

OFFICE OF THE U.S. TRADE REPRESENTATIVE

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HEARING REGARDING THE PROPOSED ACTION IN THE
SECTION 301 INVESTIGATIONS OF DIGITAL
SERVICES TAXES ADOPTED BY AUSTRIA

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THURSDAY
MAY 6, 2021

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The hearing convened, via video
teleconference, at 2:30 p.m., Benjamin Allen,
Office of the U.S. Trade Representative,
presiding.

Government Panelists

BENJAMIN ALLEN, USTR

PATRICK CHILDRESS, USTR

ROBERT TANNER, USTR

WON CHANG, Department of the Treasury

NABIL ABBYAD, Department of Commerce

CHARIESE ELIZABETH WALTON, USDA

SARAH BONNER, U.S. Small Business Administration

DAVID MOO, Department of State

Witnesses

MIKE SAX, ACT - The App Association

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

2 2:34 p.m.

3 MR. ALLEN: Okay, everyone, good
4 afternoon and welcome.

5 The Office of the United States Trade
6 Representative, in conjunction with the
7 Interagency Section 301 Committee, is holding
8 this public hearing regarding a potential trade
9 action in connection with its Section 301
10 investigation of the digital services tax, or
11 DST, adopted by Austria.

12 The United States Trade Representative
13 initiated this investigation on June 2nd, 2020.
14 In a notice published on March 31st, USTR
15 announced a proposed trade action in this
16 investigation. This notice may be found at
17 86 FR 16816.

18 Earlier today, we held hearings with
19 respect to the proposed trade actions in the
20 Section 301 investigations of DSTs adopted by the
21 Italy, Spain, and the United Kingdom.

22 The Section 301 Committee will

1 carefully consider the testimony provided at this
2 public hearing and the multijurisdictional
3 hearing held on Monday, May 3rd. The Committee
4 will also review the written comments received in
5 response to the March 31st notice of the proposed
6 trade action, as well as post-hearing rebuttal
7 comments from interested parties. The Section
8 301 Committee will then make a recommendation to
9 the U.S. Trade Representative.

10 Before we begin today's testimony, I
11 will provide some procedural and administrative
12 instructions and introduce the U.S. Government
13 representatives that will participate in the
14 hearing.

15 This hearing consists of one panel
16 with one individual scheduled to testify. The
17 provisional witness list has been posted to
18 USTR's website.

19 Each witness appearing at the hearing
20 is limited to five minutes of direct testimony.
21 After witness testimony, the Section 301
22 Committee will have an opportunity to ask

1 questions.

2 Post-hearing comments, including any
3 written responses to questions from the Section
4 301 Committee, are due by May 12th. The rules
5 and procedures for written submissions are set
6 out in the March 31st Federal Register notice.

7 A written transcript of this hearing
8 will be posted on the USTR website as soon as
9 possible after the conclusion of this hearing.

10 Now a few technical points. For those
11 participating in the hearing, when it is not your
12 turn to speak, please be sure to leave your video
13 and microphone muted.

14 If you are having technical difficulty
15 and need help, please let us know in the chat box
16 on the BlueJeans platform.

17 When you are speaking, you are
18 responsible for keeping time. As a reminder, you
19 are limited to five minutes of direct testimony.
20 Should you exceed this time, we will ask you to
21 conclude your comments.

22 I would now like to introduce the U.S.

1 Government panel that will be presiding over this
2 hearing.

3 I am Benjamin Allen from USTR's Office
4 of General Counsel. I'm joined in the room by my
5 USTR colleague Patrick Childress, who is also
6 from USTR's Office of General Counsel.

7 Also joining from USTR is our
8 colleague Robb Tanner from the Office of Services
9 and Investment.

10 We are also pleased to be joined today
11 by several international trade and economic
12 experts from a range of U.S. Government agencies.

13 From the Department of State, we have
14 David Moo.

15 From the Department of Commerce, we
16 have Nabil Abbyad.

17 From Treasury, we have Won Chang.

18 From the Department of Agriculture, we
19 have Chariese Walton.

20 And from the Small Business
21 Administration, we have Sarah Bonner.

22 We will now proceed with testimony

1 from the panel. The panel is comprised of Mike
2 Sax of ACT, The App Association.

3 Mr. Sax, you may now proceed with your
4 testimony.

5 MR. SAX: Thank you, Mr. Allen. And
6 thank you to the entire panel for the opportunity
7 to share views on the Austrian digital service
8 tax and its impact on American small businesses
9 and the digital economy community.

10 The App Association, as you may know,
11 represents thousands of small software companies
12 and technology firms that create apps for mobile
13 devices and in enterprise systems. Today, this
14 ecosystem, which we call the app economy, is
15 valued at around \$1.7 trillion and is responsible
16 for 5.9 million American jobs. And alongside the
17 world's embrace of mobile technology, our members
18 also create innovative solutions that power the
19 internet of things across modalities and segments
20 of the economy.

21 Austria is an important market for The
22 App Association members. The annual net revenue

1 across apps on major platforms has increased from
2 50 million in 2014 to over 227 million in 2020.
3 That's a 348 percent increase over just six
4 years.

5 We believe that the imposition of
6 digital service taxes is unreasonable and
7 discriminatory, that they disjoint the digital
8 economy and impede the U.S. exports and
9 investments abroad. Their imposition on U.S.
10 digital exports directly impacts America's most
11 innovative service industries and, in particular,
12 the small businesses that are driving those
13 industries, including software development and
14 connected services.

15 The Austrian DST, in effect since
16 January 2020, raises serious concerns for The App
17 Association's members. It is imposing a tax of 5
18 percent on the turnover from advertising services
19 and requires those who do not have a docile or a
20 place of management or permanent establishment in
21 the EU or the EEA to appoint an Austrian
22 representative for taxes.

1 DSTs like the one being imposed by the
2 Austrian government unduly discriminate against
3 American companies, are extraterritorial, and
4 would unreasonably increase administrative
5 burdens for those companies. Such taxes are, in
6 effect, tariffs on the digital economy, and The
7 App Association agrees with USTR that unilateral
8 digital taxes are significant trade barriers.

9 We agree with the imposition of
10 digital service taxes also giving rise to
11 conflicts with international treaties and
12 taxation principles reflected in the OECD's Model
13 Tax Convention on Income and Capital and the U.N.
14 Model Double Taxation Convention, and numerous
15 bilateral treaties. These established approaches
16 recommend the taxation of income, not revenue,
17 and discourage assessing taxes to entities
18 without considering if they are established in
19 that country, and avoiding assessing taxes
20 retroactively.

21 Further, digital service taxes
22 conflict with commitments made under the WTO

1 General Agreement on Trade in Services, Articles
2 II and XVII, and contravene, in effect, with the
3 WTO moratorium on custom duties on electronic
4 transmissions which has been in place since 1998.

5 The App Association notes agreement
6 that some changes may be needed with respect to
7 international taxation due to the rise of the
8 digital economy. We endorse and we urge the U.S.
9 Government to support the ongoing OECD efforts to
10 reach a consensus on needed tax changes and
11 support the development of such a solution as
12 soon as possible.

13 Country-specific digital service taxes
14 put into place while the OECD solution is being
15 pursued will ultimately only undermine the global
16 consensus needed to reach a workable solution and
17 they will damage the ability of American small
18 businesses and the digital economy to innovate
19 and create new jobs.

20 Should USTR decide that some or all of
21 the tax policies being investigated are
22 actionable under Section 301 of the Trade Act,

1 The App Association recommends that the U.S.
2 Government focus on attaining a consensus
3 multilateral tax agreement through the OECD
4 process and avoid the imposition of retaliatory
5 tariffs that would most impact American small
6 businesses like The App Association members.

7 We really appreciate the opportunity
8 to provide our views, and we are happy to help in
9 any way we can moving forward. Thank you.

10 MR. ALLEN: Thank you, Mr. Sax, for
11 your testimony.

12 We'll now proceed to questions from
13 the Section 301 Committee.

14 And the first question will go to Robb
15 Tanner of USTR.

16 MR. TANNER: Thanks, Ben.

17 Thanks for your testimony, Mike,
18 today, this afternoon.

19 I think I want to start by asking a
20 question, just in comparison to some of the other
21 national digital services acts that are under
22 investigation by USTR, the Austrian act is

1 limited in scope to digital advertising services.
2 The question is, does the narrower scope of the
3 Austria law change anything about your assessment
4 of the potential impact of the tax on your
5 membership, again, particularly for small or
6 medium-sized companies?

7 MR. SAX: Well, I think in some ways
8 it will affect fewer companies because not all of
9 our members are engaged in using advertising in
10 their apps. But, at the same time, the tax rate
11 of 5 percent is much higher. So, the impact of
12 the DST in the Austrian case is a little bit
13 higher, or quite a bit higher than for the other
14 countries that have imposed a DST.

15 MR. ALLEN: Robb, did you have
16 anything further?

17 MR. TANNER: Not at this time.
18 Thanks, Ben.

19 MR. ALLEN: All right. Thank you.
20 For the next question, we will go to
21 Treasury.

22 MR. CHANG: Hello, Mr. Sax, again.

1 Thank you again for your testimony today.

2 In your testimony, you noted that
3 Austria is a key market for your members, and
4 thus, you are concerned about Austria's DST,
5 which you note is unreasonable and
6 discriminatory. However, you do not support the
7 imposition of tariffs in connection with this 301
8 investigation. Do you think the imposition of
9 tariffs will not convince the Austrian government
10 to remove its discriminatory DST?

11 MR. SAX: Well, we're mostly concerned
12 that the imposition of tariffs will end up
13 causing kind of a race or an escalation of the
14 problem that will ultimately be very harmful for
15 our members and the whole ecosystem. We think
16 that maybe the Administration could use all the
17 available opportunities for engagement with
18 Austria and other countries, and use a whole-of-
19 government approach to press for avoidance or
20 removal of unilateral DSTs and their commitment
21 to a coordinated multilateral solution through
22 the OECD process, as the best approach.

1 MR. CHANG: Thank you very much for
2 that.

3 MR. SAX: Thank you.

4 MR. ALLEN: Next, we will have
5 Commerce.

6 MR. ABBYAD: Thank you again for your
7 testimony, Mr. Sax.

8 In your testimony, you request that
9 USTR not impose tariffs to avoid escalating use
10 of tariffs that most impact American SMEs. In
11 what specific ways do you believe tariffs affect
12 American SMEs and why do you believe that tariffs
13 most impact American SMEs? You may direct this
14 either today or in your post-hearing comments
15 with evidence to support that.

16 MR. SAX: Well, there's no doubt that
17 tariffs increase the administrative burden, the
18 level of involvement and care that companies have
19 to take to be compliant when they enter markets
20 or when they are active in those markets. This
21 takes up a lot of executive time and
22 administrative time.

1 In addition, those companies actually
2 have to pay for the added cost of those tariffs.
3 And then, even when they are small enough to be
4 exempt from them, in many cases they are part of
5 an ecosystem where they are either suppliers of
6 companies that are not exempt or they have
7 suppliers that are not exempt in another
8 direction. So, a lot of our members also sell
9 their apps through digital marketplaces and
10 platforms which are not exempt from these
11 tariffs. And what we've seen in different
12 situations is that, usually, those costs end up
13 being passed on to the smaller companies as well.
14 So, whatever DSTs are imposed, even if a very
15 small company is not directly affected by it, it
16 will definitely be indirectly affected by it,
17 both through ecosystem consequences and the
18 impositions on the bigger companies that they do
19 business with.

20 MR. ABBYAD: Okay. Thank you very
21 much.

22 MR. SAX: Thank you.

1 MR. ALLEN: For the next question, we
2 will go to State.

3 MR. MOO: Hi. Thank you, Ben.

4 And thank you, Mr. Sax, for the
5 testimony today.

6 You mentioned that you recommend that
7 we continue the OECD process as an effort to
8 resolve the situation with Austria. In addition
9 to that process, and as part of the whole-of-
10 government approach, do you have any specific
11 recommendations for actions the U.S. Government
12 should take to convince Austria to revoke its
13 digital service tax?

14 Thank you.

15 MR. SAX: I don't have a very specific
16 recommendation. I guess what I would advocate
17 for is that the government, basically, use as
18 much of a holistic approach to creating a
19 consensus and solve this using multilateral
20 agreements instead of focusing on a battle that
21 has the serious risk of escalating and, then,
22 essentially, just causing harm in the short term.

1 A lot of these companies, especially
2 the smaller ones, don't really have the capacity
3 to sit out those kinds of fights and take a long-
4 term approach because they're small businesses
5 and have very limited resources. So, whenever an
6 approach is taken that might have short-term
7 damage, but long-term gains, we have to keep in
8 mind that those kinds of approaches end up
9 affecting the small companies the most because
10 they don't have the resources and the buffers to
11 sit it out for the long term and ultimately
12 benefit.

13 Thank you.

14 MR. MOO: Thank you.

15 MR. ALLEN: The next question will go
16 to USDA.

17 MS. WALTON: Hi. Good afternoon, Mr.
18 Sax. Thank you for your testimony.

19 So, my question is in your testimony
20 you state that Austria's DST raises serious
21 concerns for The App Association's members.
22 Could you please provide any specific examples of

1 how the DST has impacted your members?

2 MR. SAX: The DST impacts our members,
3 obviously, from a bottom-line point of view, but
4 also -- and probably most importantly -- from the
5 level of complexity that it takes to deal with
6 these DSTs and make sure that the business is
7 compliant, especially if we have multiple
8 countries doing this, and we have companies that
9 are fairly small businesses that are active in a
10 fairly small market for each of those countries.
11 The cost, the percentage of cost for those
12 businesses to be compliant is much higher because
13 they are such small businesses and they have to
14 target multiple markets where they have to make
15 sure that they're compliant, that they don't
16 violate any rules. They might even need a tax
17 representation in some of those countries.

18 And so, we realize that, for bigger
19 companies who have departments who can handle
20 compliance like this, that compliance burden,
21 administrative burden, might be a very small
22 percentage of their actual expenses. But, for

1 small businesses, it can actually make the
2 determination whether a small business wants to
3 enter a market or not. And in that way, I think
4 it's a really significant barrier.

5 MS. WALTON: Thank you.

6 MR. SAX: Thank you.

7 MR. ALLEN: Okay. Before concluding
8 this panel, I'll pause to see if any members of
9 the Section 301 Committee have any remaining
10 questions.

11 Okay. Hearing none, Mr. Sax, would
12 you like to make a final comment on any of the
13 matters we discussed this morning?

14 MR. SAX: Not especially. Thank you
15 so much again for the opportunity and for
16 allowing us to testify. We're always happy to
17 help in any way that we can.

18 MR. ALLEN: Great. Thank you.

19 Well, that concludes this panel.

20 I'd like to thank you again for
21 testifying today and for your important
22 contribution to our investigation.

1 As a reminder, the deadline for
2 rebuttal comments, which may include written
3 answers to the questions posed at today's
4 hearing, is one week from today. Those comments
5 should be submitted through USTR's online portal
6 at comments.ustr.gov/s.

7 Today's hearing is now adjourned.
8 Thank you very much.

9 (Whereupon, the above-entitled matter
10 went off the record at 2:52 p.m.)

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C E R T I F I C A T E

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In the matter of: Section 301 Investigations
Public Hearing

Before: U.S. Trade Representative

Date: 05-06-21

Place: teleconference

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