesses and people's livelihoods.

Six, minimal harm to U.S. consumers. There are many substitutes for these wines. In terms of champagne-style wine, the Italian, Spanish, English, and Americans all make champagne-method wines. There are many other countries as well. If one includes non-champagne-style sparkling wine, there are oceans of it that are made almost everywhere there are grapes.

Also, most of the entry-level champagnes made by large companies are not of high quality. It's an open secret in the wine business that the under $55 wines from the large champagne houses are pretty terrible. Americans are overpaying for plonk supported by highly effective brand marketing.

Seven, the appearance of symmetry. An important point here is that the French targeted only our large technology companies. They did not catch smaller companies.

For the reasons stated above, I believe that it makes sense for us to only target their large companies as well. I believe --

MS. GRIMBALL: Mr. Fass, your time -- your time has expired. Please conclude.

MR. FASS: Five minutes is up? Okay. Thank you very much for listening to my thoughts.

MS. GRIMBALL: Thank you.

MR. BISHOP: Thank you so much, Mr. Fass.

Madam Chairman, that concludes direct testimony from this panel. We would ask that Ms. Frank and Mr. Fass please remain on the line to entertain questions. Thank you.

MR. SPITZER: Thank you. My question is for Mr. Gilster from Gellert Global. Could you please provide examples of the products your company markets? And, furthermore, do your companies do any further processing, or do they mainly sell the goods in the form that it's imported?

MR. GILSTER: Yes. I think it's Mr. Spitzer, thank you for the question.

The Gellert Global Group has a variety

of cheeses that it sells, ranges from, you know, blue cheese, Gouda cheese, Pecorino, Romano, covers the full gamut of cheeses, many of which we enjoyed, I'm sure, on New Year's Eve here.

They do have a blend of both selling as well as some, you know, processing as well, taking the raw materials that they import and then finishing them and then selling them.

In addition to the cheeses, they also have butters, a variety of specialty foods that you typically see in any kind of specialty food store.

And happy to -- we're happy to expand upon that as well subsequently in our written remarks as well.

MR. SPITZER: Yeah. If you would, please. Thank you.

You mentioned a food manufacturing facility. I just wonder what activities occur in that facility.

MR. GILSTER: Yeah. We'll follow up

in our written remarks with the exact details of the nature of manufacturing, sir.

MR. SPITZER: Thank you.

MR. SULBY: My question is for Mr. Faber. In your testimony, you discuss sort of the limitations proposed by Ohio's minimum sort of profit law and how that works. Could you just walk us through what that law entails and sort of how it works through the supply chain?

MR. FABER: Yeah. The state of Ohio has specific laws put in place that once we as a wholesaler purchase something, we're required to charge our customers, whether restaurants or retailers, a 25 percent increase in order to raise state tax revenue.

At that point, from a retail level, there are state minimum prices that retailers are required to charge, which is a 50 percent increase on what they pay for it from us, to raise additional revenue for the state.

MR. SULBY: So could you currently sort

of walk through how this impacts the supply chain in terms of how a tariff would be sort of divvied up within the supply chain?

MR. FABER: Yes. The easiest way to look at it would be if we paid $10 a bottle for something. With a 100 percent ad valorem tariff, we are looking at 20. So if the price on that wine, the $10 we pay, we're charging a retail store, you know, 12.50, so they're selling it for 17.99 on the shelf.

At $10 to us, with a 100 percent tariff, we're at 20, which then takes it to, you know, 25, what have you, which then takes it to 40. So you're effectively almost more than doubling the price of these products in Ohio.

MS. GRIMBALL: I realize that you're just speaking of Ohio. But to your knowledge, do you know if other states have similar laws, or is Ohio unique in that?

MR. FABER: To my knowledge, Ohio is the only state that has this set for all levels of the three-tier system. I know there are other states that have -- blue laws between different states are very diverse. There are states that do have different protections and things in place to make sure that certain profits are being made on items.

Some states -- like we also work in -- Kentucky has an additional 11 percent excise tax that has to be paid on every bottle of wine from us to the customer to raise revenue. So Ohio I think is a little bit unique in its specific tax structure. I really couldn't speak to every other state.

MR. DANIELS: I'd just add here that there is a patchwork quilt of compliance burdens for the alcohol industry that could not possibly be overstated. I think there is actually some irony that the base of all of this is that the tech companies are trying to avoid an uneven regulatory framework.

That's not state by state. It goes all

the way down to localities and even counties in certain states, where our actions and how we have to sell and the compliance burdens are different from one place to the next.

MR. FABER: Yeah. I would add, like in Ohio, Cuyahoga County, which is the base of Cleveland, has an additional tax that is paid on top of all of this.

MS. FRANK: This is Christy Frank. May I speak and add to that?

MS. GRIMBALL: Yes, please.

MS. FRANK: I work nationally, and we -- we used to joke that it essentially was as if we were working with 50 different countries. New York and a number of other states have filing requirements. So 45 days before the beginning of the month, the prices and all of the deal structures have to be set. That's a hard date.

There was a little bit of wiggle room for the tariffs, but New York, Connecticut, has filing requirements. Every state has substantial rules. And when the tariffs that did take place happened in October, many importers and many distributors did little else except figure out how this would impact their local state filing requirements.

MR. FABER: I know there are several other states that have those filing requirements as well. You may be able to speak better to that, since you work across the country. But if there's --

MR. DANIELS: We'd be happy to submit more details in post-hearing submission. It's mind-boggling, frankly.

MS. GRIMBALL: We'd appreciate that. That would be -- thank you.

MR. CHANG: Hi. My name is Won Chang, Department of Treasury. I had a question for Tim, Tim Gagnon.

MR. GAGNON: Yes.

MR. CHANG: Are sparkling wines from other European countries an option for your company? That's question number one.

And the other is, how do -- how would these tariffs affect the domestic wine industry?

MR. GAGNON: Sure. So for the first question, it's -- yes, it is another option, but it would take time. To find other sparkling wines from countries that work with the same ethos as everything else in our portfolio would take months. We spent 10 years building this business to where it is, and these types of relationships just don't happen overnight.

And there really isn't -- other people have touched on it before, but there aren't very many substitutes for very specific locales coming from France, Champagne in particular, and other parts of France, other parts of some of these other affected EU countries as well.

But, yes, in short, we could, but it would take quite a bit of time -- six months to a year -- to figure out how to come up with about 20 percent of our portfolio, basically.

Every single one of our producers from France makes sparkling wine to some degree, and that reflects a pretty large portion of our annual revenue.

The second point -- we actually do distribute a fair amount of domestic wineries using the same infrastructure as we use to import wine in New York and Chicago, and domestic wines make up approximately 18 percent of our portfolio at the moment.

Again, it's something that we're trying to expand, and we could, but there will never be any substitute for the other 75 percent of our portfolio. And also, with the interruption of cash flow on that 75 percent, will be -- you know, depending on how long these tariffs last, and if they go into effect, we could be seeing a position where we couldn't even pay those domestic producers because we have very limited channels to -- you know, we sell our 65 imported wineries in 27 states, but we are only able to sell the domestic wines in two states based on our current structure.

So there would be just -- we could figure it out. But, again, it would take a lot of time. And should we start to go out of business and other people -- there are a lot of other companies like ours that, while their specialization is in European wines, they do a lot of work with domestic producers as well.

And if we all start to go out of business, then they lose all their market share in many of these states. So it doesn't seem too far to say that many of the wineries would go out of business as well.

MR. FABER: If I could quickly add to that, we have spoken to -- and we work with I think 93 domestic producers at this point. We have spoken to the vast majority of them. They are against this.

The other thing I would add to what Timothy said is that it's not just that they can't -- if our companies start to go out of business, that they will lose their distribution network. It's that right now the number of distributors in the United States has downsized so far that it's hard for them to move now.

There's a handful of large companies that operates in multiple states, but companies like mine are very -- becoming increasingly rare. So for specifically smaller wineries in the United States, it has become very difficult already to find representation.

And if they lose another large subset of the distributors around the country, they won't be able to find representation, which means not just their businesses but a lot of these people buy their fruit from small farmers in Oregon, Washington, California, where have you. They won't be able to buy the fruit anymore because they won't be able to produce and there won't be enough demand for their product.

MR. DANIELS: Also, I would direct the committee's attention to some written testimony that has been submitted by the Wine Institute, which is a coalition of 1,000 wineries, more than 1,000 wineries from California.

Also, there is two great submissions from Eyrie Vineyards in Oregon, from Jason Lett, as well as Tablas Creek in California. Those are all producers that very capably lay out how damaging these tariffs could be for the domestic wine industry.

Thank you.

MR. ROGERS: Good morning. My question is for Mr. Daniels. In your testimony, you noted that the example of a low grape yield in France in 2016. And could you specify what type of grape that impact -- what products were impacted by that grape?

Actually, I have a two-part question, but I'll let you answer that first.

MR. DANIELS: Sure. The climatic conditions for the grape harvest in France in 2016 was a perfect storm of bad things. There were people that were affected by frost. There were people that were affected by hail. There was then drought later in the season in certain parts of the country.

All told, it was the lowest grape harvest on record from France in particular for quite some time.

MR. ROGERS: Was that across all types of wine produced in France?

MR. DANIELS: So six percent is a global figure for the entire country of France. I can tell you that if you get into the specifics, particularly the Loire Valley, we had one producer that we visited in 2016 who literally did not have any fruit at all due to late spring frost.

So, basically, once grapes are on the vine, if you have frost, you cannot have a harvest after that. So in specific instances, the loss was much higher than six percent. So six percent is an aggregate figure.

MR. ROGERS: And then my next question

to you is -- gets to, let's say, customer behavior, particularly your customers who are restaurants. And, in particular, do you think that they would stop buying champagne altogether or switch to sparkling wines from other places other than France, more domestic sparkling wines, if we were to put the tariffs in place?

MR. DANIELS: You know, I think that's a good question. And it speaks to what -- a number of questions that the committee asked yesterday that I think implied some skepticism about all of this.

I think that the harm that tariffs on French sparkling wine and champagne would cause to the business of panelists. In our case, the amount of champagne that we sell, and sparkling wine, is 26 percent over the trailing three years.

Outside observers might be tempted to say that for a restaurant or for a wholesaler or for an importer you could compartmentalize these specific categories. I think that's misguided.

The truth of the matter is is that this is a very fragmented state-by-state industry, and we're all very reliant on one another. And so if champagne is, you know, kicking the leg out of the stool for an importer, that affects the wholesaler down the line, which affects the restaurant and the retailer and the end consumer.

And I think that although the amount of sparkling wine that our firm sells, or that other companies sell, or that a restaurant sells may seem insignificant, it could well be the straw that breaks the camel's back and causes a cascading effect.

And I think that, to speak to the prior question, that cascading effect would land squarely on the back of U.S. producers. For every dollar that is spent on wine in the U.S., two-thirds of it is on domestic wine. And so if the infrastructure and the restaurants and the retailers that rely on any wine, whether it's champagne or others, start to collapse, the effect is going to be felt predominantly by U.S. producers. And wine is now being made in all 50 states.

MS. GRIMBALL: I have a follow-up question. And correct me if I'm wrong, but would it be an accurate statement to assume that some fluctuations in prices of imported wine are commonplace due to environmental conditions? Is that safe to say? Like what happened in 2016, is that an isolated event or is that sort of common?

MR. DANIELS: That's a very good question, and it's -- and it's a complicated response. Yes. Some amount of fluctuation is common. Traditionally, small wine producers accepted the fact that maybe out of every 10 vintages would be lost due to climatic vagaries.

With the current climate, and over the course of the last decade in the 15 years that I have been involved in this business, those fluctuations have become more dramatic.

And for the purposes of the hearing today, I can just say the small changes in prices that result from that have resulted in our inability to sell products. You know, sometimes a small fluctuation in price leads to basically our discontinuing products.

And it's a challenge of our business. Much like the restaurant industry, I think everybody that is here, it's a labor of love.

MR. FABER: That's also not just limited to European wineries. I mean, if you look at somewhere like Oregon in 2011 had to completely change their pricing structure because they had such a difficult vintage where they lost so much of the fruit before harvest. So it is something that affects American producers as well.

MR. DANIELS: I think, all told, it speaks to the fragility of our industry. There are lots of examples of the effect of small changes creating a ripple effect and a cascade effect that hurts all of us both domestically and abroad.

MS. GRIMBALL: Thank you.

MS. HUANG: This is Jessica Huang from

the U.S. Department of Commerce. My question is for Christy Frank. Can you hear me?

MS. FRANK: Yes. Yes, I can.

MS. HUANG: Having worked for a large global wine and spirits importer, can you give us an idea of the percentage of the U.S. market large global importers account for versus small importers like yourself?

MS. FRANK: Well, I don't -- I worked for -- I worked for Moet Hennessy, left in 2007 to open the shop. I don't -- I don't know the specific numbers. But when you look at the -- and I'm sure it's somewhere in the testimony, I'm sure it's somewhere that can be pulled up, I can try to find a quick study for it.

But the industry is incredibly concentrated overall towards the large companies when you look at the volume. So if you were to look at the big brands, if you were to look at the -- I think it's about seven major national distributors that are selling the wines, that's a large dollar volume with a large volume of the industry. But when you start to get below that probably 60, 70 percent, you're looking at the rest of it spread over all of the people that are in the room here today in terms of the importers and the distributors and the smaller producers and the grape farmers and all of that.

So I don't have a number, but it's kind of your typical maybe not quite as bad as 80/20, but close to that.

MS. HUANG: Thank you. Also, I understand from your testimony that for your company increased duties on sparkling wine from France would not result in shifting inventories to wine from other regions. Is your company's inventory locked in place by a contractual arrangement with French wine producers or importers?

MS. FRANK: I'm a wine store, so I can -- I have the flexibility to buy and sell whatever I want to as a small wine store. However, the customer base, there is only -- there is only so many -- there is only so much of a certain kind of wine that they would want to buy.

So I can -- I know we're veering into the Airbus territory, but like, for example, there is only so much California Cabernet of a certain style at a certain price that I can -- that I can sell.

So if I no longer -- we'll take it back to sparkling, if I don't have the champagne and the French sparkling wine to sell at those prices, there isn't necessarily another substitute that I can bring in at that price that people will want to buy. So they will -- they will just buy something else. Hopefully, they will continue to buy wine.

But shifting back again to the Airbus, the much broader tariffs that we were talking about, we would see people start to buy sparkling wine coolers or beer or shift to spirits or just not to drink at all. So the flexibility is limited by the diversity that the customer demands.

MR. DANIELS: May I add to that? I'm sorry. You know, even if it were possible, physically, to replace all of the sparkling wine that would disappear from the U.S. market -- which we heard some compelling testimony yesterday that that wouldn't be possible, but let's wave a magic wand and say for the sake of argument that it were possible -- champagne only comes from Champagne, and that's not a marketing tagline.

With all due respect to our colleague from the American Apparel and Footwear Association, who was talking about the cache of labels, the fact that champagne only comes from Champagne is a physical reality.

Every vineyard in the world has a unique set of factors -- soil, subsoil, altitude, drainage, the hours of sunlight in a given day, even the yeasts that live on the skin of the grapes that affect the fermentation of the finished wine. All of those things conspire to create a distinctiveness that cannot be replicated elsewhere.

Now, we may minimize some of the economic damage by replacement therapy, let's call it. But the fact of the matter is is that consumer choice will inevitably be affected by tariffs on champagne and sparkling wine from France, whether they're one percent or 100 percent. It will affect consumer choice, and it will not be replaceable.

MS. HUANG: I do have a question -- another question for Ms. Frank, and if anybody else wants to -- what I'm trying to understand is, do you enter contractual agreements? You're buying wine from a vineyard, and is it like a monthly contract, annual contract? When do you decide or how often do you decide?

MS. FRANK: Again, I'm a wine store, and a small wine store. So I place orders and receive the wine the next day, or up in Copake, sometime that week.

So I -- well, because of the way the

three-tier system works, I am not allowed to buy directly from the winery, except in some limited cases in New York, which is my home state, because of some farm winery license regulations that were put in place to allow those local producers to have more outlets to sell.

I cannot buy directly from an American winery, and I cannot -- certainly cannot buy directly from a European winery. I have to buy from a distributor who has to buy from an importer, and it is the importers and the distributors that would have the contracts that you're asking about.

MS. HUANG: Thank you.

MR. GAGNON: I would actually like to just jump in on that and kind of answer the question, too, as somebody who actually counts Christy as a loyal and trusted customer in New York State.

To answer the question about how these -- how you enter these contracts as an importer, I would say that, I can't speak for everybody, but on our scale it's very -- every relationship is completely unique, and usually it takes quite a bit of time to enter into that contract.

Sometimes there is a written contract and a minimum that they would like you to buy. Sometimes it is very much just getting on the phone with them and discussing what their plans are. Sometimes it's buying 100 percent of their wine in one fell swoop, depending on their -- on their scale as a producer.

And, again, this is -- this is only for companies of our size. I can't speak to everybody, but it really is a person-to-person interaction and takes a lot of finesse and a lot of time, which goes back to my earlier point of it would be very difficult to refocus and rebuild these relationships after they have been dismantled by these tariffs or to start a new -- with new producers.

MS. HUANG: Thank you for your input.

MS. FRANK: And, very quickly, this is Christy again. To build on that, I cannot buy from

-- because I cannot buy from European wineries, I depend very heavily on my relationships with the distributors, who depend on their relationships with the importers.

So if I suddenly did not have access to wines that -- I also have worked with, through no contractual obligations but just because I love them and that's what my customers want -- I would then have to go through a process of tasting new wine, learning new producers, and that would take time as well, and that's actually happening right now as we try to restock after the holidays, because there are a lot of wines that are sort of in holding patterns as we wait to see how this all -- how this all pans out.

MS. GRIMBALL: I did have a follow-up question. Mr. Daniels, you spoke about your company making purchases on an allocation basis?

MR. GAGNON: Yes. Many of our producers, while we do work with some, quote-unquote, "larger scale producers," some of them possessing close to 30 hectares in terms of vineyard size, many of them hover around the two to seven hectare size, which roughly translates to somewhere -- depending on vintages, can be anywhere around like 10,000 cases per year allocated to us and also a lot of their export markets.

Sometimes we do function as the sole export market for our much smaller producers, wherein we are buying lots of less than 100 cases sometimes. But in the other -- the vast majority of our producers, we are actually allocated wine for the U.S. market.

And should we lose that allocation by not being able to purchase it because of tariffs, we would be put to the back of the line. It happens even in years where, say, we grew too much and we purchased too much from another sector, and we couldn't take our entire allocation.

We, therefore, lose that additional allocation and go to the back of the line to go back up to what we were purchasing before. And, of course, if we were not able to purchase our allocation for the vintage, we would lose it, and they would reallocate. And then come next vintage, we can't say if there would be any more wine for us. And I think that goes for a lot of -- a lot of people.

MR. DANIELS: It's particularly true for champagne in our business. The champagne producers that we work with are some of the identity brands that open doors for us. And they have more demand than they do supply.

I would caution against assuming that that means that people will stomach increased prices. I want to make sure that that's not misconstrued.

While there is a sufficient demand for us to take allocations from our producers, which let's call it an implied contract. Basically they offer us a certain amount of wine in a given year, and if we take it, we'll be offered more wine the next year. If we don't, effectively that relationship could be terminated and our agency for that wine here in the U.S. could be terminated.

MS. GRIMBALL: Thank you.

MS. BONNER: This question is for Mr. Fass, on the line.

MR. FASS: Yes, I am here.

MS. BONNER: Thank you. I have a couple of questions. In your written testimony, you recommend as an alternative option that tariffs be placed only on large brand champagne. To start with, what would be the level of impact, if any, on small businesses like small retailers, grocers, and restaurants, if the tariffs were limited to large brand champagne conglomerates?

And is your idea that the large companies would be unlikely to pass those costs down in the supply chain?

MR. FASS: Okay. So I think the damage to the small businesses and retailers, if only a tariff was on large brand champagne, would be negligible, minimal, maybe even zero. Large brand share -- a lot of the retailers that have testified, and importers have testified, they work with something called grower champagne, which is a different type of champagne. It's more kind of the farmers and romantic things that many people think about, and that's what most of us work with.

And also, more importantly, the French digital tax does not target small companies. So it seems very symmetrical.

But the damage would be minimal, I would say. It would be more, I would say, just to much larger companies. But even at larger companies, they will be willing to compensate.

The other thing as well is I believe that these large brands are not as price sensitive, I would think, as smaller brands out there. You know, the people who buy the large brands, you know, for celebrations, for whatnot, you know, Veuve Clicquot, and I'm sure LVMH, would definitely, you know, do some sort of subsidy to keep the prices consistent, you know, because that and handbags are -- you know, that's the butter, you know, on the bread there at LVMH there.

So I would personally think the damage would be minimal to nil for all of kind of the small business -- small and medium businesses. That's why I suggested it, because I think it would be the most effective in bringing the French possibly to the table, just because it is, you know, it's a serious tax on the richest guy in France, and it would also, at the same time, not do much to any damage to the small to medium people, because we don't work with those wines.

What was the second question -- part of the question? I'm sorry.

MS. BONNER: So I have another question. I think you answered that.

MS. GRIMBALL: Sarah, before you ask, can I just pose a question to the panelists?

MS. BONNER: Yes. Yes, that would

be --

MS. GRIMBALL: Do you all have any reaction to Mr. Fass' response as small businesses?

MR. FABER: I like his idea better than what is being currently proposed, I guess would be the easy answer. I think it's actually significantly more fair to small businesses specifically.

MS. GRIMBALL: Thank you.

MS. BONNER: So the second question --

MS. GRIMBALL: I think we have one more.

MS. BONNER: Oh, sorry.

MR. DANIELS: I was just -- I was going to second that, and I would say that there is effectively two very different worlds in champagne. There are those of the large houses, which source their fruit from a wide variety of different growers and then produce it in-house. Basically, they just handle the production part of things.

And then there are those that are

soup-to-nuts winemakers, which farm their grapes, do the wine -- do the harvest, make the wine, and then commercialize it as well. And those two tiers are a world apart. They are effectively different products. There is different markets for them.

And all of the things that you're talking about -- contractual obligations and pricing resilience and all of that -- it's different for the two different worlds. What we deal with, the grower champagne that Mr. Fass is talking about, is extremely sensitive and fragile.

MS. BONNER: So my second question for Mr. Fass on the line is, do you have any specific ideas on how a tariff could be crafted to target large brand champagne? For example, how might large brand champagne be distinguished from other sparkling wines from France under the covered HTS numbers?

MR. FASS: How would they be distinguished? I believe I covered that in my testimony. Let me just -- I'm looking at it right now. I mean, I believe you can do it just from either historical imports to the U.S. from Champagne in general. I guarantee you the top people, like Veuve Clicquot and Moet Chandon will be at the top of that list.

MR. ROGERS: If I could offer -- pardon me, if I could offer a clarifying point. This is Michael Rogers from USTR's Europe Office. We do not believe that we are able to impose tariffs based on brand. We want you to understand that. So --

MR. FASS: No, no, no.

MR. ROGERS: -- it has to be by volume or some other manner. So that's what we're searching for. Thanks.

MR. FASS: I understand that completely, and I will just reread the part of my testimony about symmetry. You know, you can look at historical imports in the numbers. If you just look at the numbers, you know, just like the way the French data tax is for however many millions of dollars of revenue for these companies in Europe, you can do the exact same thing for -- I'm saying large brand champagne, but obviously I know you cannot target large brand champagne.

But the way you can, quote-unquote, "target" it is if you are looking at possibly revenues from these companies or historical imports to the U.S. That is it.

So you would -- there would be a threshold of, you know, let's say, you know, I don't know, 40, $40 million or $50 million or who knows. I'm not, you know, an economist or anything like that.

But I think you can do this and thread this needle in that way. It would be the same thing as the French digital tax. It would be X amount of revenue, you know, or X amount of wines that are imported. And you would be targeting the large brands that way, but you would not be directly going after them. It would be the same thing as the digital tax.

MR. ROGERS: Thank you for that. We

would just encourage anyone -- any of the panelists or any other interested stakeholder to -- if they have suggestions as to how we might be able to break out and distinguish between these large -- large champagne producers and the smaller -- smaller producers, as is suggested, that they submit comments in the post-hearing, before the deadline.

Thank you.

MR. FASS: Thank you.

MR. BISHOP: We release this panel with our many thanks, and we add an extra special thanks to Ms. Frank and Mr. Fass for your patience and willingness to participate by telephone. Thank you.

We will take a short recess while we set for the next vote -- thank you -- for the next panel.

(Whereupon, the above-entitled matter went off the record at 11:15 a.m. and resumed at 11:22 a.m.)

MR. BISHOP: Madam Chairman, our first

witness on this panel is Zev Rovine with Devenish Wines. Mr. Rovine, you have five minutes.

MR. ROVINE: Thank you very much. And thank you for taking the time to hear my testimony. My name is Zev Rovine and I have a wine import company based in Brooklyn called Zev Rovine Selections.

Ed was here yesterday and was not able to stay, so I'm here on his behalf reading his testimony. So I apologize if I can't answer very specifically any of the follow-up questions that are about his company, but I have some perspectives on wine that I can maybe add.

So, I'm just going to read it as it's written. My name is Edward B. Swain and I own a small wine wholesale business in Maine. Before I begin, I want to say that I'm glad to live in a society where people have the freedom to start their own businesses doing whatever they think is a good idea. I'm proud to live in a society where everyone at least has the opportunity to come and advocate for their interests in this forum.

I acknowledge that wine is a luxury, but it does provide the livelihood for hundreds of thousands of people across the United States. And I made the trip from Maine to add my personal story.

When most people think of Maine they think of lobsters, wilderness, and self-reliant people working the land. Maine has the lowest population density east of the Mississippi, and Maine is a relatively less affluent blue-collar state.

We're probably not the first place you think of for a thriving wine business, but tourism is one of the largest sectors of our economy, and many people make a living in the wine business. I can say, without doubt in my mind that these tariffs could cost hundreds of jobs among small businesses in my state.

I started building my business, Devenish Wines, in 2003. I bought out my business partner January 1st, 2016, and in 2019 I finally broke $2 million of revenue.

We're not a big company. I employee 13 people, including myself. I recently purchased an existing warehouse in order to expand my business.

I pride myself on finding lesser known small production wines from around the world that are less expensive so that more people can enjoy them. I've invested 17 years, my entire professional life, in building this business.

That investment has taken the form of purchasing inventory, purchasing a building to occupy, developing personal relationships, learning Italian, traveling to Europe, purchasing trucks, purchasing my business licensing fees to the state, finding, hiring and training the people I work with, and so on and so forth.

I may be a tiny cog in a giant economic industrial machine that is the American economy, but I'm proud of what I do, and I take the responsibility seriously.

About 55 percent of my sales volume is wines from Europe. Being located on the East Coast it costs nearly the same amount to get wines shipped to me from Western Europe as it costs to get the wine from the West Coast to the United States.

There's no way around those shipping costs. The U.S. imports something like $4.5 billion of wine from the EU. If the EU wines are tariffed at 100 percent, they will effectively no longer be salable.

The best-case scenario is that I will lose about approximately 45 percent of my sale volume. That's assuring -- that's assuming I scramble and source more wines from other places. But I'll be competing with every other U.S. wine-seller for the same wines.

Fine wines are an artisanal agricultural good that comes from farms. Farmers are famously thrifty and do not make wine that they do not have customers for. There isn't spare, unsold wine available in America or anywhere else to replace the lost $4.5 billion of imports from the European Union.

Unlike many other commodities, it is impossible to ramp up production quickly. With industry manufactured goods, for example, if plastic toy cars from China were tariffed, a factor in India could add an extra shift or expand and meet the displaced demand relatively quickly.

In the case of wine, it takes at least three years for new vines to mature and begin producing fruit. The grapes aren't particularly high quality until closer to ten years of age. This rules out the possibility of the U.S. replacing that displaced demand through domestic production.

I would try to sell some other product, but I'm barred by my state law from selling spirits. I'm also barred from making wine or beer.

I would try to distribute beer, but beer is lower in value and has to be sold at a higher volume to compensate.

My current infrastructure isn't built to handle beer. My warehouse and trucks are too small and my salespeople don't know enough about it.

If these tariffs come to past, the only possible end result I can see from my company is to shrink and lay people off. That's the best case scenario.

The worst case scenario is that I can't maintain the debt load I have from still paying back my former business partner and mortgage and I have to shut down.

I'm inherently optimistic and I think I'll find a way to make it work, but it will hurt a lot. These tariffs will hurt myself and other small entrepreneurial family businesses in the U.S.

In the EU, these tariffs will hit small farmers and grape growers hardest. People completely unrelated to France's three percent digital service task.

However, as other people here today

will tell you, those producers do have plenty of other markets. China, Russia, Thailand, Vietnam, South Korea, are all consuming more fine wine.

European wine makers will redirect to their sales to other markets. Meaning that this tariff action won't have the leverage over French and EU policy that it was desired.

We'll also point out --

MS. GRIMBALL: Please conclude shortly.

MR. ROVINE: Okay. I think that's good.

MS. GRIMBALL: Thank you.

MR. ROVINE: Thank you.

MR. BISHOP: Thank you, Mr. Rovine.

MR. ROVINE: Thank you.

(Applause.)

MR. BISHOP: Our next witness is Eben Lillie with Chambers Street Wines. Mr. Lillie, you have five minutes.

MR. LILLIE: You got my name right too,

amazing. Thank you.

Greetings. My name is Eben Lillie and I come to you today from New York on behalf of my family wine store, Chambers Street Wines. And in a greater sense, on behalf of the wine and food industry as a whole.

Before I begin, I would like to thank you all for your time, and thank the Trade Commission for allowing me to speak today.

I'd also like to apologize for my appearance, I didn't plan on being here for more than a day, so I had to sleep on my friend's couch in Delaware. In any case.

So, Chambers Street Wines was opened by my father and his business partner, Jamie Wolf, in June of 2001. Just five blocks from the World Trade Center in downtown Manhattan.

I was 18 at the time and in need of a summer job so I helped open the store and I have been involved ever since. Now, nearly 20 years later, I am a partner with Mr. Wolf and my father and I plan to continue my father's footsteps and hopefully even have a third generation involved in the trade.

When the tragedy of 9/11 happened just three months after we opened, it was a very challenging time. We considered throwing in the towel or moving, but decided to stay and help rebuild the neighborhood and be a part of the rebirth of downtown.

In 2008 when the financial crisis hit, this was, once again, a challenging time but we hunkered down and slowly but surely business began to pick up again.

As with many small businesses, there were other challenges along the way but we survived them all and are now just a year away from our 20th anniversary. We're almost old enough to finally have a drink.

With regards to the proposed 100 percent tariffs I will say with all seriousness and without exaggeration that I do not know how we would be able to survived.

Without a doubt we would have to lay people off, which would be very hard considering we have a team of about 20 employees, whom we all appreciate and care about. We would have to downsize inventory and would most likely downsize the store in general.

Depending on how long these proposed tariffs would be in effect, we might have to discuss whether or not we could stay open.

Now, with only five minutes, I know that I don't have a great chance of swaying your decision with my story, but by now with the comments that were submitted online and the statements you have already heard today and yesterday, it should be clear that the tariffs would be catastrophic for countless businesses involved in the wine and food industry.

And it's not just the wine stores that would be hit, there's a long chain of employment accounting for thousands of job with numbers surpassing a million if we look on the national scale.

From the docks where shipments arrive and are offloaded to the warehouses where they are stored, from the distributors that employ a fleet of trucks to do daily deliveries to the importing companies and their sales reps and office staff, Mike Zev, my friend here, and finally to the many stores and restaurants and the staff they employee.

I would like to point out here that we do have a great selection of American wines at Chambers Street, along with wines from Australia, South American and other non-European countries. But more than 70 percent of our wines we sell are from Europe.

I can go into details about French and French sparkling afterwards.

And there just isn't a feasible way for us to replace that income by doubling down on wines from non-European countries.

On top of that, since we stock only

wines from small producers, many of our California and other U.S. wines are distributed by companies that, like us, focus more on European wines as a whole.

If these importers and distributers end up downsizing or cutting staff, or closing down, it could end up hurting many small size and family run wineries in the U.S. as an unlucky consequence.

Our access to small producer artisanal American wines would inevitably be more limited, not greater, if the distribution network was disrupted by tariffs of this magnitude.

I will finish my comments by saying that I believe in fairness. And had we in the industry at all done anything to deserve punishment, I would accept tariffs of this scope as a consequence.

However, in this case, the actions of the French in regards to the digital services tax seem to be completely unrelated to the food and wine industry, let along to handbags, porcelain and hand soap.

I will admit from reading all of the related materials and arguments provided by the Commission that the passing of the recent law in France was perhaps a bit abrupt. Considering that many countries have been discussing the topic of a digital services tax but have not acted unilaterally or so suddenly on the matter.

I believe that the rural community could address the topic and hopefully work together to develop a solution. We could even discuss a similar tax in the U.S. considering that Google and Facebook make billions on advertising in America and avoid paying taxes in this country.

All of that would be a discussion for another day. Maybe you can get together with the new EU Trade Commissioner, Phil Hogan, and figure out a way forward.

In closing, if you impose these hundred percent tariffs it will undeniably hurt small businesses in America and lead to massive job loss in the middle class that will have a lasting effect for years to come.

If at all possible, we implore you to find an alternative to this approach, one that would not jeopardize the jobs and futures of hard working Americans across the country.

I would like to add quickly that regarding wines, I know the proposed tariffs that we were discussing today are related to French sparkling wines. I would like to ask you to consider these statements, and statements from yesterday, in regards to the Airbus dispute as well, the continuation of 25 percent and also the proposed increase to 100 percent.

We in the wine industry, we're a bit unprepared and we found out about the 25 percent tariffs when they were being implemented. We weren't aware of the hearing in May, we were not so organized.

Now we have become much more organized because of the increased threat of tariffs. And I wish we had been able to appear at the hearings last year in May to share our statements then.

I can share data on French sales quickly, since, oh, the red is on. But sparkling sales for my family store are, over the last three years, between ten to 15 percent of our income, which has generally been about $8 million a year.

French sales of about 30 to 35 percent of French wine. But for French sparkling champagne and non-champagne, it's usually between ten and 15 percent. Which I can get into details of how that would not be able to, we'd not be able to replace that, but that could be after the statements.

Thank you very much for your time, again.

(Applause.)

MR. BISHOP: Thank you, Mr. Lillie. Our next witness is Jessica Wasserman with Bel Brands USA. Ms. Wasserman, you have five minutes.

MS. WASSERMAN: Thank you. My name is Jessica Wasserman and I am testifying on behalf of Bel Brands USA.

Bel Brands is a cheese production company with facilities in South Dakota, with 281 employees, Kentucky with 306 employees and Wisconsin with 172 employees. It is headquartered in Chicago, Illinois with another 120 employees.

We are known to our members of congress in each of these locations and have meet directly with Senator Thune, Congressman Dusty Johnson, Senator Baldwin, Congressman Gallagher, Senator Rand Paul and Congressman Guthrie. All of whom agree that tariffs on our products would seriously harm job creation in their states and districts. And are willing to work with us to communicate with you going forward.

We are especially known to Senator Thune because the State of South Dakota worked hard for five years to attract our investment. Which we opened a plant in Brookings, South Dakota five years ago.

Bel Brands products are well known in

the U.S., in particular, the Laughing Cow Cheese and the red wax covered Mini Babybel.

None of our, these are processed cheese, so none of our cheeses benefit from the geographic indication or our product is completely irrelevant, we have no skin in the game with regard to the GI issue.

Bel Brand supports the U.S. milk industry and buys milk from Dairy Farmers of America and Land O'Lakes for our South Dakota plant and from Michigan White Eagle Co-op and DFA for Kentucky.

Bel's 48-acre Brooking, South Dakota site enjoys a robust dairy industry and access to the milk needed to make Mini Babybels. Our plant uses about 600,000 pounds of milk per day, all sourced from local dairy co-ops.

Production in the United States of our products creates job and economic activity in the United States. However, there are some products that Bel is not able to produce in the U.S. or for which the demand is so small and sporadic that implication is the correction option for a global supply chain.

Our importation compliments local cheese production rather than substituting it. Our preference is always to source domestically some necessary, and often temporary, exceptions.

One of our biggest product lines in the U.S., Mini Babybel, is an example of this approach. In the past we imported Mini Babybel. And as the cheese became more popular here in the U.S., we invested in establishing a new plant in South Dakota.

This approach of testing the U.S. market and then moving production close to the consumer is win-win for the U.S. And we hope that USTR will not disrupt this successful approach.

We are now testing Mini Babybel rolls, and if this product is a success we will invest in a new line in Brookings.

Our Cheese Dipper product is a soft

cheese packaged with crackers for dipping. The product is new to the U.S. market and we are determining the extent of long-term for this product.

If the product is successful, we will consider domestic production as we did for our Mini Babybel. If a high tariff is put on this product, we will no longer be able to consider domestic production for this product.

And in this case, the potential for further U.S. investment jobs and economic growth in the U.S. Midwest will be harmed.

Bel enjoys a positive relationship in rural areas of the U.S. where it has invested and provided jobs. When we announced U.S. investment, we were invited to a number of U.S. states, all of which wanted Bel to invest in their state.

We hope that the positive environment for investment will continue and look forward to expanding production in the U.S. in the future.

A tariff increase, with regard to

consumers, would be passed on to the consumer in the form of higher prices. And as noted, many of these products have no domestic counterpart that would serve consumers as a substitute.

Thus, any tariff action taken here would either significantly increase consumer cost or more likely price the product out of the market, leaving the consumer with less choice in the marketplace.

Mini Babybel production process is patented knowhow for producing small size cheese products, has been developed over a century and is not something that could be easily mimicked by other cheese producers, therefore high tariffs would deny U.S. consumers a product that will not become available in the U.S.

We recently successfully petitioned to have this product removed from the retaliation list in the large civil aircraft dispute. The product was removed on the basis that the importation is essential to foreign direct investment and jobs in the United States, so that hindering or eliminating importation of this product would cause more cost than benefit to the U.S. economy.

We maintain that this product should, again, be removed on the same grounds.

Finally, in the case involving France digital service tax, we believe that the consideration of retaliation against services versus goods should be taken into account.

The violation alleged in this matter is a violation impacting the services sector. And we suggest that retaliation focused on the French services sector would be more appropriate than retaliation impacting the goods sector.

Therefore we kindly request the removal of these three products from the list of products with the proposed tariffs. Thank you very much for your time.

MR. BISHOP: Thank you, Ms. Wasserman. Our next witness is Mark Baumgarten with Materne North America. Mr. Baumgarten, you have five minutes.

MR. BAUMGARTEN: Hello, my name is Mark Baumgarten and I am vice president for quality at Materne North America, also known MNA.

MNA is a subsidiary of the MOM Group, which specializes in healthy snaking solutions and has become a strong market leader in the United States where its GoGo squeeZ branded fruit squeezers are loved by children and families.

MNA, headquartered in New York, employees over 500 people in the United States. Primarily at our two factories, one in Traverse City, Michigan and one in Nampa, Idaho, with around 250 employees in each location.

We produce GoGo squeeZ fruit squeezers in the U.S. and are planning production in the U.S. of our GoGo squeeZ shelf-stable yogurt, which we currently import from Normandy, France.

We respectfully request that USTR remove shelf-stable yogurt imports, HTS Subheading Number 04031090, from the list of products proposed for additional duties for the following reasons.

Number one, U.S. jobs. The main reason that USTR should take HTS 04031090 off the retaliation list, is that we create jobs at our U.S. production sites and for our U.S. suppliers and is a shining example of successful U.S. foreign direct investment.

The overall health of our company, as we operate our two production plants in the United States, providing U.S. jobs in rural areas, is dependent on these imports. Imposing tariffs cause serious economic harm to us, reduces U.S. jobs and the overall viability of our U.S. operations.

Therefore, tariffs on this yogurt product are not in the U.S. economic interest.

Recently, we announced a new investment, a $14.6 million in new technology that will increase our capacity and will create approximately 25 new jobs.

GoGo squeeZ yogurts production is our

next planned U.S. expansion and investment into U.S. manufacturing, and is estimated at $40 million investment, created 50 local jobs and purchasing annually over ten million liters of U.S. milk.

Tariffs on these imports would interrupt our plans for future investment and job creation in the United States and would threaten the overall viability of MNA.

Number two, unique product without competition. The production and process and patented knowhow for producing our shelf-stable yogurt has been developed exclusively and is not something that could be easily mimicked by other dairy producers.

Our exclusive manufactured shelf-stable dairy products made from fresh milk and fruit purees with four grams of protein, strong Vitamin D content, no preservatives and packaged in a convenient squeezable pouch. Tariffs on this product will not therefore result in additional U.S. production in jobs.

Number three, higher tariffs would hurt U.S. consumers. A tariff increase would be passed on to the U.S. consumer in the form of higher prices.

And as noted, our product has no direct counterpart that would serve consumers as a substitute. Thus, any tariff action taken would either significantly increase consumer cost or more likely price our product out of the market leaving the consumer with less choice.

And two final points. We recently successfully petitioned to have this product removed from the retaliation list in the large civil aircraft dispute.

The product was removed on the basis that the importation is essential to foreign direct investment and jobs in the United States. So that hindering or eliminating importation of this product would cause more cost than benefit to the U.S. economy.

We maintain that this product should again be removed on the same grounds.

Additionally, in this case involving France's digital services tax, we believe that the consideration of retaliation against services versus goods, as we've heard today as well as yesterday, should be taken into account.

The violation alleged on this matter is a violation impacting the U.S. services sector, and we suggest that retaliation focused on the French services sector would be much more appropriate than retaliation impacting the good sector.

To summarize, number one, my company represents positive foreign investment and job creation here in the United States.

Number two, GoGo squeeZ yogurts is our next planned U.S. expansion and investment into U.S. manufacturing with $40 million investment, creation of over 50 local jobs and purchasing annually ten million liters of U.S. sourced milk.

Number three, we're deeply rooted in our U.S. economy, U.S. farmers, growers, suppliers, customers and consumers.

Number four, we have invested, to date, over $170 million in the U.S. industry.

Number five, a tariff increase would halt our planned GoGo squeeZ yogurt U.S. expansion and jeopardize our long-term U.S. investment.

And number six, higher tariffs would hurt the U.S. consumers of GoGo squeeZ yogurts.

Therefore, we kindly request the removal of yogurt HTS Subheading 04031090 from the list of products proposed for additional duties. Thank you very much.

MR. BISHOP: Thank you, Mr. Baumgarten. Our next witness is Peter Vitaliano with the National Milk Producers Federation. Mr. Vitaliano, you have five minutes.

MR. VITALIANO: Thank you. Yes. I am the vice president for economic policy and market research for the federation.

Thank you very much for giving the federation the opportunity to testify on behalf of America's dairy farmers the farmer owned dairy cooperatives.

I'm here today to discuss the proposed tariffs on dairy products from France. While the federation takes no position on whether France's digital services tax is a discriminatory trade practice under Section 301, what is important for us is that France's unjust trade barriers on dairy products of unduly restricted U.S. dairy exports.

National Milk commends USTR for including dairy products on the proposed list of retaliatory measures. We recommend that the dairy tariffs subheadings listed in our submitted testimony, be captured on USTR's final list in order to help achieve USTR's goal of French compliance on tax policy issues.

France has taken a proactive role in advancing the European Union's unfair trade agenda for dairy products. The EU's high tariffs and convoluted non-tariff barriers have put American dairy producers at a clear disadvantage.

These restrictive trade policies have resulted in a deeply unbalanced trade deficit. The U.S. imported approximately $260 million of French dairy products in 2018, while France only imported a meager $4 million of U.S. dairy products that same year.

The EU's unfair trade practices have seriously affected the health of our rural economies. They exacerbated the economic hardships that drove seven American dairy farms out of business every single day in 2018.

One of the most egregious of these trade barriers is the EU's aggressive use of geographical indications. France has been a strong component of the EU's prohibition on U.S. exports of cheeses relying on common food names that consumers know and love. Such as Muenster, Gruyere and Neufchatel.

Rather than protect and respect valid GIs, French officials have utilized the EU's GI restrictions to grow their dairy product exports and erect de facto trade barriers on U.S. dairy imports. Accurately labeled U.S. cheese products are barred from French shelves, while French dairy products, cheese products can be found in abundance in the lucrative U.S. dairy market.

To address this serious disparity, it is critical that USTR's final retaliation list include dairy product tariff codes that will capture the import of French Cheeses with unreasonable GI protection in addition to the inclusion of certain high value tariff lines.

France has supported the EU's overly burdensome certification and compliance requirements, mandated government level assurances of compliance with the EU regulations and certification rules for imports, unduly burden commerce without a genuine food safety basis in doing so.

These onerous and problematic standards are yet another example of trade distortions intended to keep U.S. dairy producers, U.S. products out of the French market.

Given the economics importance of dairy, the dairy industry in France to its overall economy, inclusion of the recommended dairy tariff codes would prove to be an effective tool to achieve USTR stated goals.

Importantly, inclusion of additional dairy tariff lines will not adversely affect U.S. businesses or consumers, they will continue to have unfettered access to some of the best cheeses in the world, made in the United States.

The U.S. has the largest single country dairy industry in the entire world. And America's dairy farmers and processors manufacturer virtually every type of dairy product at high quality and competitive price.

On behalf of America's dairy producers thank you for effectively recognizing France's dairy trade distorting practices, USTR's recommendation to implement tariffs on numerous dairy tariff lines sends a strong message that the

U.S. will seize available opportunities to address trade imbalances and restore fair and reciprocal trade in dairy.

We look forward to continuing to work alongside USTR to further dismantle trade barriers harming U.S. dairy producers and hampering the rural economy. Thank you very much.

MR. BISHOP: Thank you, Mr. Vitaliano. Our final witness on this panel is Emily Lyons with the Cheese Importers Association of America. Ms. Lyons, you have five minutes.

MS. LYONS: Good morning. My name is Emily Lyons and I'm an Attorney with Husch Blackwell, LLP, and I'm presenting testimony on behalf of the Cheese Importers Association of America.

The CIAA represents firms and individuals responsible for importing the majority of cheeses into the United States. Many of which are small and family owned and operated businesses.

We appreciate this opportunity to

express our strong opposition to including the 21 tariff subheadings specific to cheeses to the items proposed for duties pursuant to the Section 301 investigation concerning the French digital services tax.

While the CIAA supports the administrations oppositions to policies that discriminate against U.S. businesses, we request the USTR remove the proposed subheadings from this action due to several reasons.

One, the severe economic impact these tariffs will have on U.S. jobs, businesses and consumers.

Two, the fact that French cheeses and certain subheadings may be subject to additional duties under two separate Section 301 tariff actions.

Three, concerns that a dispute, or we're concerned that a dispute concerning French digital services taxes is an inappropriate vehicle to address French agricultural policies on U.S.

cheeses, and the impact to the proposed tariffs on the U.S. Department of Agriculture's Dairy Import Licensing Program.

First, imposing the tariffs on goods covered under the 21 subheadings will harm U.S. cheese importers, processors, wholesalers, retailers, restaurants and consumers that purchase these products. The cheese importing community covers thousands of employees.

You've heard from at least one individual company here, or two companies, that support multiple businesses, or multiple employees and businesses within the United States, as well as their own manufacturing operations.

Specifically, our members import, market and sell cheeses as-is, but also further process and package them for retail food service and ingredient use.

For example, members have manufacturing facilities in the United States where cheeses are imported in original loaves and then cut and wrapped into consumer-friendly packaging, as well as shredded and powdered for institutional and commercial uses.

In that regard, the cheese importing community not only supports individuals directly employed by our members, but also supports workers in the larger U.S. supply chain, including freight forwarders, truck drivers, food retailers, restaurant workers, many of which are associated with smaller local enterprises.

The proposed tariffs will directly and negatively impact or eliminate jobs throughout the entire U.S. supply chain, dependent on the import of French cheeses covered by the 21 subheadings.

Also, we believe that increased costs due to these tariffs will be passed directly on to consumers. Moreover, many French cheeses and cheese products that our members import and distribute cannot be found elsewhere in the world or in the United States.

The result of these tariffs will be

reduced product variety availability to U.S. consumers and higher prices.

U.S. cheese importers are facing substantial uncertainty due to this action as well as the Section 301 tariffs related to the large civil aircraft dispute.

All the cheese subheadings proposed in this action are also concurrently under consideration for being added to the list of affected goods in the large civil aircraft dispute during its review process that is currently ongoing at USTR.

We recognize that these are two separate tariff proceedings before USTR with different underlying initiating events and policies driving additional duties.

However, we do not believe that USTR should force U.S. cheese importers, and ultimately the U.S. consumer, to pay multiple Section 301 duties on the same good, which happens to be covered under separate 301 actions.

The uncertainty of the imposition of these tariffs has caused many CIAA members to put on hold capital investments in their U.S. operations and implement hiring freezes. As the imposition of additional duties have required them to divert funds to pay duties instead of investing in their businesses and U.S. operations.

We believe that many of the subheadings selected have been targeted because of their association with French and European Union agricultural policies that limit the export of dairy products to France and other parts of the European Union, including restrictions on the use of common food names through the use of geographical indications.

Recently CIAA sent a letter to members of the European dairy community, that was also provided to USTR, that includes cheese, and this was also sent to members of the cheese manufacturing community in France, that calls for an end of policy that reduced market access around the globe for

U.S. dairy exports.

However, while we support the administration's opposition to certain discriminatory agricultural policies, we do not believe that tariffing French cheeses because of a French tax against digital services companies is the appropriate vehicle to dispute these agricultural policies.

Finally, a number of the cheeses proposed to be covered by the additional duties are imported under licensing and a tariff rate quota system administered by the U.S. Department of Agriculture. These licenses are essential to the operations of U.S. cheese porters.

Following the large civil aircraft dispute proceeding and the implementation of those tariffs, we were assured by USDA that there would be limited or no impact on the administration of this licensing program. However, dairy import license holders were notified by USDA in December, that the system which the agency uses to determine whether a license holder has used its quota allocation, therefore making that license holder eligible for their license the following year, was not being updated in the normal course.

This meant that license holders that rely on this database to monitor their quota usages, which have mandatory regulatory cutoffs on whether or not you are eligible, were not able to do so in the normal course of business.

MS. GRIMBALL: Ms. Lyons, please conclude. We are aware of this situation.

MS. LYONS: Yes. And therefore we request that any products that are subject to an import license not be covered. And in sum, we believe that these, overall, the 21 subheadings related to cheeses should be removed from this action due to their, the impact on U.S. cheese importing businesses and the employees that they support.

MR. BISHOP: Thank you, Ms. Lyons. Madam Chairman, that concludes direct testimony from this panel.

MR. CHANG: Hi, my name is Won Chang, Department of Treasury. My question is for Zev Rovine or Mr. Swain.

You stated in your testimony the tariffs at a hundred percent on European wines would result in a loss of 40 percent of your sales volume. What percent of sales does sparkling wine from France account for, because that's the only part that's being considered for the DST investigation?

And does Devenish Wines import sparkling wines from other regions?

MR. ROVINE: I can't say exactly his sales figures with relation to that. I know, I've worked with his company for a long time, I know he does sell quite a lot of champagne. If 40 or 55 percent of his wines come from Europe, I would think that around 20 percent of that would be sparkling wines from France.

He does sell sparkling wines from other regions. Other countries in Europe and California as well.

MS. GRIMBALL: And since you're here on his behalf, if you could let him know of this question?

We will be posting the transcript on the USTR website, probably in a day or so. If you could draw his attention to this question so that he could provide a written response, I'd appreciate that.

MR. ROVINE: Oh, absolutely.

MS. GRIMBALL: Thank you.

MS. BONNER: This question is for Mr. Lillie. In your testimony you mentioned that many small family wineries in the U.S. could be hurt by the proposed tariffs. And you mentioned possible downsizing of importers and distributors.

Keeping in mind that sparkling French wine is the wine for which tariffs are proposed in this investigation, could you elaborate on how U.S. producers could be harmed, and specifically, could you touch on any regulatory barriers that allow, that prohibit you from buying direct from U.S. small wineries?

MR. LILLIE: Yes, sure. Well, to start with the end. We can't buy directly from any wineries in the U.S., we have to buy through, because of the three-tier system in the U.S., the importers buy from the wineries, distributors distribute and wine stores and restaurants have to buy from.

So, Zev would, in New York would be supplying wines from California. I buy them from him, for my wine store.

In regards to wineries being, U.S. and California wineries or just U.S. wineries, I think I probably was more broadly referring to the greater tariffs. But in specifics to today's hearing and on French sparkling wine, I think that, I don't know, I don't think that it would hurt them as much.

So, the statement was a little bit more broad. Again, we're sort of trying to catch up with proceedings that have been happening since the Airbus dispute and we're just trying to organize all of our little companies to be aware of what's going on with these proceedings.

I don't think that it would present a new opportunity for wineries, just because of the long history. Say, hundreds of years of champagne being sold and being known.

Our customers do buy a lot of wines and we do provide a lot of wines under about $30 price point from sparkling wines from America, from Spain, from Italy, from many non-French companies. So, we do have demand for wines under sort of $30.

And we have a decent supply of American wines in that category that are sparkling. However, this ten to 15 percent of our sales that come from French sparkling wines, most of that is from champagne.

I feel that there is no real established region in the U.S. known for sparkling wine. And I don't think that there would be any way to suddenly replace that. The customers we would lose there.

So, it wouldn't, tax specifically on French sparkling wines I don't think would directly hurt small wineries in the U.S., but I don't think that it's going to provide opportunity for them because our customers who buy sparkling wines over $30, buy champagne, there is no demand for sparkling wines from America that are over that price point. And I wouldn't be able to stock more. Or just stock them.

There isn't a history or a region in the U.S. known for sparkling wine production. So I will lose those costumers.

I will not be able to offer them a $50 American sparkling wine they just won't buy, I will lose those customers. I will keep some customers, but it would hurt, even French sparkling. In that way. Sorry, I hope that helps.

MS. GRIMBALL: To the extent that any of the panelist, that your testimony does straddle both actions, if you have an LCA and DST, if you haven't done so already, even if you just copy and paste your testimony to that docket --

MR. LILLIE: Yes.

MS. GRIMBALL: Okay.

MR. LILLIE: Yes. But I know with the hearings, in terms of increasing the, with the Airbus dispute, there was no, I think the hearings happened last year, there was no chance to appear. We can send comments, correct? Okay.

MS. GRIMBALL: That's good.

MR. LILLIE: Thank you.

MS. HUANG: Thank you for your testimonies. My question is for Jessica Wasserman.

You mentioned in your testimony it is not in the U.S. economic interest to raise tariffs on these products at this time. Why not at this time?

And could there actually be a benefit to U.S. cheese and dairy producers who can produce many of the same cheeses and will now have the opportunity to increase production or expanding your U.S. production facilities to be able to test products in the U.S.?

MS. WASSERMAN: The point is that, so, Bel Brands is a large global company and chooses its locations based on view of the entire, of all the options for sourcing and so forth.

So, the U.S. was chosen, again, for expansion five years ago and worked with SelectUSA and the Department of Commerce and was, as I said, sought after foreign direct investment.

And when they chose this location, they were looking at the good milk supply in South Dakota, and also exporting to Canada from that location.

So, and then they have this model of, they are not a specialty cheese they are a processed cheese. So they have this model of, but they are specialized in these kind of miniature products, so I don't know the wax cheese that's in the net that most people know about.

So, they have a very specialized

product that isn't easily reproducible. And they have intellectual property and so forth around that. And they supply all their milk from the U.S.

So, my point is just that they're, I've been in trade for a long time, they seem like such a win-win in terms of moving their production to the U.S. They only import a bit in order to test the market, and as I said -- so, like, the Mini Babybels come in all different like flavors, so there is seven or eight types. They can be skim or cheddar or these various types. And so, like, there may be one of them that they produce outside the U.S. for now and they want to see whether it would take off in the U.S.

So, it's just such a positive story in that regard. And the point is that there wouldn't be, the U.S. producer wouldn't immediately rush in to do this.

You know, another point I wanted to make was, I'm sure you're fully aware of this, but the U.S. dairy industry is huge. And the cheese imports, or all of dairy imports, I believe is the statistic, only make up, from the EU, about two percent of U.S. domestic consumption.

So, when we're talking about these cheese products, it just seems like an important point that it's not as if, I mean, I take the GI issue is what the U.S. industry is most, why they so want to target this, the French cheeses.

But that's your policy choice. But our product is not a part of that dynamic in any event. I don't know if I answered your question, but thank you.

MR. SULBY: My question is for Mr. Baumgarten. Could you provide more information about your company's plans to increase investment for shelf-stable yogurt, in particular, the timing of any such investment?

MR. BAUMGARTEN: Sure. So basically, let me go back, I got a small little story.

In 2008 we started importing our product from France. And in 2011 it became to such a great threshold. We got to a certain volume where we actually started building manufacturing plants in the U.S.

So, in 2011 we built the plant in Traverse City, Michigan. And in 2015 we built a plant in Idaho.

And using that successful model, we want to do the same for yogurts. Currently right now we're importing them, we're not at that threshold yet.

We believe by the end of next year we'll be at that threshold where we actually will start the investment process. Does that answer --

MR. SULBY: So, my same question is, what prevents the current U.S. domestic industry from making the shelf-stable yogurt for your current consumers here in the U.S.?

MR. BAUMGARTEN: So, we're currently a very unique specialized process, and to take that investment we would require to be at that certain threshold level.

Right now it's not cost effective to bring it into this country at this time. But based on our growth rate, we believe by the end of 2021 we can bring that.

The technology right now does not exist. Or it does exist, but it's in our facility in France. In Normandy.

MS. WASSERMAN: Could I also add a point? I realize maybe that's what you were asking me as well, but with regard to Bel Brands and the timing of the investment, so they were, this is kind of a sad trade story insofar as they were planning to expand very quickly in South Dakota. They did expend but as a platform to Canada because they were excited about TPP and the additional cheese access that was pending there.

And so, when TPP fell apart they actually looked more at locating in Canada. But now that USMCA seems to be promising that again, they're watching that very closely. And that could be a factor in expansion as well.

But they are, in those products that I mentioned, the Cheese Dippers especially, that's the one that they are testing right now and will move production to the U.S. as soon as, in the next year kind of time frame.

So, I think maybe that's what you were asking me about the investment time frame. Thank you.

MR. ROGERS: My question is for Mr. Vitaliano. And if I mispronounced your name apologies. I have actually two questions for you. The first relates to tariff rates.

You noted in your testimony that there's an abundant supply of supplies and production of U.S. product, and I'm wondering if it's the view of your organization, whether the level of duty necessary to impact on French exports would be at 100 percent or do you think a lower level of duty would have the same impact?

MR. VITALIANO: We have --

MR. ROGERS: And then I'll move on to

my second question after you respond, okay.

MS. LYONS: Yes, we have, I believe, testified in support of 100 percent tariff rate. Basically to make this trade remedy more effective.

MR. ROGERS: Thank you. Okay, my second question relates to geographical indications.

Now, you've outlined how the EU's approach to geographical indications is having a negative impact on U.S. dairy exports to France and the rest of the EU. Can you elaborate on how the EU's approach to GIs is negatively affecting U.S. exports to third country markets to the advantage of French producers?

MR. VITALIANO: In the EU, EU has been rather aggressive lately in negotiating bilateral agreements. Countries such as Japan and I believe looking at Mexico.

And they are seeking to insert restrictions on geographical indicators, indications in all of those trade agreements, which would effectively make it more difficult, if not impossible, for the U.S. to export products to those third countries under the common food names that we've used for many, many years in this country. Things like Parmesan as well as the varieties that I've mentioned.

So that the EU is, sort of has a global strategy for, in a sense, restricting the use of those names from basically every other importing source, except from the European Union. That's basically, it's a very, very pervasive and very aggressive strategy that basically has global implications in its application.

MR. ROGERS: Thank you.

MR. SPITZER: My questions are for the Cheese Importers Association, for Ms. Lyons. In your testimony you mention that U.S. grating and packaging facilities potentially be impacted by the proposed tariffs. Do you have any information on the cheese types and the volume that are further processed when they're imported into the United States?

MS. LYONS: So, I can provide general comments right now, but we can get specific information from the members.

But pretty much any cheese that is imported into the United States, not all but most, are imported in original loaves or wheels, which is large. It helps with stability and food safety in the transport process from foreign markets into the United States.

So, any time you see a small consumer package of a foreign cheese, that is generally imported in a much large amount and a much larger size, and then cut in the United States. So anything that you can think of.

Parmesan cheese is grated, that is imported into the United States. While there is some Parmesan production in the United States, anything that you see that's grated that has an Italian origin or any kind of European origin, would be grated in the United States generally. We're not importing too much grated cheese.

So it's really, it can be anything that's imported is cut and wrapped. For example, the Gellert Global Group that testified earlier today, I know at their operations that's in Lakewood, New Jersey, specifically, they cut and wrap cheeses from all over Europe, as well as other parts of the world.

That includes Brie, there are some cheddar cheeses. They usually import high values cheeses. We're not importing large amounts of commodity product.

MR. SPITZER: Okay. Any information you can provide on that, that information would be welcomed. Thank you.

Second area of interest, you mentioned in your testimony that the Cheese Importers has written a letter to the European Dairy Community to encourage changes in the geographical indications policy.

MS. LYONS: Yes.

MR. SPITZER: Could you elaborate on those efforts and indicate any kind of responses you've received?

MS. LYONS: So, the Board of Directors of the Cheese Importers Association felt that it was necessary to take a position on geographical indications because of the impact that, because of what we've seen in the Section 301 actions taken up by USTR over this year. Over this past year or so.

They have highly targeted geographical indicated cheeses and the countries that they are imported from. And the tariffs are paid by the importers, they're not paid by the European communities that are creating and implementing these policies around the world that are limiting U.S. dairy exports.

So they felt it was important to take a position that said, we agree that common cheese names should not be restricted for use around the world, it limits U.S. abilities to export products and the abilities for other countries to export products under common cheese names around the world.

However, we do recognize that there are some geographical indications that are appropriate. Those are generally using terms that are tied to a specific geographical region.

There are some protected designations of origin from the European Union that do this, and those we feel would be appropriate for restrictions. However, not restrictions of the common cheese name that may be tied to and included with that geographic origin.

That letter was sent to a number of manufacturers in the EU, as well as the EU Trade Associations. And we have heard that it has also been shared with many of the members of the governments in the EU. It has also been shared within the U.S. dairy industry.

We have heard some, it's really been

mixed reactions from individuals within the European Community. Some of the smaller manufacturers have reacted that they're happy.

Maybe not happy but they understand why CIAA needed to take this kind of position. And feel that there has been some overreach by the EU on these policies.

There are, however, other individuals who have been very disappointed that CIAA took a position on this issue. You know, as an importer, we're not impacted by these export policies that are impacting the U.S. dairy companies that are attempting to export around the world.

And it's a unique situation for the association to be in to take a position on this. However, we are the companies. I am representing the companies that are being impacted by these tariffs, I'm not representing our European suppliers.

So, anything that we feel they can do to help support our positions is what we're letting them know they need, that we would like them to do.

MR. SPITZER: Thank you very much.

MS. LYONS: And I do just have one thing. I know you talked a lot about supplying U.S. cheeses for some of these products.

There are several products that are absolutely unavailable in the U.S. We do have a wonderful large dairy industry in the U.S., however, there is minimal to no sheep and milk cheese production in the United States. And many of those subheadings are covered by this tariff action, as well as the large civil aircraft.

There are some small artisan producers making sheep and goats milk cheese in the United States, however, wide scale cheeses like Pecorino, and at the demand that it exists in the United States, are not readily available. They must be imported from other countries.

MR. SPITZER: Not enough sheep in the U.S.

(Laughter.)

MR. BISHOP: We release this panel with are many thanks.

(Applause.)

MS. GRIMBALL: Thank you for your participation, this hearing is adjourned.

(Whereupon, the above-entitled matter went off the record at 12:16 p.m.)