

OFFICE OF THE U.S. TRADE REPRESENTATIVE

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MULTI-JURISDICTIONAL HEARING REGARDING THE
PROPOSED ACTION IN THE SECTION 301
INVESTIGATIONS OF DIGITAL SERVICES TAXES
ADOPTED BY AUSTRIA, INDIA, ITALY, SPAIN,
TURKEY, AND THE UNITED KINGDOM

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MONDAY
MAY 3, 2021

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The hearing convened via video
teleconference, Patrick Childress, Office of the
U.S. Trade Representative, presiding.

Government Panelists

PATRICK CHILDRESS, USTR

BENJAMIN ALLEN, USTR

ROBERT TANNER, USTR

REBECCA NOLAN, Department of State

DAVID MOO, Department of State

CHRIS BLAHA, Department of Commerce

WON CHANG, Department of the Treasury

ALBERT YAM, Department of the Treasury

ANDREW STEPHENS, USDA Foreign Agricultural

Service

MATTHEW SHAILER, USDA Foreign Agricultural

Service

Witnesses

**MEGAN FUNKHOUSER, Information Technology
Industry Council (ITI)**

JORDAN HAAS, Internet Association

**RACHAEL STELLY, Computer & Communications
Industry Association (CCIA)**

**GARY SPRAGUE, Silicon Valley Tax Directors Group
(SVTDG)**

BRIAN SCARPELLI, ACT - The App Association

**BLAKE HARDEN, Retail Industry Leaders
Association (RILA)**

**BETH HUGHES, American Apparel & Footwear
Association (AAFA)**

**MATT PRIEST, Footwear Distributors & Retailers
of America (FDRA)**

JONATHAN GOLD, National Retail Federation (NRF)

C-O-N-T-E-N-T-S

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

2 9:32 a.m.

3 MR. CHILDRESS: Good morning,
4 everyone. I think we can go ahead and get
5 started.

6 Welcome to today's hearing. Office of
7 the United States Trade Representative in
8 conjunction with the Interagency's Section 301
9 Committee is holding this public hearing
10 regarding potential trade actions in connection
11 with its Section 301 investigations of digital
12 service taxes, or DSTs, adopted by Austria,
13 India, Italy, Spain and the United Kingdom. The
14 U.S. Trade Representative initiated these
15 investigations on June 2nd, 2020.

16 In notices published on March 31st of
17 this year USTR announced proposed trade actions
18 in these investigations. Those notices may be
19 found at 86FR16816, 86FR16824, 86FR16819,
20 86FR16813, 86FR16822, and 86FR16829.

21 In this public hearing and in hearings
22 to be held over the coming days USTR and the

1 Section 301 Committee will hear witness testimony
2 regarding the proposed trade actions.

3 Today's hearing is intended to address
4 multi-jurisdictional issues; that is, cross-
5 cutting issues that are relevant to more than one
6 of the six investigations. We will subsequently
7 be holding a series of country-specific hearings
8 and those will occur according to the following
9 schedule:

10 Thursday of this week we'll be holding
11 four additional hearings: first the hearing for
12 Austria, which will start at 9:30 a.m.; then the
13 hearing for Italy, which will start at 11:00 a.m.
14 That will be followed by the hearing for Spain at
15 1:00 p.m., and then the hearing for the UK at
16 2:30 p.m. On Friday we will hold our hearing for
17 Turkey, and that will start at 9:30 a.m. And
18 then the following week we will conclude on
19 Monday, May 10th with our hearing for India, and
20 that will also start at 9:30 a.m.

21 Most hearing rebuttal hearing comments
22 are due one week after each respective hearing,

1 and then following these hearings the Section 301
2 Committee will carefully consider the testimony
3 provided at the public hearings. We will also
4 review the written comments received in response
5 to the March 31st notices as well as post-hearing
6 rebuttal comments from interested parties. The
7 Section 301 Committee will then make a
8 recommendation to the U.S. Trade Representative.

9 Now before we begin today's testimony
10 I will provide some procedural and administrative
11 instructions and introduce the U.S. government
12 representatives that will participate in the
13 hearing.

14 Today's hearing will be organized into
15 two panels of witnesses across which nine
16 individuals are scheduled to testify. The
17 provisional list of witnesses has been posted to
18 USTR's website. Each witness appearing at the
19 hearing is limited to five minutes of direct
20 testimony. After the testimony from each panel
21 of witnesses the Section 301 Committee will have
22 an opportunity to ask questions.

1 Between panels there will be a short
2 break while we assemble the next panel.

3 Post-hearing comments including any
4 written responses to questions from the Section
5 301 Committee are due by May 10th and the rules
6 and procedures for written submissions are set
7 out in the March 31st Federal Register notices.
8 A written transcript of this hearing will be
9 posted on the USTR website and on the USTR portal
10 as soon as possible after the hearings conclude.

11 Now just a few technical points to go
12 over: For those of you participating in the
13 hearing today, when it's not your turn to speak
14 we ask that you please leave your video and
15 microphone muted. And if you would like to
16 respond to a question posed to another witness
17 that's on your panel, you can un-mute your video
18 and that will be a signal to us to recognize you
19 to speak.

20 If you're having any technical
21 difficulty, please let us know about that in the
22 chat function on the BlueJeans platform.

1 And then lastly, when you are speaking
2 you will be responsible for keeping your own
3 time, however, we will provide a visual warning
4 when one minute remains and when your time has
5 expired.

6 With that I'd like to introduce the
7 government panel that will be presiding over this
8 hearing.

9 Sorry. Just one moment, please.

10 (Pause.)

11 MR. CHILDRESS: Okay. I just received
12 a note that some people are having trouble seeing
13 my video, so we're going to take a moment to try
14 to sort out that issue.

15 (Pause.)

16 MR. CHILDRESS: Okay. Great. I'm
17 told that my video is now working. I apologize
18 for the delay.

19 So the next step is to introduce the
20 panelists on our U.S. government panel, and we
21 will be presiding over this hearing this morning.

22 I am Pat Childress. I'm from the

1 Office of USTR's General Counsel. I am joined
2 here by my USTR colleague Ben Allen, who is also
3 from the USTR Office of General Counsel, and our
4 USTR colleague Rob Tanner from the Office of
5 Services and Investment is joining us this
6 morning as well.

7 We're pleased to be joined today by
8 several international trade and economic experts
9 from other U.S. government agencies. First from
10 the State Department we have Rebecca Nolan and
11 David Moo. From the Department of Commerce we
12 have Chris Blaha. From Treasury we have Albert
13 Yam and Won Chang. And from the Department of
14 Agriculture we have Andrew Stephens and Matthew
15 Shailer.

16 Before we begin with our first panel
17 I'd just like to check in with my colleagues to
18 ensure that all of our panelists testifying for
19 Panel 1 are present in the room today.

20 Nidah, are you able to confirm that
21 everyone is here?

22 MS. MAJID: Yes, everyone's present.

1 MR. CHILDRESS: Okay. Excellent.

2 Thanks very much.

3 So with that we can move forward with
4 Panel 1. And Panel 1 is comprised of five
5 parties that will be offering testimony this
6 morning. The first is Megan Funkhouser from the
7 Information Technology Industry Council. She
8 will be followed by Jordan Haas from the Internet
9 Association, Rachel Stelly from the Computer &
10 Communications Industry Association, Gary Sprague
11 from the Silicon Valley Tax Directors Group, and
12 Brian Scarpelli from ACT - the App Association.

13 And with that, Ms. Funkhouser, if
14 you're ready, you may proceed with your
15 testimony.

16 MS. FUNKHOUSER: Thank you so much.
17 I want to thank you for the opportunity to
18 testify today with regard to the Office of the
19 U.S. Trade Representative Section 301
20 investigations into digital services adopted by
21 Austria, India, Italy, Spain, Turkey and the
22 United Kingdom.

1 My name is Megan Funkhouser and I'm
2 Director of Policy at the Information Technology
3 Industry Council where I lead on international
4 tax policy.

5 ITI is the premier global advocate for
6 technology representing the world's most
7 innovative companies. Founded in 1916, ITI is an
8 international trade association with a team of
9 professionals on four continents. We promote
10 public policies and industry standards that
11 advance competition and innovation worldwide.
12 Our diverse membership and expert staff provide
13 policymakers the broadest perspective and thought
14 leadership from technology, hardware, software,
15 services and related industries.

16 ITI supports a global tax environment
17 that provides much needed certainty for companies
18 to innovate, expand and deliver essential goods
19 and services to individuals and businesses around
20 the world.

21 In our January 2020 testimony before
22 the Section 301 Committee we noted that while the

1 immediate focus of that hearing centered on the
2 appropriate U.S. policy response to France's DST,
3 it had as much or more to do with preventing the
4 widespread application of unilateral actions that
5 undermine a functioning international tax policy
6 and comprised the predictability that is afforded
7 to companies to conduct business globally. This
8 very much remains the case in today's hearing
9 which considers the appropriate U.S. policy
10 response to the measures adopted by Austria,
11 India, Italy, Spain, Turkey and the United
12 Kingdom.

13 Indeed, over the course of the last 16
14 months individual governments have continued to
15 propose, enact and collect increasingly expansive
16 DSTs that attempt to (audio interference) digital
17 economy, target U.S. headquarters firms and are
18 inconsistent with prevailing international tax
19 and trade principles. Developments in the first
20 few months of 2021 alone bear witness to this
21 reality.

22 In March India retroactively expanded

1 its equalization levy which exclusively taxes
2 non-resident companies, both large and small,
3 when one or more aspect of a transaction takes
4 place online.

5 Canada has launched a public
6 consultation to assist its development of a DST
7 and Vietnam has released a set of proposals that
8 would create deemed permanent establishment
9 criteria in (audio interference) non-resident
10 companies engaged in eCommerce activities.

11 The European Commission is advancing
12 work to release a proposal for a digital levy in
13 June which it plans to apply above and beyond
14 whatever consensus-based solution emerges from
15 ongoing multilateral negotiations.

16 All the while more measures have taken
17 effect including in (audio interference). More
18 governments have started actively collecting
19 their DSTs, France and Turkey.

20 We therefore remain supportive of
21 USTR's efforts to analyze the impact of the
22 measures adopted by Austria, India, Italy, Spain,

1 Turkey and the United Kingdom and concur with the
2 conclusions of its respective Section 301 reports
3 on these measures. These investigations have
4 played an important role in stemming further
5 fragmentation of the international tax landscape
6 and underscore the serious and growing threat of
7 the unilateral DSTs which undermine longstanding
8 and rational tax reforms (audio interference) by
9 charging a tax on gross revenue, private and non-
10 resident companies, and operating outside of tax
11 treaties, among other concerns.

12 Beyond the detrimental impacts
13 identified in the Section 301 reports released in
14 January of this year the continuing proliferation
15 of DSTs detracts from the ability of governments
16 participating in multilateral negotiations to
17 realize a sustainable approach that attacks
18 challenges arising from the generalization of the
19 global economy.

20 The 139 governments participating in
21 the OECD G20 include the framework negotiations
22 including the United States and all of the

1 governments that have adopted the measures under
2 consideration today who identified mid-2021 at
3 the self-imposed deadline for reaching political
4 agreement on a multilateral consensus-based
5 solution. Despite the scope of the project, its
6 politically sensitive nature and the
7 extraordinary challenge posed by the COVID-19
8 pandemic negotiators have nonetheless
9 demonstrated significant progress toward that
10 goal.

11 Ultimately tax policy problems require
12 tax policy solutions. It is with this in mind
13 that we again encourage governments to withdraw
14 their unilateral measures and continue their work
15 to address the harmful fragmentation caused by
16 the proliferation of DSTs and reach consensus on
17 a sustainable multilateral approach.

18 Thank you again for the opportunity to
19 testify today and for USTR's efforts to
20 investigate these materials. I look forward to
21 answering any questions you have.

22 MR. CHILDRESS: Thank you for that

1 testimony, Ms. Funkhouser.

2 Now we'll hear from Jordan Haas from
3 the Internet Association.

4 MR. HAAS: Great. Thank you for the
5 opportunity to testify before you today. Let me
6 start by saying the internet industry applauds
7 USTR's prompt and decisive finding in response to
8 DSTs adopted by Austria, India, Italy, Spain,
9 Turkey and the United Kingdom, which specifically
10 target the (audio interference).

11 Internet Association represents over
12 40 of the world's leading internet companies. IA
13 is the only trade association that exclusively
14 represents leading global internet companies on
15 matters of public policy. IA supports policies
16 that promote and enable internet innovation
17 ensuring that the information flows freely and
18 safely across national borders uninhibited by
19 restrictions that fundamentally are inconsistent
20 with an open and decentralized nature of the
21 internet.

22 With these findings in these Section

1 301 investigations USTR underscored the
2 importance of an American industry that creates
3 unprecedented benefit for society that generates
4 the largest trade surplus of any industry and
5 supports millions of jobs and businesses of all
6 sizes. USTR's determination that these DSTs are
7 unreasonable, discriminatory, and restrict U.S.
8 commerce is an important step in protecting U.S.
9 companies and workers while attempting to stem
10 the tide of new discriminatory taxes around the
11 world.

12 American-based internet companies are
13 a significant driver of the U.S. economy and U.S.
14 exports to all businesses, entrepreneurs across
15 the country who use the internet to sell goods
16 and services around the globe. Digital trade now
17 accounts for more than 50 percent of all U.S.
18 service exports. American digital service
19 exports are 517 billion per year generating a
20 U.S. trade surplus, digital trade surplus of 220
21 billion that is shared by small and large firms
22 and workers far outside the traditional digital

1 sector.

2 As USTR has found, an increasing
3 number of foreign trade trading partners are
4 proposing discriminatory revenue taxes on digital
5 services provided by U.S. tech firms. The scope
6 of these digital services taxes are specifically
7 designed to go after U.S. digital companies while
8 protecting foreign competitors from the scope of
9 the taxes.

10 While IA applauds USTR for the strong
11 response, it does not take a position on the
12 impact of the proposed actions in the form of
13 additional duties on products of the six
14 countries. It remains the goal of the digital
15 (audio interference) industry (audio
16 interference) these countries to -- will end the
17 discriminatory tax before any additional duties
18 would enter into force, thus proposing duties
19 will not have to be put into place.

20 IA believes that global tax rules
21 should be updated for the digital age, but
22 imposing discriminatory taxes against U.S. firms

1 is not the right approach. In proceeding with
2 their DSTs these countries took a unilateral
3 approach even as a global solution at the OECD is
4 actively being developed. IA applauds the U.S.
5 government for its commitment to the OECD process
6 and calls on other nations, notably those that
7 are subject to these investigations, to repeal or
8 defer the collection of (audio interference)
9 their commitment to an OECD-led solution.

10 Additional countries not named during
11 these Section 301 investigations have passed
12 DSTs. These countries' measures should also be
13 investigated under Section 301 as they are
14 unreasonable and discriminate against U.S.
15 digital countries. Additionally, other countries
16 are developing DSTs, including Belgium, Brazil,
17 Canada, Nigeria, Pakistan, Vietnam and the
18 Philippines. The U.S. government should engage
19 with these countries developing DSTs to
20 discourage them from moving forward with the
21 implementation process.

22 It is critical that the U.S.

1 government continues to work to stem the tide of
2 new discriminatory taxes around the world. The
3 digital industry now hopes every government that
4 has moved forward with DSTs will roll back these
5 taxes before any additional escalation occurs.
6 The U.S. must help to build a global consensus
7 around developing a fair and modern global
8 approach to taxation in the digital age while
9 continuing to send a strong message to trading
10 partners that targeted discriminatory taxes
11 against U.S. firms are not an appropriate
12 solution.

13 Thank you for the time to testify
14 today and I look forward to answering any
15 questions.

16 MR. CHILDRESS: Thank you, Mr. Haas.

17 We'll now move on to Rachael Stelly
18 from the Computer & Communications Industry
19 Association.

20 Ms. Stelly, if you're ready, you can
21 begin your testimony.

22 MS. STELLY: Good morning. My name is

1 Rachael Stelly and I serve as a policy counsel
2 for the Computer & Communications Industry
3 Association. Thank you for the opportunity to
4 express the views of CCIA regarding USTR's
5 Section 301 investigations and to digital
6 services taxes.

7 CCIA is a trade association of
8 internet and technology firms, many of whom that
9 support goods and services around the world.

10 Digital services taxes at the center
11 of the Section 301 investigations of Austria,
12 India, Italy, Spain, Turkey and the United
13 Kingdom discriminate against U.S. firms, conflict
14 with existing international commitments, and
15 undermine important ongoing work to update
16 taxation norms for the 21st Century. CCIA has
17 been strongly supportive of scrutiny by USTR in
18 the form of Section 301 investigations and
19 targeted actions.

20 The economic burden associated with
21 compliance with DSTs is significant for U.S.
22 exporters. Costs are exacerbated as many

1 countries continue to move forward with various
2 digital taxation measures. This burden
3 associated with compliance is significant even if
4 firms can pay the tax. U.S. firms are now faced
5 with many of these complex taxation rules that
6 depart from traditional norms of taxation raising
7 costs of serving customers outside the United
8 States. If DSTs are left unchecked and the
9 proliferation of DSTs continue, U.S. internet
10 exports will be discouraged from serving markets
11 around the world.

12 CCIA welcomes USTR's conclusions in
13 the six open Section 301 investigations. In the
14 United States officials and lawmakers have
15 repeatedly made clear their disapproval of any
16 discriminatory tax measures against U.S. tech
17 firms. The actions of Austria, India, Italy,
18 Spain, Turkey and the United Kingdom, as well as
19 any country that implements and collects on a
20 national DST or other discriminatory tax
21 measures, warrant a substantial proportionate
22 response from the United States.

1 CCIA takes seriously the impact that
2 tariffs can have. Tariffs should only be used in
3 limited circumstances in a targeted manner and
4 where there is a clear strategy in place designed
5 to change the behavior of a trading partner.

6 USTR's proposed actions appear to meet
7 this standard as DSTs are in design and effect a
8 tariff on U.S. technology imports. This should
9 be countered with similar measures to ensure that
10 our trading partners maintain market access and
11 refrain from targeting new taxes on foreign
12 producers.

13 As countries consider changes to the
14 international tax framework in light of the
15 digital economy, this work should be done
16 pursuant to a multilateral process currently
17 ongoing led by the Organisation for Economic Co-
18 operation and Development. An OECD-led solution,
19 not discriminatory national digital tax measures
20 that incite trade conflicts, remains the best
21 path forward.

22 CCIA has long been supportive of the

1 ongoing work and is especially encouraged by the
2 progress made in recent months by parties-based
3 negotiations. CCIA believes that an updated
4 international corporate tax system can provide
5 legal certainty for all and helps for economic
6 recovery.

7 While the OECD process continues
8 countries should be deterred from enacting and
9 collecting our national taxes which undermines
10 the multilateral process and heightens trade
11 tensions. USTR's conclusions in the Section 301
12 reports and proposed action sends a strong signal
13 to trading partners that discriminatory taxes
14 will not be tolerated.

15 Thank you very much for the
16 consideration of these issues and I'm happy to
17 answer any questions.

18 MR. CHILDRESS: Thank you, Ms. Stelly.

19 We will now move along with Gary
20 Sprague, who's representing the Silicon Valley
21 Tax Directors Group.

22 Mr. Sprague, if you're ready, you may

1 now begin your testimony.

2 MR. SPRAGUE: Thank you, Mr. Chair.

3 My name is Gary Sprague. I'm a
4 partner with Baker McKenzie in Palo Alto,
5 California speaking on behalf of Silicon Valley
6 Tax Directors Group, an industry association of
7 approximately 110 high-tech companies with a
8 significant presence in Silicon Valley. We
9 appreciate this opportunity to offer comments, in
10 particular with respect to the quantification of
11 the burden imposed on U.S. companies.

12 We agree with USTR's determinations
13 that the covered DSTs are unreasonable and
14 discriminatory and burden or restrict U.S.
15 commerce. We believe that the covered DSTs
16 represent unfair trade practices, are
17 incompatible with WTO obligations, undermine the
18 United States' tax treaty network.

19 We also appreciate the work to
20 quantify the tax and compliance cost burdens
21 these discriminatory taxes will impose on U.S.
22 taxpayers. Based on information from our members

1 we believe that the tax burden on our members
2 will be at least 120 percent to 200 percent of
3 the estimates published by USTR, depending on the
4 country, and notably higher than that for India.
5 The estimate will be higher for all U.S.
6 companies as we did not extrapolate our numbers
7 for companies not our members.

8 We can speculate as to some of the
9 reasons our estimates are higher. In some cases
10 the tax is imposed on a revenue base that is
11 greater than the actual revenue recognized by the
12 taxpayer in its financial statements. This is
13 true most notably in the case of India. In many
14 cases the DST of more than one country can be
15 imposed on a single transaction because the
16 definition of revenue source is not coordinated
17 among the DSTs.

18 Various DSTs also generally do not
19 coordinate for the fact that a transaction
20 facilitated by an intermediary might have
21 participants in two countries and both countries
22 might impose a DST on a single transaction. In

1 some cases inter-company transactions are subject
2 to DST, though cascading taxes can be created in
3 some structures.

4 Finally, more recent DSTs have
5 considerably expanded their scope. The Turkish
6 DST has a broader scope than the earlier DSTs and
7 the Indian DST has recently been amended with
8 retroactive effect composed in an extremely broad
9 scope. We believe that the cost estimates for
10 the Indian DST should include the tax imposed on
11 digital advertising under the original 2016
12 equalization levy which imposes a six percent
13 tax. For these reasons we believe that the
14 burden estimate for India is particularly
15 understated.

16 We would like to bring to the
17 Committee's attention that other governments
18 around the world are continuing to enact or
19 propose DSTs. The African Tax Administration
20 Forum recently published a DST suggested approach
21 which provides guidance to member governments on
22 design features for a DST. ATAF's suggestions

1 carry significant weight among African national
2 tax policymakers.

3 Canada has introduced in its 2021-2022
4 budget a proposed DST to apply effective January
5 1, 2022. This DST is expressly modeled closely
6 on that of France.

7 The European Commission has announced
8 an intention to pursue a so-called digital levy
9 which would be a tax imposed on defined digital
10 transactions. While the details of the tax are
11 not now known, the proposal clearly contemplates
12 some sort of tax that is imposed solely on a
13 defined category of digital transactions.

14 Kenya has enacted a DST which came
15 into effect on January 2nd, 2021.

16 The Polish government is proposing a
17 tax much like the Austrian DST subject to this
18 investigation to be effective July 1, 2021.

19 Other governments continue to make
20 statements that their countries also may consider
21 such taxes.

22 USTR's Section 301 investigations are

1 relevant also to these other jurisdictions as the
2 tax and trade issues are essentially the same.

3 As we have testified previously we
4 support the OECD inclusive framework process to
5 reach a global consensus on the tax issues
6 relating to the global digitalized economy. We
7 support the U.S. government taking a leading role
8 in these discussion. We endorse the U.S.
9 position that, quote, all relevant unilateral
10 measures, end quote, should be removed as part of
11 the global consensus. All of the DSTs included
12 in this investigation should be regarded as
13 relevant unilateral measures to be removed.

14 We appreciate this opportunity to
15 testify and we'd be pleased to respond to any
16 questions.

17 MR. CHILDRESS: We will move forward
18 with the testimony of our final panelist in this
19 first panel, Brian Scarpelli from ACT - the App
20 Association.

21 Mr. Scarpelli, if you're ready to
22 start, please begin.

1 MR. SCARPELLI: Thank you. Hope you
2 can hear me.

3 Great. Wonderful. Thank you for this
4 opportunity to share views on digital service
5 taxes and their impact on our community, which is
6 the American small business digital economy
7 community of innovators.

8 The App Associations represents
9 thousands of small business software application
10 development companies and tech firms that create
11 the software apps used on mobile devices and
12 enterprise systems and for consumers around the
13 globe. Today the ecosystem that our association,
14 or The App Association, represents, which we call
15 the app economy, we value at approximately 1.7
16 trillion annual and it is responsible for, we
17 estimate, over 5.9 million American jobs.

18 Alongside the world's rapid embrace of
19 mobile technology including -- it's all --
20 everything at issue here with these DSTs, our
21 members have been creating innovative solutions
22 that power the Internet of Things, the concept --

1 to me the concept that verticals, vectors, use
2 cases which were not utilizing wireless and
3 activity and big data analytics, et cetera, are
4 now utilizing them to unlock new efficiencies,
5 and the USTR's approach in this matter has a
6 direct effect on all of our members.

7 So while the global digital economy
8 continues to show -- has shown and continue to
9 show great promise for our members' growth and
10 job creation, they also face a diverse array of
11 challenges when they enter new markets: trade
12 barriers and laws, regulations, policies or
13 practices that are usually intended to protect
14 domestic goods and services from foreign
15 competition or artificially stimulate exports of
16 particular goods or services.

17 These barriers take a lot of different
18 forms but have the same effect. They impede U.S.
19 exports and investment and they suppress growth
20 and job creation for our community. Generally we
21 support efforts to address barriers to U.S.
22 export of good and services and foreign direct

1 investment, the proper enforcement of IP, and
2 we're committed to working with the U.S.
3 government and other governments to reduce or
4 eliminate barriers to trade that will inhibit the
5 growth of the app economy.

6 Our written testimony includes some
7 more detail on our general views and priorities,
8 but I just would note that it includes enabling
9 cross-border data flows; in other words, that the
10 tolling of data across border -- crossing borders
11 with a purpose of collecting custom duties or
12 taxes directly contributes to the balkanization
13 of the internet and jeopardizes the efficient of
14 the internet and effectively blocks innovative
15 products and services from market entry.

16 So generally we believe that the
17 imposition of DSTs are unreasonable and
18 discriminatory, that they disjoint the digital
19 economy and that they impede U.S. exports and
20 investment abroad. DST imposition on U.S.
21 digital exports directly impacts America's most
22 innovative service industries and the small

1 businesses that are driving those industries
2 including software development and connected
3 devices in which our members are key figures and
4 are leading.

5 While many of the countries proposing
6 or enforcing DSTs base their actions on an
7 argument that digital economy businesses pay less
8 tax or do not pay taxes, that claim does not
9 align with research data and the experiences of
10 our own members.

11 Something we note in our testimony but
12 worth mentioning is that while it's not the
13 subject of the current investigation, some
14 studies prompted by France's DST effort
15 demonstrated that the average corporate tax rates
16 of many digital companies exceeded the European
17 Commission's hypothetical estimates by 20 to up
18 to 50 percentage points.

19 The DSTs being considered in this
20 investigation generally discriminate against
21 American companies, sometimes openly, would
22 assess taxation liability on a retroactive basis;

1 some are extraterritorial, would unreasonably
2 increase administrative burdens and are otherwise
3 unreasonable to us. And we share USTR's concerns
4 with each of the proposed and final tax policies
5 that are being investigated and we view these as
6 in effect tariffs on the digital economy and
7 significant trade barriers.

8 We agree that the imposition of
9 digital service taxes also gives rise to
10 conflicts with international treaties and
11 taxation principles, namely those reflected by
12 the Organisation for Economic Co-operation and
13 Development's Model Tax Convention on Income and
14 Capital and the UN Model Double Taxation
15 Convention, and countless bilateral tax treaties.
16 These established approaches recommend that
17 taxation of income and not revenue -- recommend
18 the taxation of income and not revenue and
19 discourage assessing taxes to entities without
20 considering if they are established in that
21 country and avoid assessing taxes retroactively.

22 Further, digital service taxes

1 conflict with commitments in our view under the
2 WTO's General Agreement on Trade and Services
3 Articles 2 and 17, and contravene in effect the
4 WTO moratorium on customs duties on electronic
5 transmissions that has been in place since 1998.
6 So in this multi-jurisdictional hearing and
7 investigation and in the various country-specific
8 investigations we strongly encourage USTR to
9 reinforce how the DSTs at issue do not align with
10 these important multilateral and bilateral
11 constructs and that the proposed unilateral DSTs
12 at issue are unreasonable and discriminatory.

13 The App Associations wants to -- we
14 really want to make sure that we note our
15 agreement that while some changes may be needed
16 with respect to international taxation due to the
17 rise of the digital economy, amongst many other
18 factors, that we endorse and encourage the U.S.
19 government to continue to support the ongoing
20 efforts with OECD to reach consensus on needed
21 tax changes and support the development of such a
22 solution as soon as possible. And these have, as

1 I think some previous panelists have noted, seen
2 significant progress of late.

3 The country-specific --

4 MR. CHILDRESS: Mr. Scarpelli, please
5 conclude your testimony shortly.

6 MR. SCARPELLI: Sure. I would just
7 conclude with that should USTR decide that some
8 or all of the tax policies being investigated are
9 actionable under Section 301, we recommend that
10 focus be on obtaining a consensus multilateral
11 tax agreement through the OECD process and the
12 avoidance of the imposition of retaliatory
13 tariffs that would have a pronounced impact on
14 The App Association's members and American SMEs.

15 Thanks for the opportunity to provide
16 our views to USTR and look forward to any
17 discussion questions. Thanks.

18 MR. CHILDRESS: Thank you, Mr.
19 Scarpelli.

20 And thank you to all of our panelists
21 on our first panel this morning.

22 We will now proceed with questions

1 from the U.S. government panel. So if any of our
2 panelists from the government agencies would like
3 to ask a question of our testifying parties,
4 please proceed.

5 MR. CHANG: Hi, this is Won Chang,
6 Department of Treasury. Thank you everyone for
7 your testimony. I had one -- my question goes
8 out to ITI, Megan Funkhouser.

9 Your testimony mentions that over the
10 course of the last 16 months individual
11 governments have completed or proposed an act in
12 collecting increasingly extensive DSTs that
13 attempt to (audio interference) the digital
14 economy from the U.S. headquarters firms and are
15 inconsistent with prevailing international tax
16 and trade principles. Are there any further
17 specifics you can share in terms of the effects
18 on U.S. companies and how the impact of DSTs can
19 be quantified? Thank you.

20 MS. FUNKHOUSER: Sure. Thank you for
21 the question. I will -- I can follow up with
22 more detail with quantification, but I can talk

1 in broad strokes about the impacts of DSTs,
2 especially on these broader measures.

3 So for example, in India with the
4 equalization levy, the recent expansion that was
5 included in the finance bill for 2021-2022, it
6 was clarified and frankly expanded to say that
7 any -- if any aspect of a transaction took place
8 online, then that transaction as a whole would
9 then be subject to the equalization levy of two
10 percent of the gross revenue of that transaction.

11 So what that means is, one, for the
12 company that is directly in scope that of course
13 is a two percent tax on revenue that doesn't take
14 into account the research and development, the
15 other staff costs that were made and like making
16 that transaction possible. It didn't account for
17 the other taxes that may be subject -- the
18 company may be subject to as it -- how it brought
19 that transaction together.

20 But the other -- the next aspect, the
21 more direct impact is that -- indirect impact is
22 that for a company that is -- for a second

1 company that has been using that service, whether
2 it be a platform or otherwise, to make that
3 transaction happen, it becomes more expensive for
4 them to do business in that country. For
5 example, if a small company in the United States
6 is looking to reach new markets, many times the
7 best way to do so is going to be using an online
8 platform, which we have many in our membership
9 and there are others represented on the panel
10 here today.

11 When a measure such as the
12 equalization levy or some of these other digital
13 services taxes are out there imposes a gross
14 revenue tax, many times because it's gross
15 revenue it is passed through depending on the
16 market. And what that means is that it can
17 become more expensive or frankly impossible for a
18 small business to do business in that new market.
19 And especially for small businesses we all know
20 that 95 percent of consumers live outside the
21 United States and if you want to scale and you
22 want to reach new markets, then many times for

1 small businesses who may not have the name
2 recognition in other markets, it's going to be
3 through online platforms. And that's really the
4 next -- I would say the next aspect of DSTs that
5 perhaps isn't talked about as much as the direct
6 impacts. Hope that answers your question.

7 MR. CHANG: Thank you. That answered
8 the question. Thanks.

9 MR. CHILDRESS: Thank you. Any
10 further questions from the U.S. government panel?

11 MS. NOLAN: Hi. Yes, good morning.
12 My name is Rebecca Nolan and I'm from the State
13 Department. I'd like to thank all the panelists
14 for their testimony. Really appreciate it. It
15 was all very useful. My question is for Jordan
16 Haas of the Internet Association.

17 Jordan, thank you again for your
18 testimony. We wonder if you've engaged with
19 other countries to discuss your organization's
20 objectives, the unilateral measures. Do you
21 expect other countries' unilateral measures once
22 there's an entity OECD agreement and when that is

1 reached?

2 MS. HAAS: Thanks, Rebecca. I think
3 I got most of it. There was -- your question was
4 breaking up a little bit, but I think I got the
5 gist of it, but feel free to jump in if I'm not
6 on point.

7 I think the concern is a solution at
8 the OECD happens. And then the countries that
9 have moved forward with their DSTs do not roll
10 back their DSTs. I think that is always a
11 concern and why we strongly encourage the U.S.
12 government and why industry strongly encourages
13 the U.S. government to continue to engage even
14 outside of the OECD process with our trading
15 partners, especially those who are moving forward
16 or have moved forward with DSTs that are -- they
17 are currently out there, or those like Canada
18 that have proposed action and are moving forward
19 with a DST even as there is progress, especially
20 progress this year. And in the last -- since the
21 Biden administration has come in at the OECD
22 countries are still moving forward.

1 So we would strongly encourage the
2 U.S. government to engage both at the OECD -- but
3 additionally to engage country-by-country making
4 clear that moving forward with a DST is
5 problematic. And again, the concern would be a
6 solution is reached and countries not roll back
7 their DSTs. Hopefully I got your question --

8 (Simultaneous speaking.)

9 MS. NOLAN: (Audio interference).

10 MR. HAAS: Thanks. Appreciate it.

11 MR. CHILDRESS: Okay. Thank you for
12 that answer.

13 Are there further questions from the
14 panel?

15 MR. TANNER: Hi, this is Rob Tanner
16 from the USTR. I have a question for Jordan at
17 the Internet Association.

18 Jordan, just to follow up I think a
19 little bit, your organization as you mentioned
20 represents internet and technology companies
21 operated in many different jurisdictions around
22 the world. I was hoping you could maybe

1 elaborate a bit about the compliance challenges
2 that your members face when dealing with the
3 different digital tax regimes that are in place
4 throughout the world. I think we were sort of
5 touching on both the ones that USTR has
6 investigated -- you also mentioned a fairly long
7 list of countries that you suggested were either
8 adopting or considering similar taxes.

9 MR. HAAS: Thanks, Rob. I appreciate
10 the question and happy to go into more details.

11 I think complex and counterintuitive
12 tax policy around the world -- and when they --
13 when countries institute taxes that go after the
14 same amount of revenue, it raises questions and
15 really gets at it. So you're seeing companies
16 that are now having to pay or could be paying
17 multiple times on the same bit of revenue. So
18 that is a multiplier on them and it is a problem
19 area. As they are structured they are going
20 after U.S. companies and U.S. entities in how
21 they have carved out.

22 So having one system and having clear

1 rules that all countries move forward with when
2 it comes to taxation would be helpful as
3 companies plan. And really what you're getting
4 at; and this is where it will hurt the U.S.
5 economy is, these digital companies spend an
6 enormous amount of research and development and
7 an enormous amount on growing the global economy
8 as a whole. And when taxation is multiple times
9 on the same amount of good, it is going to eat
10 into those profits.

11 I think we've all seen, and I know
12 we've previously testified on, where you see the
13 -- those same taxes being then pushed down
14 throughout the economy. So small businesses will
15 often end up also shouldering a burden within
16 those taxes. Having a clear system in place that
17 all countries abide by -- and we again strongly
18 encourage the U.S. government to engage with each
19 of these countries separately and in addition to
20 the OECD process to ensure that a solution is
21 reached at the OECD, but that also that these
22 countries roll back their DSTs, do not move

1 forward with those that are proposing DSTs. And
2 if the U.S. government sends a strong signal, a
3 country should not continue to develop -- or for
4 new countries to develop DSTs.

5 MR. TANNER: Thank you, Gary.

6 MR. HAAS: Thanks, Rob. Appreciate
7 it.

8 MR. CHILDRESS: Thank you, Mr. Haas.

9 And I'm moving forward with any
10 further questions from the U.S. government panel.

11 MR. BLAHA: Yes, this is Chris Blaha,
12 Department of Commerce. I had a question for Ms.
13 Stelly. A couple questions actually.

14 You made reference in your testimony
15 to the administrative burden associated with the
16 various DSTs. Do you have a sense of what the
17 scope of that burden is and how it might vary
18 across different aspects of the various DST
19 regimes under discussion here?

20 And then a second question is you also
21 made reference to the use of tariffs on goods
22 imports. I was wondering if CCIA had any

1 alternative ideas or means by which the subject
2 countries could be induced to abandon their
3 current DST regimes outside of actions of that
4 nature. Thank you.

5 MS. STELLY: Hi. Thank you for the
6 question. With respect to the first question we
7 do talk about the costs of administrative burdens
8 and compliance with a number of these digital
9 services taxes. Any time that a country moves
10 forward with a novel taxation framework that's
11 going to take a significant adjustment for firms.
12 Now we have dozens of these countries considering
13 these measures. And while a lot of them do --
14 are based on a digital service tax similar to the
15 EU proposals, similar to the French DST, they all
16 vary in scope and covered services.

17 And so this isn't something that
18 companies can just create a new compliance model
19 and then copy and paste in all these
20 jurisdictions. It's going to take a lot of
21 country-by-country analysis and reworking of
22 their internal frameworks. And so that's why the

1 ongoing process of the international -- at the
2 multilateral system is so important, because
3 providing a long-term, forward-thinking,
4 consensus-based approach instead of these
5 national measures that all differ slightly, or
6 are completely different in the case of India,
7 that contributes to the large administrative
8 burden that these services operating around the
9 world will have. And that's in addition to the
10 cost paid to the tax collectors in the first
11 place.

12 And so I believe in our written
13 comments we go into a little bit more of our --
14 the internal estimates based on publicly
15 available filings about just what the costs would
16 be to U.S. firms across these six open
17 investigations. And the methodology and further
18 details on those numbers is available in the
19 written filing as well.

20 And then with respect to the second
21 question, CCIA believes that a strong response by
22 the U.S. is needed to combat the DSTs and other

1 discriminatory measures and targeted tariffs are
2 an appropriate remedy in these investigations to
3 change trading partners' behavior.

4 An immediate targeted response will
5 also signal to other countries pursuing their own
6 national taxes that such actions will be met with
7 a similar response, and we think that's
8 especially critical, as other members of this
9 panel have mentioned, that there is a scenario
10 that will be a bad outcome, that the OECD does
11 reach an agreement and countries don't feel the
12 pressure to walk back their national measures or
13 actually consider additional measures on top of
14 the OECD framework.

15 They're monitoring developments in the
16 EU who, while abandoned their proposal for a
17 digital service tax, they have proposed and are
18 currently conducting consultations on a similar
19 digital levy, which differs slightly, but still
20 would be an additional tax that a lot of digital
21 companies -- a number of U.S. companies could be
22 paying on top of whatever is reached at the OECD.

1 So we're monitoring developments there as well.

2 MR. BLAHA: Okay. Thank you.

3 MS. STELLY: Thank you.

4 MR. CHILDRESS: Thank you. And, Ms.
5 Stelly, I had a quick follow-up question for you;
6 you mentioned that in your written filings you
7 have included some estimates of the costs of DSTs
8 to companies, and in particular U.S. companies.
9 I'm curious whether those estimates were specific
10 estimates for compliance costs or were they the
11 cost of DSTs more generally on these companies?

12 MS. STELLY: Thank you. With respect
13 to the estimates, they're more generally to the
14 cost, not just on administrative costs.

15 MR. CHILDRESS: Okay. And just one
16 more follow-up: Are you aware of any effort or
17 studies that have been done to get at the
18 specific compliance costs that these companies
19 say are significant? Are you aware of any
20 studies that are looking for sort of a concrete
21 number for that cost for companies?

22 MS. STELLY: I'd be happy to follow

1 up.

2 MR. CHILDRESS: All right. That would
3 be great. Thanks very much.

4 Okay. Great. And I have a question
5 for Gary Sprague, who's representing the Silicon
6 Valley Tax Directors Group.

7 Mr. Sprague, your testimony included
8 a summary of other DSTs that are currently under
9 consideration in other jurisdictions around the
10 world. Do you believe that taking trade action
11 in the form of tariffs in relation to the six
12 countries that we're discussing today might
13 dissuade some of those other countries from
14 adopting DSTs, and why or why not?

15 MR. SPRAGUE: Well, thank you for the
16 question. As some of the other commentators have
17 noted, we believe that the best approach here is
18 essentially a whole of government approach. So
19 we have not taken a view one way or the other on
20 whether tariffs are the appropriate response
21 because there are many different channels of
22 communication available for the U.S. government

1 to pursue the objective.

2 The objective is clear to cause
3 removal of these DSTs and other relevant
4 unilateral measures. The OECD-inclusive
5 framework process is obviously central to that.
6 State Department communications with their
7 counterparts around the world I think is an
8 important part. Trade negotiations with
9 countries that have imposed DSTs would seem to me
10 to be an appropriate channel to raise the
11 question.

12 One of the commentators referred to
13 tax treaties. These DSTs are a fairly blatant
14 end run around our U.S. tax treaties. Every
15 government that has imposed a DST has stated that
16 they don't think that the DSTs are subject to our
17 tax treaty with that country, though tax treaty
18 negotiations with those countries should make it
19 clear that DSTs are to be governed by the tax
20 treaty.

21 So our view is that the whole of
22 government is the appropriate frame of reference

1 to figure out what the right response would be,
2 always with the ultimate goal to have a prompt
3 removal of these DSTs.

4 MR. CHILDRESS: Okay. Thank you for
5 that. You also mentioned during your testimony
6 that the organization that you're representing
7 has done some independent analysis and the
8 damages figures that that analysis produced were
9 substantially higher than USTR's damages numbers.
10 I'm curious if you could tell us a bit more about
11 the methodology that you followed in undertaking
12 that damages analysis. And then also if you
13 could tell us who prepared the analysis; that is,
14 whether it was an internal analysis done by SVTDG
15 or whether you perhaps hired an outside economics
16 firm to undertake that analysis.

17 MR. SPRAGUE: No. No, happy to. Yes,
18 so when we first saw the USTR determination, our
19 immediate impression was that those cost figures
20 were pretty low. So what we did is we did an
21 internal review among Silicon Valley Tax
22 Directors Group members. There's been no outside

1 economists involved in this.

2 And also to make clear, the number I
3 described, the 120 percent to 200 percent, that's
4 for the tax only, not the administrative cost to
5 comply. The administrative cost to comply can be
6 significant because these taxes are novel and
7 they require companies to gather and maintain for
8 audit information they normally would not have
9 to.

10 Just as an example, many, not all, of
11 the DSTs require companies on the advertising
12 side to track the number of views, not just paid
13 views, but any view of an advertisement by a
14 person in the country and compare it to all views
15 by all persons everywhere in the world. And then
16 apportion revenue to the jurisdiction based on
17 that formula and then preserve in an auditable
18 way all that information for the requisite
19 statute of limitations.

20 So this is a mechanism that requires
21 first engineering costs in order to set up the
22 system, to track the billions and billions of

1 data points, and then internal administrative
2 costs to comply.

3 Our number doesn't even cover all
4 that. Our number is the cost of the tax itself.
5 And what we did is we asked member companies if
6 they were willing to just give us an estimate of
7 the taxes they expect to pay in the six
8 countries. And based on the answers we received
9 I'm comfortable saying that the numbers for each
10 of the countries will be up to 200 percent just
11 based on the companies that responded. And that
12 is Silicon Valley members only. There are
13 clearly companies outside our group that are in-
14 scope companies that would not be included in our
15 internal poll.

16 And I do want to clarify a little bit,
17 or elaborate a bit about the Indian number. The
18 Indian number in our view is considerably
19 understated for two reasons: One is we do
20 believe it's appropriate to include the six
21 percent equalization levy on advertising. We
22 don't know whether your numbers included just the

1 expanded scope from last year at the two percent
2 or also included the 2016 six percent on
3 advertising, but the advertising payments subject
4 to the DST in India are exactly the same business
5 model as the French DST, UK DST, et cetera, et
6 cetera. So to compare apples to apples you need
7 to include the six percent, and that produces a
8 big number.

9 And also the Indian DST, I think of
10 all of them is the hardest to estimate because
11 the scope is so broad and it will be a while
12 before we see how the DST is actually implemented
13 and practiced by Indian revenue, but on the face
14 of it it could cover a wide range of transactions
15 considerably beyond what's subject to tax under
16 the normal historical DSTs. I hope that's
17 responsive.

18 MR. CHILDRESS: Yes, thank you very
19 much, Mr. Sprague.

20 Moving on, are there further questions
21 from the U.S. government panel?

22 MR. SHAILER: Yes, this is Matt

1 Shailer for USDA. My question is for Brian
2 Scarpelli.

3 In your testimony, Brian, you
4 mentioned that DSTs are discriminatory and
5 unfair, but that your preference is to avoid the
6 imposition of retaliatory tariffs in connection
7 with these DST investigations. Do you have
8 suggestions for other types of trade actions or
9 other approaches that the U.S. government could
10 consider that might persuade the countries under
11 investigation to revoke their DSTs? Thank you.

12 MR. SCARPELLI: Thank you very much
13 for that question. I think you'll find our
14 recommendations in line with several of the
15 previous commentators in that I think what we're
16 hoping for is bilateral pressure and pressure
17 through multilateral fora to align with this
18 forthcoming proposal from the OECD.

19 I think if we get -- our fear is that
20 if we get into a back and forth retaliatory style
21 dynamic with DSTs, that as -- and I'm kind of
22 heartened to hear across several of the previous

1 panelists this theme that these are passed on --
2 that these are -- these costs are passed onto the
3 smaller businesses that operate on these
4 extremely valuable and trusted platforms.
5 Ultimately they bear these costs. And for the
6 smaller business viewpoint that we're
7 representing it can be far more of a pointed
8 impact and far more detrimental. They just don't
9 have the resources necessarily to absorb that
10 like typically a larger company would.

11 But I think more focus -- and we
12 appreciate the focus so far of the U.S.
13 government. I don't mean to at all indicate that
14 there isn't a focus, but more focus on advancing
15 the OECD solution is pretty much what we're
16 pointing to.

17 MR. SHAILER: All right. Thank you.

18 MR. CHILDRESS: Thank you for that.

19 And now I'll pause for a moment to see
20 if there are any further questions from any of
21 the members of the U.S. government panel for any
22 of the witnesses who are testifying today.

1 MR. BLAHA: Yes, Chris Blaha again.
2 I just I had a follow-up for Mr. Scarpelli there.

3 I think in your testimony you had
4 referenced the imposition of retaliatory tariffs
5 having an impact on SMEs like those in The App
6 Association members. And I think you just kind
7 of made reference also again to the impact on
8 SMEs. I guess do the companies within your
9 association -- are they importers of some of the
10 products that are on the lists, or are you
11 referring more towards kind of for retaliation
12 against any U.S. action by foreign -- with
13 foreign tariffs? If you could clarify that.
14 Thank you.

15 MR. SCARPELLI: Thank you for the
16 question. I think that the answer is the latter.
17 I think that in a way we see a wide impact across
18 our entire membership, and there's certainly a
19 direct impact that -- I should mention that it is
20 a struggle for us across a wide range of
21 contexts, not even specific to this DST matter,
22 in trying to quantify the damage basically that

1 could be caused by the proliferation of something
2 like a DST across various markets.

3 So we have members who have customers
4 today across all of the markets that are being
5 investigated. Then we also have members who are
6 on the cusp of trying to enter that market or
7 considering entering that market and how does it
8 impact their decision? So we end up with
9 anecdotal data, sometimes just anecdotes that are
10 also really valuable. So we struggle to quantify
11 that in a way that could be the most helpful.
12 That's just kind of like a general comment that
13 is an add-on. I hope that that's helpful.

14 MR. SHAILER: Thank you. Your
15 members, are they importers or exporters of
16 actual goods as well?

17 (Simultaneous speaking.)

18 MR. SCARPELLI: Sure. Sorry about --
19 I didn't mean to interrupt you there.

20 MR. SHAILER: Yes, I guess talking
21 about DST and some of the actions being
22 considered here, we got to tariffs on goods. And

1 I think you just made reference in some of your
2 testimony to some -- trading goods as an interest
3 to your members. I was just curious are your
4 member exporters of goods or importers of goods
5 subject to (audio interference).

6 MR. SCARPELLI: Yes, that is a good
7 question. It's a mix. Our membership is
8 extremely diverse in the sense that we -- when
9 you read ACT -- The App Association, I think most
10 people think of a software application available
11 on a publicly-accessible app store. And indeed
12 we have a great many members who develop such
13 apps, but increasingly we have a really
14 interesting and diverse mix of our members who
15 are also building connected devices and then also
16 the software to manage those devices and all the
17 data that they bring in and things like that.
18 So we do have some members who are developing and
19 sometimes exporting IOT products.

20 MR. SHAILER: Thank you very much.

21 MR. CHILDRESS: Okay. Thank you,
22 Chris, and thank you, Brian.

1 Any other questions from the U.S.
2 government panel?

3 Okay. Hearing none, I'd also now like
4 to give the witnesses an opportunity to respond
5 to any of the questions that have been asked of
6 other witnesses. So any of the other points that
7 we've touched on that any of the other witnesses
8 would like to address, feel free to speak.

9 Yes, Mr. Scarpelli?

10 MR. SCARPELLI: Yes, thank you. Yes,
11 I thought it might be helpful to just very
12 briefly note a thread that I think that went
13 across -- I mentioned this a moment ago very
14 briefly, but that ran across I think the answers
15 from the different viewpoints expressed here
16 today about the impact on the small business
17 community.

18 For example, in discussing -- I'd
19 point at -- what I think I referenced earlier was
20 that the burdens we're talking about that would
21 be imposed would be particularly negatively
22 impactful on the American small business

1 community that needs access to this larger base
2 of users, be they consumer or enterprise, to grow
3 and create American jobs.

4 For example, I know that there was
5 some discussion of administrative burdens, and as
6 I think about it, I look across the different
7 taxes that are subject of this investigation.
8 The one in Austria as I understand it requires
9 the appointment of a local representative in the
10 country and those kind of -- we've run into those
11 kind of barriers before. We hear from our
12 members that they are in some cases a non-
13 starter, so those compliance costs can be
14 extremely impactful on our members, and I thought
15 I'd mention that.

16 I also thought I would just endorse I
17 think from one of the previous commentators the
18 discussion of getting a little detail about the
19 engineering costs associated with capturing data
20 to comply with such taxes can also be extremely
21 burdensome and costly for the small business
22 community. Thanks.

1 MR. CHILDRESS: Thank you for that,
2 Mr. Scarpelli.

3 Any further comments from any of our
4 panelists testifying today?

5 Okay. Hearing no further comments,
6 I'd like to thank you all for your time this
7 morning and for your contributions to our
8 investigations.

9 And that concludes our panel. We will
10 now take a short break while we assemble the
11 folks for our second panel. And we will likely
12 be starting in about 10 minutes. Thank you.

13 (Whereupon, the above-entitled matter
14 went off the record at 10:47 a.m. and resumed at
15 11:05 a.m.)

16 MR. CHILDRESS: Okay, apologies. Good
17 morning. I think we're now ready to start our
18 second panel.

19 Nidah, will you please confirm that
20 the parties testifying for our second panel are
21 present?

22 MS. MAJID: Yes, all parties are

1 present.

2 MR. CHILDRESS: Okay, that's great.

3 So with that, we can go ahead and proceed with
4 our second panel. And that panel is composed of
5 Blake Harden from the Retail Industry Leaders
6 Association, Beth Hughes from the American
7 Apparel & Footwear Association, Matt Priest from
8 the Footwear Distributors & Retailers of America,
9 and Jonathan Gold from the National Retail
10 Federation.

11 Okay, thank you. And, Ms. Harden, if
12 you're ready, you may now proceed with your
13 testimony.

14 MS. HARDEN: Okay, good morning. On
15 behalf of the Retail Industry Leaders
16 Association, thank you for the opportunity to
17 provide the Retail Industry's perspective on the
18 Administration's proposed actions regarding the
19 Section 301 investigations into Austria, India,
20 Italy, Spain, Turkey and the United Kingdom's
21 digital taxes services.

22 My name is Blake Harden, I serve as

1 vice president for International Trade at RILA.
2 RILA represents the world's largest and most
3 innovative retail companies accounting for more
4 than one and a half trillion dollars in annual
5 sales and millions of American jobs.

6 RILA shares the Administration's
7 concerns with the proliferation of digital
8 services taxes that unfairly target and
9 discriminate against American companies. And we
10 agree they must be addressed.

11 However, we are concerned that the
12 imposition of additional tariffs on imported
13 goods will punish American companies, consumers
14 and workers who are forced to pay the tariffs and
15 will bear the downstream impact of them without
16 effectively addressing or assisting in the
17 elimination of the DSTs.

18 We have raised examples of this. For
19 example, American businesses and families have
20 been assessed more than \$85 billion in additional
21 tariffs on products since the China 301 tariffs
22 have been in place.

1 There has been widespread impact of
2 these tariffs resulting in less money in the
3 pockets of American families, a slow down in U.S.
4 manufacturing and decreased competitiveness for
5 American businesses, vis-a-vis their European and
6 Asian counterparts. The use of tariffs in the
7 China Section 301 investigation has also failed
8 to stop China's unfair trading practices.

9 The global economy faces enormous
10 uncertainty right now. According to the OECD,
11 experience shows that companies can vest while
12 there is no certainty by investing in fewer
13 longer term relationships.

14 U.S. retailers have built many such
15 relationships out of China where possible.
16 Including in Austria, India, Italy, Spain, Turkey
17 and the United Kingdom.

18 Our members leveraged existing
19 relationships in these companies, built on their
20 intrinsic strengths, build labor necessary
21 products on the proposed retaliation list, and
22 efficient supply chains due to the proximity and

1 availability of raw materials.

2 Placing a tax on imports from these
3 countries now would create tremendous uncertainty
4 for U.S. retailers and give them fewer sourcing
5 options if they continue to look to diversify
6 supply chains away from China.

7 Further, imposing tariffs on consumer
8 products from U.K., Turkey, Spain, Italy, India
9 and Austria, would disproportionately harm U.S.
10 economic interests and jeopardize the gains made
11 by the Administration's laudable efforts to put
12 money back in the pockets of American families
13 and a few robust U.S. economic recoveries who
14 have merged from the COVID-19 pandemic.

15 Simply put, adding additional
16 financial strain during an ongoing pandemic and
17 economic recession will slow our recovery from
18 American business's ability to compete, limit
19 American consumers access to keep products and
20 put American's out of work.

21 This does not mean leading retailers
22 do not support the Administration's goal of

1 addressing DSTs that have barely targeted to
2 discriminate against U.S. companies. Or that the
3 United States has no great force to address such
4 discriminatory measures.

5 Our point is this, tariffs on the
6 proposed products will not be effective in
7 obtaining the elimination of our trading
8 partners' discriminatory tax policies or prevent
9 the proliferation of additional DSTs around the
10 globe.

11 The USTR's proposed list, our numbers
12 import goods such as cosmetics, perfumes and
13 shampoos from the United Kingdom, carpets, bed
14 linens, curtains, tiles, kitchen fixtures and
15 bathroom ceramics from Turkey, glassware,
16 footwear and seafood from Spain, and jewelry,
17 seafood, basmati rice and furniture from India.

18 We fail to see how the imposition of
19 an additional import tax on these products, which
20 will be paid by American's, will convince our
21 trading partners to withdraw or reform their
22 DSTs. At the same time, imposing these tariffs

1 will severely harm the ability of U.S. retailers
2 to compete globally.

3 RILA believes the proliferation of
4 digital taxes services requires a multilateral
5 tax solution, not a unilateral tariff response.
6 To that end, we appreciate the Administration's
7 demonstrated willingness to address the DSTs
8 multilateral negotiations at the OECD.

9 We believe that the OECD is the
10 appropriate forum for achieving a negotiated
11 solution and strongly support the Administration
12 in these efforts.

13 We also appreciate that in our first
14 month on the job, Ambassador Tai with our
15 counterparts in the U.K., Turkey, Spain, Italy
16 and India, and that these discussions included
17 DST issues.

18 We applaud this Administration's
19 desire to engage our trading partners in
20 productive and positive dialogues to resolve
21 trade irritants without causing economic harm to
22 American businesses, consumers and workers.

1 But if USTR goes forward with imposing
2 tariffs, we urge it to remove from the proposed
3 product list, the specific HTS lines we've
4 identified in our more detailed written comments.
5 We further urge USTR to consider removing from
6 the proposed list all consumer goods which have
7 no relationship to a tax on digital services.

8 Finally, if USTR must work with
9 imposing tariffs on goods from the U.K., Turkey,
10 Spain, Italy, India and Austria, we urge you to
11 provide at least 30 days notice before the
12 tariffs take effect. This will help account for
13 goods that may already be on the water, as well
14 as provide importers with some advance notice to
15 prepare for the tariffs.

16 Thank you for your consideration of
17 our views. I'm happy to answer any questions.

18 MR. CHILDRESS: Thank you, Ms. Harden.
19 We will now move on to Beth Hughes from the
20 American Apparel & Footwear Association. Ms.
21 Hughes, if you are ready you can begin your
22 testimony.

1 MS. HUGHES: Thank you. On behalf of
2 the American Apparel & Footwear Association,
3 thank you for this opportunity to testify
4 regarding the proposed action in the Section 301
5 investigation of services taxes by Austria,
6 India, Italy, Spain, Turkey and the United
7 Kingdom.

8 I am the vice president for trade and
9 customs policies at AAFA. AAFA is the public
10 policy and clinical voice of the apparel and
11 footwear industry of management and shareholders
12 of nearly four million U.S. workers on a
13 contribution of more than \$400 billion in annual
14 U.S. retail sales.

15 AAFA strongly supports the trade
16 principle that U.S. trading partners must abide
17 by global trade rules. Although we support the
18 Administration's efforts to address unfair
19 trading practices.

20 However, we have serious concerns of
21 imposition of new punitive duties on U.S. imports
22 from Austria, India, Italy, Spain, Turkey and

1 United Kingdom, will result in great harm to our
2 industry and exasperate production issues during
3 the COVID-19 pandemic.

4 I provide a list of specific parallel
5 lines of concerns to my members in my written
6 comments.

7 First and foremost, other countries do
8 not share the tariffs proposed in these
9 investigations. Tariff fines are taxed on
10 Americans, that include hidden taxes paid by
11 American consumers in the form of higher prices,
12 and by American workers in the form of fewer jobs
13 and lower wages.

14 A number of our member companies have
15 sought out new suppliers because of the Section
16 301 action against China several years ago. U.S.
17 imports from China have declined and our trading
18 partners are feeling the results in gaps.

19 For instance, India is our fifth
20 largest supplier of accessories to the U.S.
21 Italy is our sixth largest supplier of footwear
22 and ninth for accessories.

1 U.S. imports from Spain has
2 successfully have tripled and footwear has nearly
3 doubled since 2010. U.S. suppliers of imports
4 from Turkey has doubled in the past decade. And
5 U.S. apparel imports in the U.K. and U.S.
6 footwear imports from Austria have experienced
7 steady growth as well.

8 The growth of each of these categories
9 in these countries in question are in the
10 national interest of diversifying supply chains
11 away from China. However, the proposed set of
12 actions was to punish the U.S. companies who have
13 much needed products in this area, thereby new
14 supply chain partners.

15 One of my members has pulled out an
16 example that illustrates the impacts of the
17 proposed tariff would have on their company. A
18 sandal importer from either Italy or Spain, as
19 the current tariff is 12.5 percent to 37.5
20 percent.

21 An already high tariff would drive the
22 cost up for American consumers. An additional 25

1 percent tariff on a 150,000 tariffs of imports
2 per years. For example, would equal \$1.35
3 million, just in additional tariffs. So let's
4 not penalize apparel and footwear and accessory
5 companies who have nothing to do with digital
6 services.

7 Because of this lack of connection
8 imposing punitive tariffs on U.S. imports for
9 apparel, footwear and accessories in this
10 country, would do nothing to foreign services by
11 the end of this year. Yet, requirement against
12 these products will have a significant impact on
13 our industry and our American workers.

14 Implemented, we'll have an opportunity
15 to differentiate product offers by leveraging
16 appropriate and meaningful policies that directly
17 address current problems in international trade.

18 Trade policy cannot and should not
19 result in unnecessary and undue punishment of
20 American consumers, American workers and American
21 communities they support.

22 Since they started imposing punitive

1 duties on U.S. imports of these products will
2 cause disproportionate economic harm to American
3 businesses, workers and consumers and do nothing
4 to end actions incurred by these countries.

5 We strongly oppose imposition of any
6 tariff on U.S. imports and request to propose
7 tariff subheadings in the document that I
8 provided rendered in the preliminary hearing.

9 Instead, an alternative remains and
10 offers a viable path forward for meaningful trade
11 policy reform. The administration should double
12 down on the multilateral process that has already
13 begun at the OECD toward a negotiated agreement.

14 Thank you for this opportunity to
15 testify on this very important issue, and I look
16 forward to any questions.

17 MR. CHILDRESS: Thank you, Ms. Hughes.
18 We'll move on now to Matt Priest from the
19 Footwear Distributors and Retailers of America.
20 Mr. Priest, you may begin.

21 MR. PRIEST: Good morning. On behalf
22 of the four distributors and retailers of

1 America, thank you for the opportunity to testify
2 at this multi-jurisdictional 301 hearing on
3 digital services taxes.

4 FDRA is the four industries trade and
5 business association. We represent more than 500
6 footwear companies and brands across the United
7 States. This includes the majority of U.S.
8 footwear manufacturers and over 90 percent of our
9 industry.

10 FDRA has served the four industry for
11 more than 75 years. And our members include a
12 broad and diverse cross-section of the companies
13 that make and sell shoes from family owned small
14 businesses to global brands that reach consumers
15 around the world.

16 We strongly urge the Administration to
17 remove footwear from the list of products that
18 may be subject to 301 tariffs under this
19 investigation, as currently proposed on footwear
20 from Italy, Spain and the United Kingdom.

21 Specifically, Italy, leather boots and
22 textile upper shoes. From Spain, certain rubber

1 plastic footwear, leather upper footwear and
2 other footwear classified textile supper shoes as
3 well. And in U.K., leather upper footwear and
4 textile upper shoes.

5 New added tariffs would result in
6 immediate and lasting harm for U.S. footwear
7 companies, their workers and their consumers.
8 Given the type of footwear produced in these
9 countries and the inability to easily shift
10 supply chains, this harm would be difficult to
11 avoid.

12 Added tariffs hit the U.S. footwear
13 industry particularly hard because our companies
14 already operate under an extremely heavy tariff
15 burden. While most consumer goods are taxed at a
16 rate of 1.9 percent, current footwear tariffs
17 average 12.3 percent and can reach rates upwards
18 of 67.5 percent.

19 301 tariffs imposed by the Trump
20 Administration significantly increased cost,
21 disrupted global supply chain and created
22 tremendous uncertainty for many U.S. footwear

1 companies.

2 In addition, the COVID-19 pandemic has
3 resulted in unprecedented challenges during an
4 already difficult time for the retailer sector.
5 Supply chain costs have increased dramatically as
6 American demand, bolstered by economic stimulus,
7 have contributed to an influx of consumer goods,
8 strain and capacity.

9 As inflationary pressures continue to
10 mount, added costs in the form of increased
11 duties on American importers would exasperate an
12 already challenging economic environment.

13 Specifically, the proposed tariff
14 action under consideration could drastically
15 increase cost for U.S. companies that import or
16 sell footwear source from Italy, Spain and the
17 U.K.

18 A tariff of up to 25 percent could
19 mean tariff rate increases of between 250 and
20 1,000 percent for leather upper footwear for
21 Spain. This could mean rate increases as high as
22 294 percent for Italian made footwear to 500

1 percent for U.K. made footwear.

2 These are staggering costs that would
3 be difficult for companies to absorb without
4 impacting U.S. consumers or U.S. workers.

5 We're hearing from our partners in
6 these companies that even a thread of these
7 tariffs have already impacted production in local
8 factories. Even as these countries struggle with
9 the difficulties of the COVID-19 pandemic in
10 Europe.

11 Our members have chosen these specific
12 countries because Italy, Spain and the U.K. have
13 factory partners with the intricate skill and
14 ability to produce specific types of footwear at
15 the high quality demanded by U.S. consumers.

16 Footwear is a very capital intensive
17 industry and it takes years of planning to build
18 relationships, establish factory partners and
19 ensure that our factories have the highest
20 standards possible.

21 Factories cannot be moved in a short
22 time frame to avoid a new tariff burden. Should

1 these tariffs go into effect, the immediate harm
2 to U.S. companies, consumers and workers is
3 therefore unavoidable.

4 For these reasons, we strongly urge
5 you to remove from consideration any Section 301
6 tariffs on footwear.

7 In our view, the U.S. should pursue
8 opportunities that strengthen diplomatic ties
9 with our allies in Europe. And we encourage the
10 Administration to work to come to an agreement on
11 digital services taxes with these key trading
12 partners as soon as possible.

13 Thank you for the opportunity to
14 testify today and I look forward to taking any
15 questions that you might have.

16 MR. CHILDRESS: Thank you, Mr. Priest.
17 We'll now move on the Jonathan Gold from the
18 National Retail Federation. Mr. Gold, you may
19 begin.

20 MR. GOLD: Great. Good morning,
21 Chairman and Members of the Committee. My name
22 is Jonathan Gold and I'm the vice president

1 supply chain and customs policy for the National
2 Retail Federation.

3 On behalf of the retail industry,
4 thank you very much for the opportunity to
5 testify during today's hearing regarding the
6 ongoing 301 investigation on several countries
7 over the proposed digital services taxes.

8 NRF is the world's largest retail
9 trade association representing all retail
10 sectors. Retail is the nation's largest private
11 sector employer contributing \$3.9 trillion in
12 annual GDP, bringing one in four U.S. jobs.
13 That's 52 million working American's.

14 Over a century, NRF has been, visited
15 every retailer and every retailer job educating,
16 inspiring, communicating the powerful impact
17 retail has on local communities.

18 From the outset, let me say that NRF
19 will be used with DSTs included by Austria,
20 India, Italy, Spain, Turkey, United Kingdom,
21 discriminated against U.S. companies constitute
22 unreasonable burdens for U.S. Commerce.

1 We support the finding of USTR and the
2 Section 301 Committee that the DSTs are
3 actionable under Section 301 of the Trade Act.
4 However, NRF believes that the ultimate goal
5 should be the removal of the DSTs, as a framework
6 process.

7 We urge that full efforts will achieve
8 a negotiated solution be pursued before
9 consideration given to any retaliatory measures.
10 Especially tariffs on consumers.

11 We urge the Administration to continue
12 to engage dialogue with the six countries,
13 negotiate an acceptable outcome, which includes
14 the elimination of the DSTs, putting through
15 multilateral negotiation that are taking place in
16 OECD concerning the taxation of the economy.

17 Submitted in more detail comments on
18 the potential impact, economic impact of proposed
19 tariffs in the case, B, that proposed retaliation
20 have the potential to negatively impact retailers
21 of all size, including small to medium sized
22 retailers, and their workers. At a time when the

1 industry is reeling in the impacts of a pandemic.

2 It will also have a ripple effects
3 with the economy and on the local communities in
4 which they operate.

5 Target power depends on a extensive
6 supply chain like third-party importers, brokers
7 and shippers, warehouse personnel and other such
8 workers. Many cases represented by small and
9 medium size businesses.

10 Specifically, we urge USTR to remove
11 the following broad categories of products from
12 the potential retaliation. Perfumes, footwear,
13 apparel, handbags, food products, carpets, stone,
14 tiles and bathroom ceramics.

15 In general, as the economy continues
16 to reopen in local and state COVID-19 related
17 restrictions are removed upon businesses, we
18 should not place economic barriers upon these
19 companies further impacting economic recovery.

20 Many retailers, both large and small,
21 face economic hardships as stores were forced to
22 close down or operate on a limited capacity.

1 Adding a 25 percent tax upon these companies will
2 surely impact their recovery. Such a price
3 increase would drive aspirational customers to
4 the counterfeit market to purchase some of these
5 luxury products.

6 It is important to note that many of
7 these products on the retaliation list, such as
8 branded luxury apparel or Italian shoes are not
9 able to be attributed to a country. Using a more
10 complex system supply chains today, they face the
11 challenges from the global pandemic.

12 It is also important to point out that
13 for several of these products, particular
14 carpets, retailers shifted their sourcing away
15 from China to Turkey, now placing a 25 percent
16 tariff on these products, disadvantaged companies
17 who did decide to shift sourcing when they could.

18 We will respectfully submit that
19 because the subject act, policy or practices of
20 these countries involves a tax on U.S. service
21 provides. It would be appropriate for the
22 potential remedy posed by the United States,

1 resuming an unsuccessful conclusion to work
2 around negotiations, includes fees and
3 restrictions on services from those countries,
4 not consumer goods.

5 Indeed, a fee restriction imposed on
6 tax imposing countries, provision of services to
7 the vast market is more justifiable, tariff
8 remedy imposed on goods are wholly unrelated to
9 the underlying harm.

10 Again, we strongly recommend the
11 Administration refrain from imposing these
12 proposed tariffs on consumer goods, work closely
13 with the separate governments to withdraw their
14 unilateral DST measures, seek to achieve a
15 multilateral solution at the OECD. Thank you
16 again for the opportunity to testify.

17 MR. CHILDRESS: Thank you, Mr. Gold.
18 And thank you for the testimony from all of the
19 parties on our second panel this morning.

20 We'll move on now to questions from
21 the U.S. Government panel. And I think we'll
22 first go to treasury for our first question.

1 MR. CHANG: Hello. Thanks again.
2 This is Won Chang, Department of Treasury. I
3 just wanted to thank the panelists for their
4 testimonies.

5 I have questions for Blake Harden of
6 RILA. You have urged the removal of the proposed
7 product list of specific tariffs lines. Can you
8 explain when the products that you have
9 identified can be supplied domestically and how
10 tariffs on those products impact retailer supply
11 chain? Thank you very much.

12 MS. HARDEN: Sure. Thank you very
13 much for the question. Obviously, the answer
14 varies slightly by product and by country, but
15 I'm happy to provide a general response. And we
16 have more detailed information in our written
17 comments.

18 A couple of examples. As a general
19 matter, most of the products that our members
20 have highlighted for us, and that we've noted
21 that are on the retaliation list, cannot be
22 easily sourced domestically, if at all.

1 One example is basmati rice from
2 India. India accounts for over 70 percent of the
3 world's basmati rice production. And it's grown
4 very limited basis in the United States but not
5 at the quality of what American consumers are
6 accustomed. So that is one product, for example,
7 that is available very limited here in the United
8 States.

9 Products from Turkey, including
10 carpets and rugs, require the same level, you
11 know, a level of artistry that can't be easily
12 duplicated domestically or by other countries.

13 In addition, there are products from
14 the U.K. that our members have highlighted where
15 they own the actual end-to-end manufacturing
16 process. And so, those products cannot be easily
17 just gifted to the United States, it would take
18 years-and-years.

19 And in some of those instances, the
20 brand identity is so tied to originating in the
21 United Kingdom that in addition to the damage
22 that general an import tax would place on

1 products by making them more expensive, of
2 course, for U.S. retailers, and then certainly
3 American consumers, gives you a lot of actual
4 brand damage if those products were actually
5 continued to be included.

6 So those are various different types
7 of examples, but again, we've provided a bit more
8 detail in our written comments. I'm happy to
9 follow-up with additional information as well.

10 MR. CHANG: Yes, thank you. Thank you
11 very much.

12 MR. CHILDRESS: Thank you for that
13 answer. And now I believe we'll move to Commerce
14 for another question.

15 MR. BLAHA: Yes. This is Chris Blaha,
16 Commerce. I had another question for Ms. Harden.

17 You indicated, I think, that tariffs
18 on the various, consumer retail price, would be
19 ineffective at changing country's policy behavior
20 in this area. I am, does that reflect the view
21 that tariffs on these items generally are
22 ineffective at changing country's behaviors, and

1 if so, kind of why?

2 If you could elaborate on why you
3 think it's effective in this case and whether or
4 not you have any additional kind of analysis or
5 background studies related to, thank you very
6 much.

7 MS. HARDEN: Sure. Thanks for the
8 question. I guess, briefly, we have, as I
9 mentioned, we have some recent examples of this
10 approach taken, for example, with the China 301
11 tariffs.

12 And we have now have had tariffs in
13 place for several years and that has cost
14 American businesses, consumers and workers more
15 than \$85 billion. That's tariffs that they have
16 paid to the U.S. Government.

17 In our view, they have not been
18 effective in changing China's behavior. And so,
19 we, you know, every tariff situation is not
20 identical. Every trade concern is not identical
21 in terms of how our partners may respond.

22 But we failed to see how taking an

1 approach that, duplicating an approach that's not
2 been effective over the course of the last couple
3 of years, in causing additional economic harm to
4 American businesses and consumers, is going to
5 have any impact at all on our trading partners.

6 Prior panelists have referenced that
7 additional trading partners are also considering
8 DSTs. And from our perspective, providing the
9 unilateral tariff response to each and every
10 instance is just going to do more damage to the
11 U.S. economy than do anything to remedy these
12 issues.

13 Which is why we continue to strongly
14 support the multilateral negotiations at the
15 OECD. We strongly support USTR engaging
16 bilaterally with our trading partners. Of
17 course, that's a really important piece of this
18 as well.

19 And support the Administration in
20 looking for other solutions that are more
21 directly connected to a tax on digital services
22 rather than a tariff on consumer goods. Thank

1 you.

2 MR. BLAHA: Thanks. One follow-up
3 question, if I may. I think in other testimony
4 we've heard here today there was some reference
5 to the U.S. retail industry hearing from the
6 producers in the source country about potential
7 impacts of these tariffs.

8 I guess, I was curious whether or not
9 any of your members have heard anything from the
10 producers in the source country as well related
11 to the potential tariffs?

12 MS. HARDEN: Generally speaking yes.
13 I'm happy to provide more details and written
14 comments, but certainly, our members are hearing
15 from their vendors who are concerned about the
16 potential impact that this could have on their
17 business relationships and potential sourcing.

18 MR. BLAHA: Okay, thank you very much.

19 MR. CHILDRESS: Great, thank you, Ms.
20 Harden. I believe we'll now go to the Department
21 of Agriculture for our next question.

22 MR. STEPHENS: Hi, this is Andrew

1 Stephens with USDA. I have a question for Beth
2 Hughes of the American Apparel & Footwear
3 Association.

4 In your testimony you state that your
5 member companies have increased sourcing from
6 these countries, as a result of the additional
7 duties on goods from China. Where would your
8 members likely turn for sourcing the goods in
9 question if the proposed actions were to take
10 effect on these countries?

11 MS. HUGHES: Hi, and thank you for the
12 question. Well, we're running out of places
13 quite frankly. We keep having to focus on being
14 retaliated again by countries, being on these
15 preliminary lists with regards to China, Vietnam
16 last year, and now this list of countries.

17 There is only so many places that we
18 can go that have the quality. And all of the
19 measures in place that we see fit for our
20 products.

21 For our apparel and footwear,
22 specifically, there are regulations in place to

1 make sure that they are safe products. Make sure
2 that they aren't, they're real products, not
3 counterfeit products. And something that our
4 members can stand behind.

5 So, we are running out of places to
6 source. There aren't very many countries out
7 there that can, that have the capacity. And like
8 I said, that have the quality.

9 So, the countries that we source from
10 right now are the ones that we can rely on, the
11 ones that will have the quality that we need,
12 that impose the standards, labor standards,
13 impose the environmental standards and so on.
14 So, like I said, I don't know if there is any
15 other countries out there that we can,
16 specifically the clearest ones that are on your
17 list can make this product elsewhere.

18 MR. STEPHENS: Thank you very much.

19 MR. CHILDRESS: Thank you. And I
20 believe we'll go to the State for our next
21 question.

22 MS. NOLAN: Thanks again to --

1 (Audio interference.)

2 I have a question also for Ms. Hughes.
3 Ms. Hughes, thank you for your testimony. (Audio
4 interference) focused further on the tax (Audio
5 interference) tariffs on import (Audio
6 interference)

7 Do you have thoughts on the (Audio
8 interference)

9 MS. HUGHES: I'm sorry, but you were
10 very jumbled, I didn't catch anything of the
11 question directed at me. I apologize.

12 MR. CHILDRESS: Ms. Hughes, maybe I
13 help clarify the question a little bit. It was
14 breaking up a bit on my end as well.

15 But I believe the question related to
16 the tax negotiations at the OECD. And the
17 question was, whether you have any thoughts or
18 advice for how we might be able to get more
19 private industries to be supportive or even
20 advocates of the OECD process?

21 MS. HUGHES: Well, I think one of the
22 things that we're looking forward to is more

1 stakeholder engagement. So, as far as the USTR
2 on other reform interagency process can reach out
3 to stakeholders, such as my members, we'd be
4 welcome to have those conversations.

5 At this point in time I have not heard
6 from any of my member companies that have had
7 that engagement yet with this Administration.

8 MR. CHILDRESS: Okay, thank you for
9 that. Then I think our next question is coming
10 from the Department of Commerce.

11 MR. BLAHA: Hello, yes. Again, a
12 further question, Ms. Hughes.

13 I think in your testimony you
14 highlight the, that the AHS would be,
15 essentially, paid for by U.S. consumers. From
16 which I gather that you don't believe that the
17 European exports would be inclined, or the
18 subject country export would be inclined to
19 reduce their export prices in order to maintain
20 U.S. market share.

21 I guess, I'd ask if you can elaborate
22 as to why in that case? Thanks.

1 MS. HUGHES: Well, we have heard from
2 some of our, you know, counterparts and our
3 organizations in reference to this.

4 What they told us, and what I think
5 you will hear this week from their testimony, or
6 at least in their comments that's submitted,
7 their reaction would be to reduce the jobs, the
8 number of folks employed in their industry. I've
9 seen articles about that as well. Not reduce the
10 cost.

11 We already have had tariffs on imports
12 of apparel and footwear in the United States and
13 that are both considered cost. Out of nine, 25
14 percent additional tariffs, I don't see them
15 taking the hit on that, so to speak.

16 And we assume from what's happened
17 with the Section 301 investigations on China,
18 China is not pulling that and not reducing their
19 prices. That is being paid for by American
20 consumers and workers.

21 MR. BLAHA: Okay, thank you very much.

22 MR. CHILDRESS: Thank you, Ms. Hughes.

1 And I have a question for Matt Priest of the
2 FDRA.

3 Mr. Priest, you mentioned in your
4 testimony that you're hearing from your partners
5 in Italy, Spain and the U.K. that the threat of
6 U.S. tariffs has already impacted production in
7 their local factories. It seems like this
8 comment would support the notion that the
9 proposed trade actions would be effective in
10 discouraging the countries subject to the
11 investigations for maintaining their DSTs, which
12 the U.S. Trade Representative has already
13 determined are discriminatory and harmful. I was
14 just wondering if you could comment on that?

15 MR. PRIEST: Yes, it's a good
16 question. I appreciate the question.

17 At the end of the day the tariffs,
18 because they're paid by American companies, are
19 basically altering American consumer behavior
20 because you're driving up costs.

21 And so, if the logic is to combat what
22 are deemed unfair digital taxes or taxes on

1 digital services for American companies by
2 imposing taxes on American consumers who may also
3 work for those said companies, then we just, much
4 like, just I guess everyone on our panel, we
5 don't see the logic behind that.

6 So if you're altering consumer
7 behavior and our orders are going to decline on
8 the U.S. side for some of our partners in Italy
9 and Spain and the U.K., then yes, you're going to
10 see, I think, an impact on demand. But that is
11 not, impact and demand by artificially making it
12 more difficult for American consumers to access
13 product is not a way of going about getting
14 change on digital services taxes.

15 And so, I can't reiterate enough what
16 Blake and Beth and Jon have also said, is that we
17 have nothing to do with these taxes. We are
18 products that have been, already have high duty
19 burdens.

20 We're actually the poster children for
21 how duties don't do what they're supposed to do.
22 Whether in an enforcement mechanism like 301 or

1 to protect domestic manufacturing.

2 So we're kind of sounding a warning
3 signal out to negotiators that this is not
4 something that will create the desired outcome
5 that you're seeking. Or the digital services
6 taxes challenges that we have in the European
7 marketplace in particular.

8 MR. CHILDRESS: Okay, thanks for that.
9 Just a follow-up.

10 The question was a bit more focused on
11 the impacts of the partners of the companies you
12 represent. The partners that are in some of
13 these jurisdictions, such as Spain, the U.K. and
14 Italy, which you mentioned in your testimony.

15 Your testimony seemed to suggest that,
16 yes, in fact, some of those partners were feeling
17 impacts from these proposed tariffs, in fact,
18 even more before the tariffs are put in place.
19 Or have the potential to be put in place.

20 So, is it your position that those
21 impacts, again, on companies that are
22 headquartered in places like Spain, the U.K. and

1 Italy, those impacts would not have the effect of
2 discouraging these countries from maintaining
3 their digital services taxes?

4 MR. PRIEST: Yes. I mean, it's a good
5 question in a sense that that's a political
6 question, right?

7 So, if industry is being damaged
8 because consumer, American consumers are being
9 harmed, then will the said governments respond in
10 kind, that's a question I can't answer. That's a
11 political question.

12 I think Blake set out a number of
13 scenarios in our recent past where we've tried
14 this attempt. Whether it's China or it's the
15 threat with 301 tariffs would be a no at the end
16 of 2020, and it didn't have the desired outcome.

17 And so, I would point to her answer as
18 one that is a good indication that in spite of
19 the fact that small, maybe small manufacturing
20 facilities in Spain are being damaged to make
21 footwear for the marketplace, will that alter,
22 from a politic perspective and a policy

1 perspective, the nation's stance on digital
2 services taxes, that's a question I can't answer.

3 MR. CHILDRESS: Okay, thank you very
4 much for that.

5 MR. PRIEST: Sure.

6 MR. CHILDRESS: And I believe we'll
7 now go to Commerce for the question.

8 MR. BLAHA: Sure. Yes, a question for
9 Mr. Gold.

10 I think you had made reference in your
11 testimony about kind of branded luxury products.
12 And I was just curious whether there was any
13 substitution there for branded versus non-branded
14 kind of like products?

15 To what extent is that a fusible
16 source of alternative supply, and if so, are non-
17 branded versions more widely available outside
18 the countries, either domestic or outside the
19 countries that are subject to this discussion?
20 Those actions.

21 MR. GOLD: Thank you for the question.
22 I think in general, if you are looking to buy a

1 branded luxury piece of product, whether it's
2 apparel, footwear, handbag, perfume, you are
3 looking to that luxury brand, you're not looking
4 for a different type of product, not looking for
5 (technical difficulties) brand.

6 So, if those are available,
7 potentially, but if you want to have the status
8 symbol and you're looking to have, buy that
9 branded product, that name brand, you're not
10 going to look for some kind of other alternative.

11 MR. BLAHA: Jon, would you
12 characterize most of the products within the
13 tariff classifications, as kind of the branded
14 luxury items or is there a lot of kind of non-
15 branded from those countries as well?

16 MR. GOLD: I think it's a mix of both.
17 But I think from what we've heard from a luxury
18 brand and apparel folks it can impact on their
19 goods.

20 Again, if you are a consumer and you
21 want to buy a luxury good, you're going to have
22 an impact. I note, the aspirational consumer who

1 is looking to buy that one luxury branded
2 handbag, you're now not going to be able to
3 purchase that handbag and that's going to have an
4 impact on them. On the company.

5 But yes, I think I agree with my other
6 panelists. The impact here is going to be on the
7 consumers, it's not going to be on foreign
8 entity. And the government.

9 So again, we fail to see how a tariff
10 on a consumer good is going to change the mind
11 set of some of these countries. We encourage the
12 continued dialogue, consideration and solution.

13 MR. BLAHA: Okay, thank you. And I
14 think you had also made reference to kind of the
15 impact on kind of the smaller and medium sized
16 retailers here.

17 Do you have a sense of, within sales
18 on these products in particular, how much of the
19 U.S. retail market is small and medium sized?

20 MR. GOLD: I can come back to you with
21 that answer.

22 MR. BLAHA: Okay. Thank you very

1 much.

2 MR. GOLD: Sure.

3 MR. CHILDRESS: Okay, thank you very
4 much. Before we wrap-up, I'll pause for a moment
5 to see if there are any other Members of the U.S.
6 Government Panel that have further questions for
7 the parties testifying. Okay.

8 And lastly, I'd like to ask if any of
9 the witnesses would like to address any of the
10 questions that have been asked of the other
11 witnesses on the panel? Okay.

12 And then lastly, I'll see if any of
13 the witnesses on the panel would like to make any
14 further comments today before we wrap-up? Okay,
15 great.

16 Well, if there are no further
17 comments, that concludes this panel. And I'd
18 like to thank you all for your time today.

19 And more generally, I'd like to thank
20 all the parties that have testified for their
21 important contributions to our investigations.

22 As a reminder, the deadline for

1 rebuttal comments, and this includes written
2 answers to any of the questions that were posed
3 today at today's hearing, that deadline is one
4 week from today. And those comments should be
5 submitted through USTR's online portal at
6 comments.ustr.gov.

7 And with that, today's hearing is
8 adjourned. Thank you.

9 (Whereupon, the above-entitled matter
10 went off the record at 11:46 a.m.)

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C E R T I F I C A T E

This is to certify that the foregoing transcript

In the matter of: Section 301 Investigations
Public Hearing

Before: U.S. Trade Representative

Date: 05-03-21

Place: teleconference

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