OFFICE OF THE U.S. TRADE REPRESENTATIVE

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HEARING REGARDING THE PROPOSED ACTION IN THE SECTION 301 INVESTIGATION OF DIGITAL SERVICES TAXES ADOPTED BY INDIA

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MONDAY
MAY 10, 2021

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The hearing convened via videoconference, Thomas Au and Benjamin Allen, Chairs, presiding.

PRESENT

THOMAS AU, USTR
BENJAMIN ALLEN, USTR
NABIL ABBYAD, Department of Commerce
ALEXANDER AMDUR, Customs and Border Protection
SARAH BONNER, U.S. Small Business Administration
WON CHANG, Department of the Treasury
PATRICK CHILDRESS, USTR
SUSAN KARIMIHA, USDA
EMMA LAURY, Department of Labor
BRENDAN LYNCH, USTR
REBECCA NOLAN, Department of State
MATTHEW SHAILER, USDA
SARAH SHORT, USTR
ALBERT YAM, Department of the Treasury

ALSO PRESENT

BRIAN SCARPELLI, ACT | The App Association
MANAB MAJUMDAR, Federation of Indian Chambers of Commerce and Industry
KAPIL SHARMA, Confederation of Indian Industry
NIGAM NUGGEHALLI, School of Law, BML Munjal University
KINSHUK JHA, Jindal Global Law School
ROSMY JOAN, National Law University
R.V. ANURADHA, Clarus Law Associates
VALUN CHABLANI, Gujarat National Law University
RAJIV JAIN, Sitapura Gems & Jewelry Industry Association
SUVANKAR SEN, Senco Gold Limited
ARVIND GUPTA, Gallant Jewelry
COLIN SHAH, Gem and Jewelry Export Promotion Council (GJEPC)
RAJEEV PANDYA, SEEPZ Gems & Jewelry Manufacturers Association (SGJMA)
NEVILLE TATA, Renaissance Global Limited
SIVAKUMAR KUNAPULI, Seafood Exporters Association of India
JOHN WILLIAMS, Southern Shrimp Alliance
DAVID VEAL, American Shrimp Processors Association

CONTENTS

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

9:31 a.m.

MR. AU: Good morning and welcome. The Office of the United States Trade Representative, in conjunction with the Interagency Section 301 Committee, is holding this public hearing regarding a potential trade action in connection with its Section 301 investigation of India's digital services tax, or DST.

The United States Trade Representative initiated this investigation on June 2, 2020. In a notice published on March 31, USTR announced a proposed trade action in this investigation. That notice can be found at 86 FR 16824.

In this public hearing, USTR and the Section 301 Committee will hear witness testimony regarding the proposed trade action.

The deadline for rebuttal comments, which may include written answers to questions posed at today's hearing, is one week from today. The Section 301 Committee will carefully consider the testimony provided at this hearing as well as testimony provided at the multi-jurisdictional hearing held on Monday, May 3.

The Committee will also review the written comments received in response to the March 31 notice of the proposed trade action as well as any post-hearing rebuttal comments from interested parties.

The Section 301 Committee will then make a recommendation to the U.S. Trade Representative regarding what, if any, trade action to take.

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

First, some procedural and administrative instructions. Today's hearing is organized into four panels of witnesses, across which 17 individuals are scheduled to testify. The provisional list of witnesses has been posted to USTR's website.

Each witness appearing at the hearing is limited to five minutes of direct testimony. After the testimony from each panel of witnesses, the Section 301 Committee will have an opportunity to ask questions.

Given the large number of witnesses that will be testifying today, we ask that you please answer our questions directly and succinctly. Please recall that you have the opportunity to provide more extensive responses in a post-hearing submission.

Between panels, there will be a short break while we assemble the next panel. Post-hearing comments, including any written responses to questions from the Section 301 Committee, are due by May 17th. The rules and procedures for written submissions are set out in the March 31st Federal Register notice.

A written transcript of this hearing will be posted on the USTR website as soon as possible at the conclusion of this hearing.

Now, for a few technical points. For those participating in the hearing, when it is not your turn to speak, please be sure to leave your video and microphone muted. If you would like to respond to a question posed to another witness on your panel, you may unmute your video. That will signal to us that you would like to be recognized to speak.

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

When you are speaking, you are responsible for keeping time.

I would now like to introduce the U.S. government panel that will be presiding over this hearing.

I am Thomas Au from the USTR Office of General Counsel. I will serve as the Chair for Panels 1 and 2 of this hearing. I am joined in the room by my USTR colleagues Benjamin Allen and Patrick Childress, who are also from the USTR Office of General Counsel. Benjamin Allen will serve as Chair for Panels 3 and 4 of this hearing.

Also joining us for some of our panels today are Brendan Lynch from USTR's Office of Central and South Asian Affairs and Sarah Short from USTR's Office of Small Business, Market Access and Industrial Competitiveness.

We are so pleased to be joined today by several international trade and economic experts from a range of U.S. government agencies.

From the State Department, we have Rebecca Nolan. From the Department of Commerce, we have Nabil Abbyad. From Customs and Border Protection, we have Alexander Amdur. From Treasury, we have Won Chang and Albert Yam. And from the Department of Agriculture, we have Matthew Shailer and Susan Karimiha. From the Department of Labor, we have Emma Laury. And from the Small Business Administration, we have Sarah Bonner.

With that, we will now proceed with testimony from our first panel. That panel is comprised of Brian Scarpelli from ACT, The App Association, Manab Majumdar from the Federation of Indian Chambers of Commerce and Industry and third, we have a change from the initial witness list, representing the Confederation of Indian Industry will be Kapil Sharma.

We will begin with Brian Scarpelli. You may proceed with your testimony when ready.

MR. SCARPELLI: Great. Thank you so much. Thank you for the opportunity to share views on India's digital service tax, and its impact on the American small business digital economy community that ACT, The App Association represents.

ACT, The App Association, represents thousands of small business software application development companies and technology firms that create the software used on mobile devices and in enterprise systems around the globe.

Today the ecosystem The App Association represents, which we call the app economy, is valued at approximately $1.7 trillion annual and is responsible for over 5.9 million American jobs.

Alongside the world's rapid embrace of mobile technology, our members have been creating innovative solutions that power the Internet of Things across modalities in segments of the economy.

India is a very important market for App Association members. As one example of that, since 2014 annual net revenue for apps across some major platforms has increased over 1,400 percent from 20 million to 316 million by 2020, 2014 through 2020.

Generally, The App Association believes that the position of DSTs are unreasonable and discriminatory, disjoint the digital economy and impede U.S. exports and investment abroad. Their position on U.S. digital exports directly impacts America's most innovative service industries and the small businesses that are driving those industries, including software development and connected devices in which our members are leading.

Adopted in March 2020, India's DST is an expansion of an Equalization Levy that has been in place since 2016 and imposes a 2 percent tax on revenue generated from a broad range of digital services, including digital platform services, digital content services, digital sales of a company's goods, data related services, software as a service and several other categories.

DSTs like the one being imposed by the Indian government unduly discriminate against American companies, are extraterritorial and would unreasonably increase administrative burdens and are otherwise unreasonable.

They are, in effect, tariffs on the digital economy, and The App Association agrees with USTR that unilateral digital service taxes are a significant trade barrier.

The App Association also agrees that the imposition of DSTs gives rise to conflicts with international treaties and taxation principles reflected in the organization for Economic Cooperation and Development's model tax convention on income and capital, the UN model double taxation convention and numerous bilateral tax treaties.

These established approaches recommend the taxation of income, not revenue, and discourage assessing taxes to entities without considering if they're established in that country and also avoid assessing taxes retroactively.

Further, digital service taxes likely conflict with commitments made under the WTO's general agreement on trade and services, GATS' Articles 2 and 17, and contravene, in effect, a WTO moratorium on custom duties on electronic transmission that has been in place since 1998.

In all of its hearings, including this one, we strongly encourage USTR to reinforce how the DSTs at issue, do not align with these important multilateral and bilateral constructs and that proposed end with those in place unilateral DSTs at issue are unreasonable and discriminatory.

We also note that some changes may be needed with respect to international taxation, and we endorse and urge the U.S. Government to support the ongoing OECD efforts to reach a consensus on needed tax changes and support of the development of such a solution as soon as possible, which have seen significant progress of late within OECD.

Country specific digital service taxes put into place while the OECD solution is being pursued, we think, will undermine the goal of consensus needed to reach a workable international taxation agreement that addresses the global digital economy and will damage the ability of American digital economy small businesses to innovate and create new jobs.

Fortunately, the OECD's Center for Tax Policy and Administration has announced that an agreement in October is likely and that it should include a mechanism and implementation plan for rolling back unilateral digital taxes.

Should USTR decide that some or all of the tax policies being investigated are actionable under Section 301 of the Trade Act, The App Association recommends that the U.S. government focus on attaining a consensus multilateral tax agreement through the OECD process and avoid the imposition of retaliatory tariffs that would most impact the American SME -- the American small business community or small SME community like The App Association's members.

We appreciate the opportunity to provide these views and happy to assist in any way that we can moving forward. Thank you.

MR. AU: Thank you for your testimony. I would now like to invite Manab Majumdar from the Federation of Indian Chambers of Commerce and Industry to testify.

MR. MAJUMDAR: Good morning. Good morning, everyone. Am I audible? Can you hear me?

MR. AU: Yes, we can. Thank you.

MR. MAJUMDAR: Okay. Thank you for the opportunity. I will get straight to the point. We represent FICCI -- we represent the trade chamber in India. We have already submitted written submission on part of this one.

So what I'll do is I'll just take the salient and important points and then, of course, I will be happy to take questions.

At FICCI, as the business chamber, our members -- and we strongly support and advocate the principles of non-discriminatory, fair, and transparent trade. And we believe in a rule-based multilateral trading system.

We submit that the proposed retaliatory action of 25 percent of add-value tax on a preliminary list of 40 products, likely just products from India, would be inimical to the vibrant bilateral trade relations between our two countries.

Our members are of the view that such a tax on 40 items imported into the U.S. from India would have negative consequences and impact on both economies.

First and foremost, I would like to highlight that the targeted products, including seafood, bamboo, Basmati rice, gems and jewelry, articles of furniture, et cetera, all are labor-intensive. They are the only source of livelihood of the producers and manufacturers.

A 25 percent additional tax will make exports from India less competitive. They will be outpriced in the American market, and therefore it will result in loss of jobs in India.

Second, the same measure we hold -- our members are of the view that it will make the target projects costlier, more expensive in the U.S. market. It will lead to supply chain burdens and supply chain disruptions.

It will lead to adverse impact on the American business, retailers, and consumers. As a result, there may be cost escalation. In fact, this particular factor has been corroborated by various other agencies of nations who have submitted their feedback given in this hearing itself.

Third, for several products, our submission is India has been the principle or a significant supplier to the U.S. market. An example given, as we have highlighted in our written submission, the Basmati rice, the gems and jewelry, fashion accessories, et cetera.

So the point is not only India, even U.S. sales plans to lose out in terms of disruptive supply chain as well as reduced consumer welfare.

From the trade policy angle, if we see the discussions on the multilateral framework regarding rules of digital taxation are at an evolved stage, and if we are expecting a solution, a multilateral solution in the near future, then we think the best way forward would be to wait for that and to take a proactive stance to have that negotiation of trust included instead of taking any unilateral step.

My last point, I would like to cover

and highlight the current challenges, current formidable challenges arising out of the present pandemic situation.

Is this the right time to consider such a unilateral action like additional levy up to 25 percent? I would like to submit that USA is a great country. It has set out many fine examples of human development, crisis management, aid for trade, capacity building, cross-country partnership, and collaboration in the past.

So even at this juncture, I would like to submit that as many countries and people around the world recognize, appreciate and value the U.S. contribution in the interest of overall development so we would like to submit that USTR and all other concerned authorities to kindly reconsider and revisit this decision.

With that, I'll stop. But if there are any questions, I would be very happy to field those questions. Thank you so much. Thank you for your kind attention. Over to you, moderator.

MR. AU: Thank you for your testimony.

I would now like to invite Kapil Sharma from the Confederation of Indian Industry to testify.

MR. SHARMA: Thank you and good morning. My name is Kapil Sharma, and I serve as the Chair of CII-IBF, the Confederation of Indian Industries-India Business Forum based here in the United States.

Before I begin to give my testimony, first I want to express my thoughts and condolences to all of my friends in India that are going through a horrific humanitarian crisis.

It's difficult to have this kind of conversation about tariffs and levies when both of our countries, all of our interests, are really focusing on trying to end the crisis so that way we can return back to normalcy.

So with that I just want to say that I'm thinking about all of you sitting in India right now and those in the U.S. who have impacted families.

With that, I also want to express on the record that CII and myself, we are proud that the Biden administration has also waived and supports the TRIPS waiver on COVID vaccines. That waiver is extremely important in our ability and India's ability to bring this crisis into a manageable level and to hopefully end it.

Now with that, I'd like to begin my testimony. On behalf of the Confederation of Indian Industries, I would like to strongly dissent the proposed trade action in connection with USTR's Section 301 investigation of India's digital services tax.

We maintain that the interim two percent Equalization Levy is not discriminatory and that we strongly suggest that the United States waits until the OECD negotiations are complete on global corporate taxes.

The proposed Section 301, retaliatory actions will not only hurt India's economy but will also impact the interest of U.S. consumers. The levy ensures that all companies serving Indian residents are brought under the ambit of tax. In the absence of the levy, non-resident operators are not required to pay taxes on e-commerce supply or services made in the Indian market. This levy does not discriminate. And I think that's a very important point to make.

It applies equally, irrespective of country of residence. Instead, it establishes a level playing field for local tax paying e-commerce companies with multinational marketplaces who can no longer escape the purview of India's tax regime by billing their customers from offshore units.

The EO, or the levy, is the best interim solution to address the global tax concerns for commerce companies as OECD negotiations are finalized. Again, I'd like to stress that this is a non-discriminatory levy.

CII and other industry members, including our friends from FICCI who just testified are disappointed in USTR's disproportionate response with the proposed retaliatory actions, including a 25 percent ad valorem tax on Indian products that in 2020 were valued at approximately $161 million.

Many of the cited products are derived from the nation's most labor intensive sectors. For instance, the U.S. ranks among India's top export markets for gems and jewelry, Basmati rice and marine products. Increased duties will therefore inordinately affect India's labor market, which has already suffered from the withdrawal of GSP benefits, intensifying a burden that will be felt by U.S. customers and also as they are trying to recover from the COVID pandemic.

Further penalties will result in a severe adverse impact on the India-U.S. bilateral trade relationship. On behalf of my friends and colleagues at CII, we urge USTR to respond prudently and not take unilateral action against a temporary levy designed to support designed to support ongoing international negotiations. Thank you very much.

MR. AU: Thank you for your testimony. With that, I would like to open the floor to the

U.S. government questions. I believe our first question is from the Department of State.

I can see you, but I cannot hear you. I'm still having trouble with the audio from you. Okay. I think it should work now. That's okay. I think we're still having some trouble. But that's okay. We have the question over here on our side as well.

Mr. Majumdar, from the Federation of Indian Chambers of Commerce Industry, your testimony notes that many small and medium enterprises rely on exports to the United States. To your knowledge, have any of your members reached out to the Government of India to request that India address U.S. concerns with the Equalization Levy and have you considered making such a suggestion to your members? Thank you.

MR. MAJUMDAR: Yes, certainly. Our members from at least two other groups for the time being, I remember currently there may be two others, two product groups, seafood as well as gems and jewelry. They did. They did approach us. And we had an elaborate discussion with them. And on the gems we have made the supplementation. We have included their submissions along with other submissions in our testimony.

MR. AU: Thank you. I believe our next question is from the Department of Labor.

MS. LAURY: Hi. Good morning. My question is also for Mr. Majumdar. In your testimony, you state that workers in the United States depend on shrimp from India for jobs in their supply chain. I believe your testimony specifically cites "a substantial fraction of 500,000-plus workers."

I wondered if you could elaborate on the types of employment that shrimp from India provides in the United States? And can you also elaborate more on how the proposed trade action might impact that employment?

MR. MAJUMDAR: Give me a second. My written submission, which has more details, just a moment. One moment, please, yes. For the shrimps and employment -- okay, if you can hear me properly, seafood are marine products and their exports play a very, very significant role in the Indian economy in terms of employment, income generation, besides valuable foreign exchange earnings.

Not only in the fishery section, the marine section occupies an important place in the socioeconomic development of our country. The sector provides livelihood support to 28 million at the primary level and almost twice the number on the value chain.

In fact in the recent post, the sector has been growing at a rate of 7 percent also. If I want to give more figures, the fishery sector in water, not fishing, like our fishery sector, accounts for 1.2 percent of our gross value-added and 7.3 percent of agricultural value-added.

So all these facts and figures greatly amplify how this particular sector's income generation occupies such an important place in terms of employment and livelihood for our people.

That was the reason I was trying to argue against such a levy on seafood chains, whatever they have been listed in there, that preliminary list of 40 items. Over to you.

MR. AU: Thank you for that response. I believe our next question is from the USDA.

MR. SHAILER: Yes. Good morning. This is also from -- the proposed trade action would be a loss-loss outcome. Is it your assumption that the United States could not source shrimp from sources other than India? If so, why? Thank you.

MR. MAJUMDAR: A valid question. A little clarification. Yes. I did make the testimony both written and oral that the proposed levy, additional levy, would lead to a loss-loss outcome for both the countries. But that was not with reference to shrimps alone. It was for the overall framework.

So if I come to your specific question whether the U.S. can source shrimps from elsewhere, of course it can. Of course it can. That is not the issue.

The issue is that shrimp, as far as shrimp is concerned, or particularly that product is concerned, India, because among the prominent suppliers, principal suppliers as of now, if I remember correctly, for this particular, India supplies a substantial portion of total U.S. imports. I can just go back and find out exact figure. At the moment, I don't have it.

Similarly, even from the other side, even from the side, first of all, although USA can source from other sources, it can source shrimps from other countries, but for a comparable quality, maybe the price will be higher. So that remains to be seen.

And also if you take from India's point of view, if you take the overall framework and development in prominent sectors, from India also USA is among one of the top destinations for India's shrimp or seafood supplies, seafood exports from that point of view.

But I still hold, yes, the particular levy, if implemented, will lead to a loss-loss, lose-lose outcome for everyone, but it is not only with reference to shrimps if I have clarified myself. Over to you.

MR. AU: Thank you for that response. I believe our next question is from the Department of Treasury.

MR. CHANG: Hi. Thank you very much. And thank you all for your testimony. My question goes to the Confederation of Indian Industry, Mr. Sharma.

In your testimony, you refer to the Equalization Levy as an interim measure. Please explain why you view the measure as interim. For example, is it your understanding that the Government of India will remove the levy upon the OECD reaching an agreement on the international tax issues? Thank you.

MR. SHARMA: Thank you, Mr. Chang, for your question. It is always difficult to predict what the government will do, the Government of

India will do, when it comes to levies. But our understanding is that it is interim. And that much of it is -- that what a lot of people are having concern about is really because of the, I guess, it's that a lot of the points that were made in the recent Budget Act of India were more clarifications than they were actually an expansion of a levy or anything else that was going further with the levy.

I cannot confirm that it is going to only be interim. And I can provide a much more formal written comment to you with greater clarification based on our understanding of how far the levy will go.

I do want to convey one point though, that, one of the biggest concerns for CII with regards to USTR's reaction has been that a lot of the numbers and stuff that are being cited by USTR are estimations and that they have not provided how they came up with those calculations on the estimations. And so we would like some clarification as to how they came to those particular numbers.

MR. CHANG: Thank you. Has your organization taken a position with the Government of India on these issues? For example, stating your view that the measure should be lifted on an OECD outcome?

MR. SHARMA: At this time, I'm taking a contrary view to the Government.

MR. CHANG: Okay. Thank you very much for your answers. Thank you.

MR. AU: Thank you. I believe our next question is from Mr. Lynch. I believe you're still muted.

MR. LYNCH: Thank you. I should probably avoid that mistake from now on. But thanks to all of our panelists for participating today. I think I should have learned that lesson by now. But thanks again for all of you appearing today.

And I have a question for CII, Mr. Sharma. And actually before I get to that, I would like to second his comments earlier in expressing sympathies for all of our friends in India. At the moment, it certainly is a tragic situation that we are all closely tracking. So with that, I'll just turn to my question briefly.

Mr. Sharma, your testimony addressed a wide range of various issues. And I just wanted to get a sense of whether or not you have any additional thoughts on the specifics of the proposed trade action. And for example, do you have views on whether the limitation of the tariffs might actually be effective in persuading the Indian Government to revisit the DST policy moving forward?

MR. SHARMA: First of all, Mr. Lynch, thank you. Thank you for recognizing the crisis in India. And we have a lot of common friends that are going through some very difficult times, especially in the Ministry of Commerce, including CII, which has approximately 30 percent of its workforce impacted by COVID. So I think it's important for us to remember the bigger issue.

With regards to your question, I can't

answer that because I'm not sure. I'm not clear. And I'm more than happy to confer with my colleagues over at CII and come back to you with a written answer on that.

As far as I'm aware, CII believes that the reaction by USTR is unwarranted mainly because of the data that was provided. It was unclear as to how USTR came with the numbers that they cited as well as it was an overreach by USTR on the various actions, whether it's the tariff or the levy itself, that it was a far reach and that the impact on Indian industry would be far greater than the action that USTR thinks that they are going to be getting by moving forward with these particular policies.

It's just difficult, as you know, to predict what governments will do in response to government action from one side to the other.

MR. LYNCH: Well, thank you for that. I appreciate your testimony and your comments. And now I will turn it back over. Thank you.

MR. AU: Thank you. Our next question

is from Customs and Border Protection.

MR. AMDUR: So good morning. We also now have some questions for Mr. Scarpelli. We haven't forgotten about you.

In your testimony, you refer to the tremendous growth that The App Association has had in India in recent years. You also mentioned the Equalization Levy. Have you conducted an analysis on how India's Equalization Levy might impact that growth and what have you learned?

MR. SCARPELLI: Thank you for that question. The short answer is that if it's okay, I would love to follow-up in more detail on that. We're just -- I guess I would say it is something of a struggle for us as we survey our members to get as much of a granular, you know, capturing of the impact of specific DSTs not only on ones who are operating there now but probably more interestingly, and maybe of interest to USTR even, I'm guessing, but speculating there. But that the impact on small businesses from our membership and others who are considering entering the market and how the levy and whether it continues on or not in its current form or whether it has changed, how it would influence their, you know, business decisions about entering the market. So it's something that we're continuing to work on. If it's okay, I can follow-up with you with data.

But I can tell you that, you know, when we speak to our members, we hear grave concern and dismay with the imposition of DSTs in fee markets, particularly India being certainly if not the top and tied for the top market for these American SMEs that want to grow and gain new customers and create more jobs in the U.S.

So, you know, we have anecdotal input. We have less formal input that continues to indicate to us that our members want us to, you know, appear at hearings like this and convey our objection to unilateral DSTs. And we hear that it's a strong disincentive to pay in and/or enter a new market. But, again, as far as data goes, if it's okay, I'd love to pull together all that we can and share it with you and follow-up after the hearing.

MR. AMDUR: Thank you.

MR. AU: Thank you. I believe our next question is from the Department of Commerce. I believe we don't have audio for you. Do you want to try again? I don't believe we can hear you at the moment but that's okay. I do have the question in front of me for Mr. Scarpelli.

We note that your organization is testifying at a number of our hearings in various investigations. In light of this, would you like to comment on whether there are any other unique aspects of India's DST that might be relevant to the proposed trade actions?

MR. SCARPELLI: Sure. And you're right, we're participating -- and I probably should know that, too. We're participating in all hearings on DSTs, including the multi-jurisdictional one and the other countries' investigations. And we're really pleased with the opportunity to do that.

I think that, you know, some notable -- there are maybe a couple of aspects that are notable here for the India DST that, you know, we have -- I can just kind of reflect some of the aggregated concerns we've heard from our members.

I think that the broad range, the scope of the tax is quite broad, at least as I think about it in relation to some of the other DSTs being investigated in specific -- being investigated such as the Spanish or Italian one.

As I read it, I think the Indian DST is much broader, and I don't know of that many called out, you know, at least called out or exceptions that we understand to apply, like, there may be for some other DSTs.

The other aspect that we've heard about, and this aspect is shared with at least a few other of the DSTs being investigated, is a clarification -- it's what is in effect a requirement for a -- well, okay. So I'm sorry. What I'm trying to say is that it is a clarification from the Indian Government that offshore firms that use an India-based -- that operate through an India-based organization don't have to pay the levy.

So I guess what I was trying to spit out there was in effect that having a permanent establishment in the country would, I believe, make you not subject to the tax. In effect that's a -- you know, so that being a targeting of foreign companies.

And I think that's very relevant to, you know, the analysis in USTR's determination of about whether the DST is unreasonable or discriminatory as far as American businesses and then that's just a particularly concerning aspect of the Indian DST that we would flag.

MR. AU: Thank you for your response. The next question is for the Federation of Indian Chambers of Commerce and Industry. We understand that you're opposed to unilateral acts. And U.S. tax was not approved by any international body. Do you consider India's DST to be a unilateral act?

MR. SHARMA: Thank you for the question. What CII would like to see is for the United States to wait for the OECD negotiations to end by the end of the summer on these particular types of taxes. CII would prefer that USTR and the United States government wait. That there's no rush to resolve this issue now but that we should wait for the next couple of months and see where the OECD negotiation -- thank you.

MR. AU: Thank you for your response. And also with regard to that question, Mr. Majumdar, would you like to provide a response to that question as well?

MR. MAJUMDAR: Thank you. No, I agree with my colleague from CII. But by unilateral action, what I meant is retaliatory, the proposed retaliatory levy, additional levy at the rate of up to 25 percent, that I have described as part of our member's view as a unilateral action. And we have submitted that that unilateral action, they should reconsider, reverse, should not take it. That was the reference of our term unilateral.

However, on the particular, just now the response given by Kapil from CII, we totally stand by that.

And on the record, if you would allow me, to just I would like to supplement my previous answer to the USTR gentleman that time I said we would come back with figures.

So the difference with shrimps for the two particular product lines, 03063500 and 03069500, India in the year 2020, India supplied 21 and more than 50 percent of these two items of total U.S. imports, total U.S. imports in the year 2020. I hope those figures can relate and you can now correlate this. Thank you, Mr. Moderator. Back to you.

MR. AU: Thank you for those responses. Before concluding this panel, we would like pause to see if any member of the 301 Committee has any remaining questions for this panel.

Hearing none, I would like to ask if

any of the witnesses would like to address questions that we had posed to other witnesses or make a final comment on matters that we have discussed this morning.

Hearing none there, that concludes this first panel. Thank you again for your time today. We will now take a short break as we compose the second panel.

MR. MAJUMDAR: Before we disperse, I would like to thank you, Mr. Moderator. Thank you for being very efficient in managing the session and all the other participants who have posed questions. And thank you very much on behalf of the Federation of Indian Chambers of Commerce and Industry. Thank you.

MR. AU: Of course. Thanks to all. We will now take a short break.

(Whereupon, the above-entitled matter went off the record at 10:15 a.m. and resumed at 10:34 a.m.)

MR. AU: We'd like to now proceed with our next panel, which is composed of five witnesses, first Nigam Nuggehalli from the School of Law, BML Munjal University, Kinshuk Jha from Jindal Global Law School, O.P. Jindal Global University, Rosmy Joan from National Law University, R.V. Anuradha from Clarus Law Associates, and Valun Chablani from Gujarat National Law University.

We will begin with School of Law, BML Munjal University, you may proceed with your testimony, whenever you are ready.

MR. NUGGEHALLI: Thank you very much for this opportunity. My name is Nigam Nuggehalli, I am the Dean of the School of Law at BML Munjal University.

I have practiced tax law in the U.S. after having studied tax law at NYU Law School, and I have taught tax law in the U.S., the United Kingdom, and India.

I have written extensively on international tax issues, most recently I've written a book on international tax from an Indian perspective and I worked with Indian tax lawyers on international tax issues.

Today I'll talk about the Section 301 investigation of India's Digital Services Tax from two perspectives, the fact that the argument is that the taxes discriminate as it targets only non-dissident companies.

And the tax is unreasonable because it violates international tax constraints relating to certainty, nexus, and scope of charge. And I'll be addressing each of these issues in turn over the next four minutes.

The tax is not discriminatory in my opinion. Indian companies applying goods and services are already taxed on a resident's basis under Section 4 of the Indian Tax Act.

Non-visiting companies without a physical presence in India will likely neither have a business connection under Section 9 of the Indian Tax Act, or neither will have a permanent establishment in India.

And this influences the host of issues taken by Indian courts and tribunals. So, without looking at India, non-resident companies cannot be taxed on their income attributable to India and in many cases the income attributable to India cannot be considered as royalty income either or fees from technical service.

Therefore, while Indian companies supplying the same services, as non-resident companies taxed in India, the non-resident companies are not subject to Indian taxation despite being in business with Indian customers.

It is to address this inconsistency that the Digital Service Tax or the Equal Additional Levy, as it's called here, has been enacted. I also believe that the ESG is not unreasonably vague or uncertain.

The challenge section is clear and the scope of the tax has been laid down. There are uncertainties in its application but I think this is the case with many tax enactments and I think over a period of time it will be ironed out.

In fact, quite a few amendments have been made in this year's budget, which has driven the issue to some extent.

In any case, I believe the use of open-ended language that is subject to varying interpretations is common in tax legislation. Examples of the new capital levy new distinctions in domestic tax law and the business purpose substance test in U.S. law, and the principal purpose test in international tax law.

I also believe that the application of DSG is not related to international norms as it pertains to tax restriction.

In fact, the best action plan 1 itself is the surges, DSG off stop that India is able to apply in light of the fact that the digital revolution requires some new ways of asserting tax (indiscernible).

The Indian constitution also allows the Indian Parliament to do something of this sort. In fact, there is case law both in India and in the U.S. which suggests that online presence in a certain territory is sufficient nexus to exercise tax restrictions.

The Indian case and facts stated that the availability of transactions to a website at a particular place is virtually the same thing as a seller having shops in that place in the physical world.

Lastly, I believe that the DSG taxation of revenue rather than income is not relative to international law and taxation. There are numerous examples of revenue-based taxation, both in domestic tax law and (indiscernible). In domestic tax law dividends, for example, have been taxed on a crossed basis.

In double tax treaties, royalties, and technical services are taxed for a revenue basis. And most importantly, non-resident entities have the option of being taxed on a net income basis if they have a distinction in India.

So, thank you for this opportunity again and I'll give the mic back to the moderator.

MR. AU: Thank you for your testimony. I'd now like to invite Kinshuk Jha from Jindal

Global Law School.

MR. JHA: Good morning, distinguished members of the panel, I'm Kinshuk Jha and I'm speaking on behalf of Center for Comparative Issues and Center for International Tax Laws at Jindal Global Law School, India.

I would like to thank you for this opportunity to present the order of submissions as part of the USTR investigations against India, taking forward the contentions made in my preliminary written submissions, I would like to highlight two points during the course of this virtual hearing.

My first point is on the investigation findings of the USTR, India has abandoned international tax principles while implementing the DST. I would like to begin by drawing your attention to the OECD inclusive framework blueprint.

The second chapter of the blueprint which defines the scope of Pillar 1 has a pertinent observation in context of taxation of the digital economy. It reads, and I quote, the definition of the scope response to the need to revisit taxing rules in response to a changed economy.

The existing international tax rules generally attached a tax rate to profits that are either from a physical presence jurisdiction, however, given globalization and the digitization of the economy.

This is a scan with or without the benefit of local physical operations participate in an active and sustained manner in the economic life of market jurisdiction during the age extending beyond the mere conclusion of sales in order to increase the value of the products, the sales, and thus their profits.

Such participation is attributable to the nature of what is being supplied, how it is being supplied, and the active interaction or engagement with market jurisdictions.

This means that an allocation of taxing rates and taxable profits can no longer be exclusively circumscribed by their friends to physical presence, unquote.

The report on Pillar 1 was published in October 2020 and it reflects the latest mindset of multiple jurisdictions that physical nexus, or we could say, that existing permanent establishment rules are not sufficient for taxation of the digital economy.

The economic nexus has gained prevalence over physical nexus in context of taxation of non-resident digital corporations in the market jurisdictions and the general consensus seems to be moving in that way.

India as a sovereign has a right to post access on its subject matters, a non-resident corporation driving economic benefit from the jurisdiction of India should qualify as an Indian subject matter.

Certain judgments of the Indian codes under United States codes, they have already been cited by Professor Nigam just before I spoke. So, with the emergence of dynamic economic activities, we cannot keep referring to this element and inadequate taxation principles.

While non-taxation is not the case here, de minimis, which the global economy has been trying to deal with and the data indicates, the underlying issue is that source jurisdictions taxing rights are going unrecognized in the absence of a non-discriminatory measure like these.

Now, the second point which I would like to highlight is that the retaliated tariffs would not lead to the benefit of either India or the United States.

The retaliatory tariffs the U.S. is proposing are intangible commodities that took products which are either manufactured or supplied by micro, small, medium-scale enterprises in India.

These products have already been subject to taxation for a level by now. On the other hand, the digital tax that India has imposed is a measure to tax the earnings of non-resident digital companies mostly, with intangibles in the foundations.

The purpose is to tax non-residents who have not paid any taxes on income despite having earnings in India. Therefore, from the perspective of any retaliated tariffs the scales seem to be imbalanced.

Whether digital economy is only set to go further the proposed categories of trading activities facing retaliated tariff only in a state of economic diversification due to the severe impact of the COVID pandemic.

And introduction to retaliated tariffs is not only going to have an adverse impact on Indian entities but also the American small and medium-scale enterprises. As is evident from several of the submissions on the USTR portal as part of this investigation.

To conclude, if USTR is still of the opinion that the Indian tariff is detrimental to the interests of U.S. digital corporations, further dialogs would be concerned and appreciated are humbly satisfied.

They have shown their weakness to discuss at multiple series. Indian Government has already deferred the implementation of the significant economic presence and has also stated that the DST can be reviewed provided we arrive at a multinational solution.

As we wait for multilateral solutions to arrive, any bilateral solution for an appropriate taxation of U.S.-based digital companies having economic nexus with India would be definitely sensible.

This would help in establishing a proper and fair system of taxation of digital economy where none of the sites feel agreed. Thank you.

MR. AU: Thank you for your testimony. I would now like to invite Rosmy Joan from National Law University to testify.

DR. JOAN: A very good morning to all the members of Section 301 Investigation Committee, I'm Dr. Rosmy Joan working as assistant professor at the National Law University, Jodhpur.

I teach international trade law at the University. It's indeed an honor for me to appear before this esteemed committee on behalf of the National Law University, Jodhpur and I thank you for the opportunity.

As the Committee may allow, the factual scenario is such that the sequence to the amendment to the Indian Finance Act in March 2020 involving a two-person capitalization levy on non-resident e-commerce operators.

The review of the United States Trade Representative found that the capitalization levy is actionable under Section 301 of the Trade Act of 1974 and proposed an ad valorem duty of $25,000 should by largely unselected.

In response to the request in writing comments concerning the proposed action in Section 301 of the investigation of India's DST, they would like to submit four points before the Committee.

The first point is that the U.S. is proposing the actualization of the tariffs is inconsistent with the WTO obligations. We humbly submit before the Committee that the proposed action contravenes Article 1 and Article 2 of the JAB as well as Article 23 of the DRC.

We would like to cite the panel reporting in the United States tariff measures, DS-543, wherein the location of Section 301 was found as inconsistent with the reference statement as in Article 2.

Any proposal in words in the tariff on this basis is clearly inconsistent with Article 151 of the JAB and could be potentially inconsistent with Article 2 of the JAB.

Moreover, any relaxed tariffs endorsed in the Section 301 implies a complete disregard to the extent of the legal legend of the WTO thereby invalidating the power and mandate of the WTO for trade regulation.

Therefore, we humbly submit that such an action goes against the spirit of cooperation and sets a bad precedent.

The second point is that India has the sovereign right to tax and the equalization levy in both India does not contravene international taxation principles and validate emission and then Action Plan 1 on tax in the digital economy.

We would like to submit that the right to taxation could be reasonably construed as one of the instruments establishing the sovereign status of the state under international law.

Further, the JAB's framework and the purpose behind the OECD-based projects substantiate this view. Therefore, we submit that the U.S. may change the compilation of these thoughts at the senior level before initiating any unilateral actions.

The third point is that the equalization levy is not disconnecting in nature, we would like to submit that the equalization levy has been applied to non-Indian e-commerce operators in India as a way to offset the disadvantage and disparity Indian firms face by being subject to paybacks on their earnings arising from similar transactions.

Further, the equalization levy is applicable on all non-Indian e-commerce operators the threshold that the equalization levy is low-income barriers in the United Kingdom, Austria, Indonesia and applies equally to all the states.

Finally, we submit that the U.S. proposal to propose a 25 percent ad valorem duty would cause distortion and unreasonably increase the burden the on U.S. consumers and producers relying on import (indiscernible).

In light of all these points, we propose that the direct tariff be imposed. Thank you for your patience here.

MR. AU: Thank you for your testimony. I would like to invite R.V. Anuradha from Clarus Law Associates to testify.

MS. ANURADHA: Thank you, good morning, Members of the Committee and thank you for this opportunity.

Let me begin by endorsing a common thread, a common point that has been made by all the preceding speakers in the first panel and in this one, which is an urging to the Government of the United States for a multilateral solution and not to resort to unilateral retaliatory actions through these proposed tariffs.

Let me also reflect briefly on the recent report of the Congressional service, which is noted that with the entry into force of the WTO, the U.S. had significantly reduced its recourse to Section 301 retaliatory action.

It is in this context particularly that the USTR notice proposing retaliatory tariffs against India stands as a departure from that practice.

And especially at a time when both our governments aren't collaborating for finding a concrete solution at the OECD, which again, several of the previous panelists have already reflected on.

As the report of March 21 that I'm referring to also acknowledged that any determination to bypass the WTO's disputes settlement system and impose retaliatory tariffs, if any, in response to a Section 301 investigation may be challenged at the WTO.

The fundamental, underlying point, which again, some of the previous speakers have emphasized on is that the motivations of India's equalization levy and I would argue is similar to the same as that of the U.S. and several other jurisdictions worldwide.

Which is the need to level the playing field between domestic and foreign corporations in both (indiscernible) transactions?

We also understand that taxation laws in various states in the U.S. have recently evolved to a post-taxation on any activities that are not (indiscernible) in the state of the U.S. but those actions have a nexus based on the economic activities of that state.

Nigam earlier had referenced to case

laws to this effect as well pursuant to which is the laws, what I understand is that majority of the states in the U.S. have already put into place.

Coming back to USTR's report of January of all India's service tax, it appears to ignore the underlying basis for India's equalization levy, which is that taxation of revenue from digital sales that have occurred in the territory of India is clearly based on a territory nexus, which is the fact that the sales are occurring in the territory of India.

There is nothing in international tax law that prohibits taxation of revenues, and in fact, revenues in the form of loyalties and fees with technical services are frequently the subject of taxation.

The focus of India's equalization levy is only on revenue from India-related transactions so, therefore, the nexus itself is narrow and clearly defined.

The objective of this levy is to

create a level playing field as some of the previous panelists have reflected on between entities that are resident in India or have a permanent establishment in India and those that do not.

It applies to all non-resident digital service suppliers irrespective of the country of origin, and therefore, does not count (indiscernible) also reflect on the previous panelist from CIF, Mr. Sharma had reflected on, which is the fact that the report of January 2021 does not really explain the basis for the conclusion that predominantly the U.S. entities that appear to be impacted.

The basis for characterizing whether an e-commerce entity is from U.S., U.K. or any other jurisdiction has not really been explained.

The estimates that have been made in the tables in that report also ignore the fact that e-commerce and technological companies will have complex structures and they're often incorporated in jurisdictions that have the least tax (indiscernible).

I would also like to emphasize that from what we have read and learned about the tax reforms in the U.S., in 2017 there appears to have been revisiting of the entire taxation structure and the rationale for that structure of that reform process in the United States appears to have been a concern of the international taxation system.

And in particular, the laws of revenue due to the artificial shifting of profit outside of the U.S. led by international firms with U.S. employment.

The tax chains in 2017 had several components and recent developments in the U.S. seem to be taking this forward as well. Clearly, in recognition of the pitfalls prevailing in international taxation structures.

In conclusion, clearly the issue at discussion is taxation of the digital economy and ask negotiations to seek at the bilateral level it would make that it tends to commit to finding a solution at that level rather than resorting to retaliatory action.

Thank you.

MR. AU: Thank you for your testimony. I'd now like to invite Valun Chablani from Gujarat National Law University.

MR. CHABLANI: Hello, can you see and hear me?

MR. AU: Yes, we can, thank you.

MR. CHABLANI: Okay, thank you. So most of the points I was supposed to say have already been spoken by some of the esteemed panelists for this panel as well as the previous one. But in any case, let me just take the time to explain my testimony and make my views heard.

My name is Valun Chablani and I'm a tax practitioner, I'm also guest faculty at Gujarat National Law University, which is the foremost law schools in India. I am grateful to Office of USTR in having this opportunity to send my comments.

Of course, many of the comments have

been said. I am sure many of our friends before have mentioned the terrible COVID wave that we are all facing in India and also, to some extent, in the U.S.

And it has really hit public finances too, it's pushed finances to its limits and any retaliatory action which also my friend Professor Kinshuk Jha had mentioned that any such action in this situation can only lead to bad results.

And whether it is the retaliatory action or whether it is the forcing of the suspension or the domination of the law itself.

We'd also like to mention that, what my friend had also mentioned, that the USTR does not have jurisdiction with respect to this hearing and the imposition of the tax.

And if the U.S. really had any grievances with respect to the levy, they should have approached the WTO test, Article 1423, these are the articles of the DST that come into play.

There is unilateral measures undermining the unilateral conflict resolution system on which the group had created the speech today. As the responsible state, U.S. activists would obtain obligations and call off any further sanctions.

On the public act of good faith, like many of my friends have explained before, we should examine the real intention of what we find though.

And as many of my friends have said, this was a temporary measure, this was a measure to spell out attached policy position under Action 1 and, of course, this was fast tracked because of COVID-19.

And in fact, the U.S. has made a laudable effort to come back to the negotiating table with the play on decisions and in the same spirit, like what some of my friends in the first panel had said, we should wait for the multilateral solution because again, any retaliatory measures is definitely going to affect both parties in a very bad way.

Further, we ignored the literature

that says that this was not be subject to a tax levy in the first place, we submit this is not a tax levy anyway and in this regard it's important to delve into the origins of the concept of public establishment.

This concept had come up because international tax law system when it was first being brought up required people to determine circumstances where you can say, oh, enterprise is sufficiently amendment therapy in the economy for the this state to justify taxation in that state.

This was a presumption back in the day because brick and mortar businesses with the old models which could do that. That presumption, again like many of my friends have said before, is not true anymore given the nature of the business models enterprises they face.

And really, that's why the project it came up in the first place. Therefore, in terms of a holistic interpretation, if we use Article 31 of the CLD, we need to understand the intention of the tax treaty and try to adapt it to whatever new technologies have come up so as to make sure that the prohibitions themselves do not become infectious.

So, again that (indiscernible), that data interpretation act committee sharing be focused solely the taxing right on to be preserved even beyond just the concept as long it is in line with the economy.

Which again, like many of my friends have said before, is because they need to get it. So, the tax, that could mean for example user participation network affects data generations and show me significant (indiscernible) in turning the jurisdiction in India in this case, justifying some state levy in India.

Finally, I'd like to conclude saying that the U.S. has always been in the forefront of our technological innovations and surely a sanction like this would undermine the American attitude of embracing changes of being in the technologies and adapting regulations thereon.

The U.S. has also, as what a friend of mine had said before, that it happens again with respect to vaccine data and with the same intention, of course, given the situation that they're all living in today, NIDA has requested that following that same principle and same intention of the U.S. Government, it is requested that these proposed sanctions also be dropped.

And I will end my speech right now and I'll be open to any questions. Thank you.

MR. AU: Thank you for your testimony. With that, we'll proceed to questions from the panel here and I believe our first question is from the Department of Commerce.

MR. ABBYAD: Thank you, my question is for Mr. Nuggehalli from School of Law from BML Munjal University. As you know, today's hearing is focused on the proposed trade action in relation to the investigation.

Do you have a view on whether placing tariffs on the products USTR has identified would help persuade the Government of India to address

U.S. concerns with India's DST?

MR. NUGGEHALLI: No, sorry. Thank you. No, I don't have a view on that. My testimony was really confined to the two issues I defined at the beginning, which was about discrimination and about the fact that the enactment of the DST was supposedly violating of certain international laws on taxation violating the confinement of the regulation.

MR. ABBYAD: Okay, thank you very much for your response.

MR. AU: Thank you, I believe our next question is from the Department of State.

MS. NOLAN: Testing audio.

MR. AU: We can hear you.

MS. NOLAN: Great let's go ahead then. At the start of your testimony, it's not discriminatory to tax only digital services because the analog services are usually not exported to India.

Although this is not the focus of today's hearing, we're interested in what you mean by this statement.

Perhaps you can provide examples and then similarly would this be the case for travel services, education services, or other kinds of services?

And are such non-digital services typically subject to taxation in India? Thank you.

MR. AU: And just for clarification, this is for Mr. Nuggehalli.

MR. NUGGEHALLI: Thank you, can I just ask the concerned person to repeat that question, please? I didn't get what she was getting at.

MS. NOLAN: Of course. Referring to in your testimony when you note that it is not discriminatory to tax only digital services because the analog of these services are not usually exported to India. And recognizing that it's not the focus of today's hearing I'm just interested in hearing more from you about what you mean by that and any examples?

MR. NUGGEHALLI: In that part of my

testimony I was referring to the fact that if physical goods were being exported to India they would not be subject to the digital services tax. But I believe that is not really a big problem in today's economic circumstances. We are not really in other words talking about a situation where there's a huge supply of physical goods to India which are then in some ways being treated differently from digital services. I believe that the discussion that what the discussion we are having today is not pertaining to that kind of situation. Thank you.

MS. NOLAN: Just a quick follow-up then, sir, this is, as you assert, the case for digital services. Do you think that's true for other kinds of services like education services, travel services, et cetera?

MR. NUGGEHALLI: I think if education services and travel services have a digital aspect to them, then I think it's fair and non-discriminatory that they should be subject to a tax of this sort.

MS. NOLAN: Thank you.

MR. AU: Thank you for your responses. I believe the next question is from the Department of the Treasury.

MR. CHANG: Hello, everyone, thank you very much for your testimony. My question goes out to Kinshuk Jha of Jindal Global Law School at O.P. Jindal Global University.

You argue in your testimony that products subject to the proposed trade action are purchased by low-income consumers in the United States. Could you please explain the basis for this assertion?

Secondly, in addition, is it your position that the U.S. should include luxury products on the list of products subject to trade action in this investigation? If so, which products might those be?

Thank you very much.

MR. JHA: So, as for this, my contention in the written submission was that there are certain low-income consumers, perhaps, in the United States which are procuring products from India.

I was already (indiscernible) is a summary of the data which was already submitted on the USTR platform by then and even now it's available. The latest USTR submissions which I was following.

One example without naming the organization concerned I can think of was with respect to certain materials being used for handbags and there were certain other industries which were talking about something to do with jams and jellies.

So, the point that being a consensus were not just being used by the Indian traders but they were consumers based out of U.S.A. who were also raising similar concerns. So, in that way, we had maybe got that contention.

Now, to answer the second part of the question that can certain luxury items be brought into the framework of USTR retaliatory tariffs? In my honest opinion, first of all, the retaliatory tariffs should not be the measure which we are looking forward to.

It should be a bilateral negotiation-based exercise and particularly in the case if at all we are not able to arrive at a multilateral situation.

So, instead of being penalty and imposing mode, both jurisdictions I would say for them, instead of being in a penalty-imposing position zone, the exercise should be to understand that this is a new economic activity which has emerged with the period of time in the last couple of decades.

And a decent amount of taxation mechanisms should be developed that are agreeable to both.

(Simultaneous speaking.)

MR. CHANG: Thank you Mr. Jha and thank you for that answer.

MR. AU: Thank you, I believe our next question is from the USDA?

MR. SHAILER: Hi, yes, good afternoon,

this question is for Rosmy Joan, National Law University. In your testimony you object to the proposed tariffs on various grounds.

We would be interested in hearing your views on the related matter which is whether the imposition of tariffs might encourage the government of India to address U.S. concerns with India's DST?

And could you address why this may or may not be the case? Thank you.

DR. JOAN: I'm sorry, can you please repeat the question once again?

MR. SHAILER: Yes, in your testimony you object to the proposed tariffs on various grounds so we want to hear your views on a related matter, which is whether the imposition of tariffs might encourage the Government of India to address U.S. concerns with India's DST.

If you could just let us know whether or not you think this is the case.

DR. JOAN: Thank you so much for this question and I regret that I would not make any reaction from the point of alignment.

But if I understand okay, my submission is really based on the jurisprudence, which are available in the trade jurisprudence and the (indiscernible) otherwise available.

I regret that I could not make any inferences as to how the government will proceed probably in the future or something, but I hope that, okay, the friendly relations and the friendly trade between the States will be a priority.

MR. SHAILER: Thank you.

MR. AU: Thank you. I believe our next question is from CBP.

MR. AMDUR: Thank you. So this question is for another panelist, R.V. Anuradha from the Clarus Law Associates. In your testimony you focus on the basis for assessing which U.S. companies were affected by India's DST. As stated in our March 31st notice USTR looked at the amount of taxes that India is expected to collect from U.S.-based company groups. Do you have any views on this approach and are you suggesting an alternative approach?

MS. ANURADHA: So it sounded you got cut in between. Can you just repeat your question again?

MR. AMDUR: Of course. So this has to do -- in your testimony, when you focus on the basis for assessing which U.S. companies were affected by India's DST. And USTR looked at the amount of taxes that India is expected to collect from U.S.-based company groups. Do you have any views on this approach and are you suggesting an alternative approach?

MS. ANURADHA: So my question was really -- or my concern was really on what basis has that assessment been made because the methodology for identifying what is a U.S.-based company? Is it based on corporate headquarters or is it based on point of incorporation or where the investments are coming from? Those were the aspects I think would be helpful if that gets clarified for a better dialogue or an understanding of the entire process in which that conclusion has been arrived.

MR. AMDUR: Thank you.

MR. AU: Thank you. Our next is from Ms. Short.

MS. SHORT: Hello. My question is for Mr. Chablani. In your testimony you address a range of issues, but do you have any specific thoughts on the proposed trade action? For example, do you have views on whether the implementation of tariffs on these products would be effective in persuading the Indian government to revisit its DST policy?

MR. CHABLANI: Ms. Short, could you perhaps repeat the question?

MS. SHORT: Absolutely. Your testimony addresses a wide range of issues, but do you have any specific thoughts on the proposed trade action? For example, do you have views on whether the implementation of tariffs on these products would be effective in persuading the Indian government to revisit its DST policy?

MR. CHABLANI: Ms. Short, I am not sure of that. Again, I do not represent the government. And like a friend of mine in the previous panel had said that in a situation like this it's really difficult to perhaps guess what governments may do in a situation like this. So I do not have an answer to that question.

MS. SHORT: Okay. Thank you.

MR. AU: Thank you. Before concluding this panel I want to pause to see if any member of the Section 301 Committee has any remaining questions for the panel.

Hearing none, I would ask if any of the witnesses would like to address questions that we have posed to other witnesses or if they would like to make any final comments on the matters that we've discussed this morning.

(No response.)

MR. AU: Okay. Thank you. Well, with that, that concludes this panel. Thank you again for your time and testimony today. We will briefly pause while we constitute the next panel.

As a reminder, the remaining panels will be chaired by Benjamin Allen of USTR. We'll take a break, a short break. Thank you.

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

MR. ALLEN: All right. Good morning, everybody. I am Benjamin Allen from USTR. I'll be taking over as chair of these hearings for Panels 3 and 4. We are now going to proceed with testimony from our next panel, which is composed of: Rajiv Jain of the Sitapura Gems & Jewelry Industry Association; Suvankar Sen of Senco Gold Limited; Arvind Gupta of Gallant Jewelry; Colin Shah of the Gem and Jewelry Export Promotion Council, GJEPC. And I'll note this is a change from the preliminary witness list. We also have Rajeev Pandya of SEEPZ Gems & Jewelry Manufacturers Association, and Neville Tata of Renaissance Global Limited.

We will begin with Rajiv Jain. You may proceed with your testimony when you are ready. Thank you.

MR. JAIN: Yes. Good morning, everybody. I was going through the testimonies of previous chambers from India and the law schools of India. Now we come to the sector-specific, which I'll take up as gem and jewelry. And I'm representing Sitapura Gems & Jewelry Association, which comprises of more than 145 units in Jaipur and it gives employment to more than 35,000 people, and of course they're supporting colored stone industry based in Jaipur, which is the largest center. Also supports that. That's the Sitapur industry because we are making jewelry here and the colored stone is supplied from Jaipur.

So I duplicate what has been proposed, that the levy of up to 25 percent should be imposed on the gems and jewelry items because that will impact the whole supply chain. If I may elaborate, that lots of gemstones are exported from India to U.S. Lots of silver items, silver jewelry. Gold jewelry is a different thing. That is a product. But there are lots of components which are exported from India to U.S. And then they are used to make jewelry also. So that is one aspect because even U.S. is exporting a lot. It's a substantial amount of jewelry which U.S. exports to other country.

Now if I talk about jewelry, jewelry is supplied mainly -- India makes low-end jewelry and Jaipur makes silver jewelry and gold jewelry which goes to the distribution centers in U.S. And then again it's redistributed to the stores. There are lots of mom and pop stores, TV networks which are selling jewelry made in India.

So if we impose or add the duty, that will disturb the whole value chain between India and U.S. And not only Indian industry will suffer, but U.S. industry will also suffer. And again then there is a large diaspora of Indians living in U.S. which prefer to wear Indian jewelry, which is supplied by India because the design skills are there. And if the price goes up because of the duty, then even the retailers there will have to suffer.

The impact of this would be that the other countries, Asian countries would benefit, and the most beneficial country can be China because of this. So my humble request to the Panel is that please do not impose such duty because already we are going through a very troublesome time because of this pandemic.

And in the same situation, if this is done, then India and U.S. both will lose business. And we have to take care of the large skilled labor because Sitapura Gems & Jewelry, we are three zones, and they were all established just to cater mainly to U.S. companies because 50 percent, or about 50 percent of the production goes to U.S. And the whole skilled labor and the artisans or the designers, they are trained to produce the jewelry, the kind of jewelry which is used in U.S. So if this comes, both sides will lose business.

So my humble submission is that it

should be not imposed. Thank you.

MR. ALLEN: Thank you very much for your testimony.

I'd now like to invite Suvankar Sen of Senco Global Limited to present their testimony.

You may begin when you're ready.

MR. SEN: We've already had a lot of discussion in terms of the technicalities and the legalities. I would be representing from the softer aspect of it representing the Gem and Jewelry Export Promotion Council and the company Senco Limited, but these were manufacturing of gold jewelry for the past 80 years.

And what I would like to basically raise three points, and that is that jewelry manufacturing in India is a heritage. It's a skill that is passed over generations. There are people who have been working and dealing with this industry for over three, four generations. And as a responsible country, United States of America and India, we must come together to ensure that you can protect and preserve the skill and the art of the human endeavor that we have been generating over a period of time.

And also one more important thing is that in this world of mechanization the handcrafted jewelry manufacturing is a rarity, and India is excelling in handcrafted manufacturing jewelry; the skills are semi-automated, but more of handcrafted, generating millions of employment from all sections of the society. And especially with the way we are seeing COVID, we need to preserve the employment. We need to generate the human skills and efforts.

And finally, we all know India and U.S. has a very, very strong relationship. There's a huge diaspora of South Asian community members: India, Pakistan, Bangladesh, Sri Lanka, Middle East. And they are appreciating the handcrafted jewelry made in India.

So as a responsible country towards its citizens we must not impose duties so that people get dissatisfied and there is any form of unhappiness in today's time. People need to --

for the auspicious occasion, for weddings, for marriages, for so many happy occasions jewelry is a very critical part to create happiness.

So these are the three soft points that we would like to present from our company's perspective and the Gem and Jewelry Export Promotion Council. Thank you.

MR. ALLEN: Thank you very much for your testimony.

I'd now like to invite Arvind Gupta of Gallant Jewelry to present their testimony.

You may proceed when you are ready.

MR. GUPTA: Hi, everyone. I'm Arvind Gupta. I'm glad to introduce our company Gallant Jewelry. It has been in gems and jewelry business for the past 19 years. Our current annual revenue is 30 million out of which 70 percent comes from selling in the U.S.A. Mostly our jewelry is focused in colored gemstones, precious stones, semiprecious stones and diamonds. We use diamonds as an accent.

Jaipur is known for its colored

gemstones for the last 150 years or so. There are more than 200,000 direct and indirect people associated with this business. These people are only able to make U.S. dollar $200 to 225 a month. Since U.S. is the main destination of gems and jewelry product their livelihood depends on business we get from customers in U.S.

Our argument against the proposed additional tariffs: Increased duty will divert American importers to shift their business to other countries. Lot of Jaipur artisans will lose their jobs if business gets shifted from India.

It is important to consider that size and status of e-commerce companies in comparison to jewelry companies are very high. We have people who are semi-skilled and skilled and they can only work in our industry because the skill requirement is limited. Any hasty decision can take a lot of jobs and a lot of people can be unemployed. Also, being our biggest competitor, other Asian countries, especially China, will get the maximum benefit which is neither in interest of India, nor of U.S.A.

India is a low-cost manufacturing country and increased duty will make the import goods expensive for the American traders and retailers. This will ultimately make the India gems and jewelry items expensive for general U.S. public. New punitive duties on U.S. import from India during COVID times will disturb the entire supply chain for the U.S. retailers, too.

It is important to mention that -- here that even this (indiscernible) Industry Association U.S. have also opposed a move to impose additional tariffs on Indian goods in retaliation to the equalization levy taking economic harm to their business workers and consumers. And finally, it will also adversely affect long term trade relationship between U.S.A. and India.

For us the suitable solution to this problem is only possible by adopting meaningful and appropriate trade policies in international trade and through dialogue on government level. Punishing the business community both in U.S. and India by additional tariffs will not serve the purpose, but only make the things difficult. Therefore, our organization requests you to please reconsider proposed tariff. Thank you.

MR. ALLEN: Thank you very much for your testimony.

I would now like to invite Colin Shah of Gem and Jewelry Export Promotion Council to present their testimony.

You may begin when you're ready.

MR. SHAH: Thank you and good morning. I am the chairman of the Gem and Jewelry Export Promotion Council, which is the effects body for our industry from India for all gem and jewelry exports. The council represents over 7,000 members: manufacturers, traders across the country.

So firstly I would like to quickly jump into I guess the question which a lot of I guess members asked on the other side is about these -- what does our government feel? So representing very closely to the government in Delhi, Commerce and Finance Ministry, what they feel is that this issue of digital tax which is being addressed at multilateral discussions at the OECD to which both the governments of the U.S. and India have committed with the view to achieving multilateral consensus. But until the consensus is achieved, is it fair to impose these unilateral tariffs against other sectors, especially when these tariffs could clearly be opposed even to the rules of WTO? So that's the feeling of this side that when these multilateral discussions were -- are going on and at the OECD, then where was the need to do a unilateral -- I guess the status?

The adverse impact on India was it started happening with the abrupt withdrawal of the GSP benefits, which has significantly hurt our exports. So out of our 35, $45 billion of exports of the year 9 to $10 billion goes to the U.S., which is 25 percent of our total exports.

But despite the impact of GSP, when it was withdrawn, India is still the third largest exporter to the U.S. And this will only harm our relationship if these tariffs indeed go ahead.

We are deeply concerned that out of 17 out of the 40 product lines pertain to the interests of our members, which is basically gem and jewelry exports, our sector has already been significantly impacted with the abrupt withdrawal of the GSP benefits and we are now further disturbed with the threat of further action against our niche sector. Imposing these tariffs on goods covered under the tariffs subheading gems will cause severe economic harm, not only to Indian businesses and employees, but also to the American businesses with whom we have built solid relationships over the last many, many decades.

This will also cause -- create disputes between India and the U.S. I come here with the hope that U.S. does not proceed with the imposition of tariffs since my fear is that this will only unleash a tit-for-tat trade dispute between countries and which ultimately both the countries imposing the tariff, the one at the receiving end and the one -- we could both end up hurting somewhere.

This will also result -- and I'm sure the U.S. and India both -- and a lot of speakers have said it earlier also -- that India -- and the diversion will only be to China, which is our main competitor for the U.S. market. Any tariff increase -- even when the GSP benefit went away, the benefit went directly to China, and China's exports to the U.S. went up.

As of today the tariff on Indian gems and jewelry imports into U.S. is ranging from 5 to 13½ percent, whereas the tariff on imports from China into the U.S. is 10 to 21 percent. So this further increase will only damage us and will be a benefit to China.

Now besides that, and again just to repeat what a lot of speakers have said earlier, it will damage India and U.S.' long trade -- long-standing trade relations in many, many industries.

And further to that, it will impact the employment. We employ over 4 million people in India, this industry, gems and jewelry. It's one of the largest employers of non-agrarian labor in our industry. These are not people who are recruited in the IT and pharma sector. They're not engineers, not doctors. It's non-agrarian labor, not so educated, but who have hand skills which they've developed over many, many years. So this will impact that employment very severely and we're really hoping that you will take another lenient, lenient view on this.

Further to that, and again like many other speakers besides me told, we are in the midst of a pandemic and the timing could not have been worse for businesses which are already reeling under this pandemic effect. Just to give you a small tidbit, our exports were down by $1.7 billion last year. They're down to 7.8. We used to be at 10. A further tariff increase will only harm this further, won't be in the interest of

India or America, and it will only go benefit China and loss of employment in India.

Besides this and lastly but not the least, it will also impact the supply chain in U.S. with reference to finance and employment. Like we all know, the Indians and the banks in India have been very I guess progressive with financing this industry and funding of the same industry, the gems and jewelry sector in the U.S. isn't even possible except for the listed companies. So the American companies really bank on Indian finance for their retail business where the inventory turns like we know are not as high as FMCG industry. So this will have a direct impact even on American retail business which will have a further impact on the jobs there.

So just to recap, our exports are already down. There's a pandemic. So this will further impact our industry. Employment will get impacted. The benefit will only go to China. And our government strongly, strongly feels that when the multilateral discussion is happening at

OECD, why are we taking this unilateral action?

So thank you. And thank you for this opportunity to represent our case to the USTR.

MR. ALLEN: Thank you very much for your testimony.

I'd now like to invite Rajeev Pandya from SEEPZ Gems & Jewelry Manufacturers Association to present their testimony.

You may begin when you're ready.

MR. PANDYA: Can you hear me? Can you hear --

MR. ALLEN: Yes, we can hear you.

MR. PANDYA: Can you hear me? Okay.

MR. ALLEN: Yes.

MR. PANDYA: Good morning to all the members of the Section 301 Committee. I am Rajeev Pandya, the president of the SEEPZ Manufacturers Association. Our association represents 150 jewelry exporters in SEEP Zone in Mumbai. We are the largest cluster of studded jewelry manufacturers in the world. Eighty-five percent of India's exports of studded jewelry to

U.S. come from this zone. This sector directly and indirectly employs about 350,000 workers. Plus we are extremely grateful to the U.S. Government for their timely help by provided the much needed relief materials to India during this pandemic crisis.

The surge of second wave of COVID-19 in India has -- is going to cause loss of millions of jobs. Like last year, this year also our workers are -- will be forced to go back to their home villages due to lock-downs in cities like Mumbai, Surat and Jaipur. Compared to U.S. there was minimal financial support from the Indian government due to the scarcity of funds. In these challenging times we request USTR not to precipitate any action which would increase the hardship of these workers.

This is -- here is how it will impact the Indian economy: After the withdrawal of -- as our previous speaker, Mr. Shah, had pointed out, that after the withdrawal of our -- just six percent GSP benefits in the year 2007, India's market share in U.S. declined from 28 percent in 2007 to 22 percent in 2013. That was almost a 40 percent drop in the sale. And for the corresponding period the market share of China had increased from 18 percent to 25 percent. This -- we have given the data in the written submission.

Margins in the jewelry are (indiscernible) in imposition of duty up to 25 percent will make our business totally unviable in items listed in the proposal. (indiscernible) Our zone has been developed focusing the needs of the U.S. market, especially in the small diamond and precious stone jewelry segment where U.S. manufacturers are not involved.

About 80 percent of the cost of jewelry is gold and stones. I would say it is from 70 to 90 percent depending on the type of jewelry, but as an average I would say 80 percent. And the jewelry making cost is about 20 percent, which is the net retention in India. Hence, a 25 percent duty will increase the nonmaterial base cost from 20 to 45, which is an increase of more than 100 percent.

Now impact on U.S. economy and jewelry industry will also be very (indiscernible). This will dramatically reduce margins of wholesale importers of Indian jewelry. Further, Indian jewelry companies, are financing U.S. jewelry retail business by giving long credit and memo (phonetic) facilities to large retailers.

There will also be negative repercussions on the business of U.S.-based supplies, machines, tools and consumables in imports like gold as well as supplies of logistics, services. U.S. jewelry manufacturers have focused on production of higher-end jewelry. Therefore, imposition of duty on Indian jewelry will not create or bring back jobs in the U.S., but reduce job opportunities.

Now from USTR perspective it can be seen that the proposed action will hurt both Indian and U.S. economy. There is no competitive overlap between U.S. and Indian jewelry manufacturers. We are also fundamentally concerned that Indian gems and jewelry sector is being unfairly targeted even though the United States does not have any grievance against the business practices or legal framework in our sector.

Finally, any terms at play adverse to India will benefit China as was told by other speakers in the panel as India competes most directly in the U.S. market with China, which along with Hong Kong is the next source of U.S. imports of jewelry. None of the other jewelry manufacturing countries like Thailand, Turkey and Indonesia have the requisite skill or capacity to compete with China.

Therefore, we respectfully submit before the Section 301 Committee USTR reconsider our request for removal of the 17 jewelry articles from the proposal.

Thank you for giving me the opportunity to present my views. Thank you.

MR. ALLEN: Thank you very much for

your testimony.

Lastly I would like to invite Neville Tata of Renaissance Global Limited to present their testimony.

You may begin when you're ready.

MR. TATA: Yes, good evening and good morning, everyone. I'm Neville Tata representing Renaissance Global Limited from India. We are a jewelry manufacturing company for over 25 years now.

Most of my -- most of the point have been covered by all my colleagues who have spoken before me. Would like to explain to you all that imposing of the DST 301 of 25 percent, up to 25 percent duty on jewelry items and remaining items of whatever categories we have covered: basmati rice, furniture and marine, would only be detrimental for both the countries because we have to understand that jewelry has started exporting out of India from the late 1980s and the early 1990s when the boom took place when the markets opened up in U.S.A., and it has taken us almost 30 years to establish what India is capable of supplying to the U.S. market and the understanding of the U.S. market.

Also, for our customers and retailers in the U.S. I speak from both the sides because it takes a lot of effort and years of exuberance, hard work and pricing to establish and categorize that what India is good in supplying to the U.S. market and understanding the consumer needs.

By imposing these duties, which are as high as 25 percent, would only be detrimental to both the countries because we will not be able to compete with lower DST duties which are already in place with China, Hong Kong or Bangkok, Thailand, and we will be unviable in our business. Most of our business will be transferred to all these other countries. Nevertheless, too, imagine that what would happen to our industry which is already established in India. We will have lot of industries which will shut shop. Plus there will be loss of jobs.

And obviously the whole world crisis

right now is the COVID-19 pandemic, which everybody is trying to battle with. And imposing such large duties would definitely not even give us a thought to touch (phonetic) shop in India because when you're battling a crisis like a virus and we are asking for aid and help from other countries, especially from the U.S., when you're now considering lot of duty, cancellations on lot of medical and help line support, imposing such kind of duties on us would obviously mean that the business would come to absolute halt.

And we only -- last but not the least, we only expect that the USTR would take our plea forward and defer this for a while or give it a rethought that if it is a 25 percent duty would be implied to jewelry sector and all the other sectors that have been mentioned in the HTS Code would only mean that there would be a loss of relationship and partnership which we have built over the last 30-40 years with the U.S.A. would come to absolute halt.

It would not be -- we would not be

able to reinvent the wheel again because raw materials are getting expensive and there would be no other alternative left for us.

I would end my plea by saying this, that please reconsider what a 25 percent DST duty would mean to India. Thank you very much.

MR. ALLEN: Thank you for your testimony.

We will now proceed with questions from the Section 301 Committee Panel. For our first question we will go to Sarah Short from USTR.

MS. SHORT: Thank you. My question is for Mr. Shah from the Gem & Jewelry Export Promotion Council.

Could you please elaborate on how the withdrawal of GSP benefits has impacted Indian jewelers? For instance, have you U.S. importers shifted demand elsewhere in response and how do you imagine this might compare to the effect of the proposed action?

MR. SHAH: Okay. So I'll need a few

minutes to I guess give you a detailed reply, but I mean just to give you an example, when this benefit used to be there -- yes, I'll maybe reverse the clock a little bit.

Like you know, 14 out of 15 diamonds in the world are cut and polished in India. I mean it's like we are probably the diamond factory to the entire world. This was an industry which used to be in Israel, Belgium, and then over the last 20-30 years has moved to India.

Now when we had this GSP benefit a lot of American manufacturers and retailers had started shifting their entire production from other countries to India. Because of the six percent duty, and especially in jewelry, which is say under the value of $500 where the duty component is $30 for every $500 unit price, that jewelry naturally started getting manufactured in India. The minute the GSP benefit went away a lot of products which were say the higher average unit price, they either went to China or Mexico.

So they were the beneficiaries because then that business started moving out of India.

Now what happened is that while we were growing nicely and from a level of around $2-3 billion the Indian industry grew to $10 billion when the GSP benefit was there. And now progressively what we've seen in the last six years or seven years is that in dollar terms actually our imports into the U.S. has been dropping progressively every year. So we've not had any growth for the last six, seven years and actually we've been dropping every year.

So this will further only accelerate that drop and the beneficiaries will be China and Mexico where a lot of production has moved. It hasn't moved back domestically to the U.S. because it still is very expensive for jewelry to be manufactured in the U.S., but the beneficiaries has been China, Thailand, and to an extent even Mexico. So I would say three countries over there.

So I hope I've been able to answer

your question.

MS. SHORT: Thank you.

MR. ALLEN: Our next question will come from Labor.

MS. LAURY: Okay. Yes, my question is also for Mr. Shah.

In your written testimony you noted that there are significant employment benefits from GJEPC's network of relationships in the United States. Could you provide a bit more detail on the employment benefits in the U.S. of your network?

MR. SHAH: See, all of our 7,000 members -- believe it or not, a big chunk of them -- and I don't have the exact numbers because they're not privy to the data on the American side, but I can very easily say that at least 500 of our members have offices in the U.S., right? They have distribution and sales offices in the U.S. where they employ I would say, right, from as low as two people to as high as -- I know somebody who has 200 people in the U.S. So that's the amount of jobs between New York, L.A., Dallas, Chicago. These are distribution centers. They are merchandising and design teams, marketing teams.

So between our members there is like a huge amount of employment. Good jobs, mind you. Because the low-paying jobs, the labor-intensive jobs are happening in India, right? So these are the little higher-salary jobs: sales people, merchandisers, distribution, SEO, SEM, marketing. So it's that kind of jobs which our member companies have in the U.S. through their subsidiaries, sales offices, joint ventures, partnerships. Somebody who is working very closely with Amazon, somebody who is working very closely with Macy's. So it's a variety of things. And obviously there will be an impact even on that end when these tariffs come into being.

So I guess that's what I meant when I said that there's a huge impact even on the jobs which the Indians create even in the American economy through this industry.

MS. LAURY: Thank you.

MR. ALLEN: All right. For our next question we will go to Treasury.

MR. YAM: Hello. My question is for Mr. Rajiv Jain of the Sitapura Gems & Jewelry Industry Association.

You note in your testimony that the proposed actions will impact the supply chain of gems and jewelry between India and the United States and negatively impact the whole supply chain including exports from the United States to other countries. Could you elaborate further your basis for predicting the negative supply chain effects or provide additional evidence of supply chain impacts? Thank you.

MR. ALLEN: Mr. Jain, you're on mute. You'll need to un-mute yourself.

MR. JAIN: Sorry. Yes, so why I wrote this was that we are not even exporting jewelry from India; we are also exporting components which are again converted into jewelry (indiscernible) because we are making low-end jewelry in India.

But the high-end jewelry which is viable to produce in U.S. is made in U.S., and we supply the components like colored gemstones, the high-end quality of colored gemstones, and the components: say silver beads, silver balls, chains and other items. And they're all going and they're assembled there. So the assembly line is there. And this is how the employment is also generated there and they re-export from U.S. to other country. So that is also substantial. So when this happens the prices, the cost of their production will also go up.

That was my view that I wrote this. Am I able to answer you?

MR. YAM: Yes, thank you for your answer.

MR. ALLEN: For our next question we will go to CBP.

MR. AMDUR: Thank you. I have a question for Suvankar Sen.

You mention in your testimony that retailers might be forced to look at other ways of procuring products making compliance a risk. Can you elaborate regarding the ways that shifting the source of supply might entail compliance risks?

MR. SEN: Sir, basically the fear -- it is more of an apprehension that the high duty, if it is imposed on the product, then instead of the jewelry that might be coming from India, the retailers might look at opportunities of getting imported from other countries. But this is just to surmise it's a risk. We do not want to specify it and think about it, but it is always a possibility. So we must take care that unnecessary duty will be disincentive for the retailers to take it from India directly. So that's what my thought process is.

MR. AMDUR: Thank you.

MR. ALLEN: Great. Our next question will come from Commerce.

MR. ABBYAD: Thank you. My question

is also for Mr. Sen from Senco Gold.

In your testimony you argue that because of the proposed tariffs of this investigation U.S. retailers and consumers will not be receiving products at competitive prices and the price of products for consumers shall increase compared to other parts of the world. Do you have a view on whether the Indian manufacturers might absorb some of this increased tariff cost? Thank you.

MR. SEN: Thank you, sir. Very honestly speaking, as already specified by my colleagues, the margins for the jewelry that we sell is very, very minimal. Capital is expensive. So it will not be very possible for the retailers and manufacturers of India to absorb any kind of cost. It will make the business more unfeasible. So it is not a possibility at all. Thank you very much.

MR. ABBYAD: Thank you for your response.

And then I have another question.

This is one is for Mr. Tata from Renaissance Global.

Thank you for your testimony as well. In your written comments you state that the impact of the proposed trade action will make it difficult to compete with suppliers in other countries. Can you please explain why you believe it is important from a U.S. perspective to be concerned that sourcing of these products might shift to other countries? Thank you.

MR. TATA: For the same reason, like I said, that it takes a lot of time and effort and relationship with the customer in the U.S. or a retailer in the U.S. to build a competent product to be sold to the U.S. market. And with the implication of these high tariff duties which will kick in, it will also make our customers, retailers source from somewhere else, which will delay the whole process and maybe they might not be able to find a solution.

Because India, the kind of raw material: diamonds, color stones that we supply

-- and as my colleague Colin Shah has also mentioned that out of 15, 14 diamonds have been cut and polished in India -- we know how to low price those products because we are into mass production manufacturing out of India for middle to low-end jewelry, which our FOB is typically $50 to $70. And if you impose a 25 percent duty on that, we will be unviable in business. And neither will your end consumer be able to pay for that product that we supply. So that's the reason why we mentioned that comment.

MR. ABBYAD: Okay. Thank you for your response.

MR. ALLEN: Our next question will come from State.

MS. NOLAN: Hi. My question is for Mr. Gupta with Gallant Jewelry.

Thank you, Mr. Gupta, for your testimony. Can you elaborate please on your company's supply chain structure? Does Gallant Jewelry have U.S.-based manufacturing and service providers or do you --

MR. GUPTA: Oh --

MS. NOLAN: Oh, please.

MR. GUPTA: No, you go ahead, please. You go ahead.

MS. NOLAN: It was a follow-up. I'm wondering -- or are -- do you go to the United States to export the final jewelry products made in India?

MR. GUPTA: Ma'am, like I said we started our business 19 years back, and mostly we sell our jewelry to TV customers, like Home Shopping, QVC and all that. And lately what we are facing, all these customers, the way they are buying, their price points are very tough. So if any duty increase will eventually make them to purchase from us and we will be eventually unviable for them.

Like I said, we have started our business 19 years back. We have 500 people in our company. If duties will increase, eventually they have -- they will not buy from us and our job, our people will be out from that company and a lot of jobs will be -- will go, you know, jobless. And for 19 years, like we have wholesalers also in America; we have retailers also in America, but they don't want to increase their price points. Duties -- increased duties will eventually affect our business a lot. A lot. I think I answered your question.

MS. NOLAN: You have indeed. Thank you.

MR. GUPTA: Thank you.

MR. ALLEN: Our next question will come from USDA.

MS. KARIMIHA: Hello. My question is for Mr. Pandya.

Thank you, Mr. Pandya, for your testimony. Can you provide some more information regarding the general structure and supply chain regarding your association's membership? You note in your written testimony that most of your members exports; 85 percent of India's exports of diamond, studded, precious, metal jewelry, to the U.S. originate from India's zone in Mumbai. Do most of your association members have U.S.-based manufacturing or service providers or are most of your sales of membership to the U.S. through exports of final products made in India? Thank you.

MR. PANDYA: What was the question? I'm sorry, I didn't get the question.

So you want to know how we get the figures? We can come back to you with my original submission, how we had this 85 percent, how we achieve.

Basically the SEEPZ -- SEEP Zone, all our members are -- most of our members are -- they are geared to supplying to the U.S. market. They have developed the skill. The workers have been developing the skill. The designers are catering to the U.S. market. So they are totally geared to serve the U.S. market. We are not selling so much to the other European markets and the other global markets as much as U.S.

So, and the figures can be sent to you by written submission. And you see the total

U.S. export from -- I mean export from India to U.S. would be something like about 1 -- I'll have to -- I think I would have the total figure of U.S. import from India in 2013, $1,200 million. Our share was something like 80 percent. So I can get back to you with the exact figures. And this is how -- and we will continue to grow in the U.S. market because we are specializing that. Our skill and our specialties is focused on the U.S. market. Thank you.

MR. ALLEN: All right. Thank you for that answer. I have one final question, and this question is for Mr. Shah and Mr. Pandya.

So to your knowledge have any of your members reached out to the government of India to request that India address U.S. concerns with the DST and have you considered making such a suggestion to your members?

Let's have Mr. Shah please begin with his response first, and then afterwards, Mr. Pandya, you can give us your response.

MR. SHAH: No, no. We have been in

constant touch I would say since the GSP benefit has gone away with our government. And what they tell us is that it's part of every I guess discussion, meeting, bilateral trade talks which happen between the two commerce ministries, at every possible forum. But somehow it's not being reinstated.

We are hopeful and it seems from my last interaction with the ministry that there's another round of talks happening at some point this year, maybe in September or October. And it's going to be back on the table even at that time. So I mean we continue to try.

And our government does realize the huge potential this has both for I guess the American consumer interest, for India's, I guess, soft part of the U.S., and even for the Indian economy because it's an industry which has been like our IT industry nurtured over the last three, four decades. Employs a lot of -- millions of people in the country and has huge potential to be actual world class. So I mean I guess our government is taking it very seriously and is very hopeful that at some point in their talks with the U.S. it will happen.

So in answer to your question, yes, our members are in touch with the government and we as the effects body do represent their interests from time to time. Very regularly, actually.

Rajeev, you?

MR. PANDYA: Yes. We understand the concern of the United States that is the taxation on the retail companies. It should be resolved by arriving at a consensus through mutual negotiation. This is what -- recently we had two separate meetings with -- our consulate had -- has invited the Department of Commerce, Director of the Commerce Ministry, and we requested them to speed up the process of negotiation, which should be done amicably and -- and because our concern should also be taken into account by the ministry. Thank you.

MR. ALLEN: All right. Thank you.

Thank you very much for your responses. Appreciate them.

Before concluding this panel we'll pause to see if any member of the Section 301 Committee has any further questions.

Okay. Hearing none, I would like to ask if any of the witnesses would like to address questions that were posed to other witnesses or make a final comment on any of the matters we've discussed this morning.

(No response.)

MR. ALLEN: All right. Very well. Oh, do we have a question? I'm sorry.

(No response.)

MR. ALLEN: Okay. No questions.

All right. That concludes this panel. Thank you for your time today. We will now take a brief pause while we constitute the fourth and final panel. Thank you.

(Whereupon, the above-entitled matter went off the record at 12:11 p.m. and resumed at 12:21 p.m.)

MR. ALLEN: Okay, good afternoon everybody. We are now ready to proceed with our final panel, which is composed of Sivakumar Kunapuli of the Seafood Exporters Association of India, John Williams of the Southern Shrimp Alliance, and David Veal of the American Shrimp Processors Association. We will begin with Sivakumar Kunapuli. You may proceed with your testimony when you are ready.

MR. KUNAPULI: Can you hear me, please?

MR. ALLEN: Yes, we can hear you.

We can hear you. You may proceed.

MR. KUNAPULI: Can you hear me now?

MR. ALLEN: Yes, we can hear you. Can you hear us?

(Simultaneous speaking.)

MR. KUNAPULI: I can't hear -- can I go ahead?

MR. ALLEN: Yes.

MR. KUNAPULI: Thank you. Seafood Exporters Association of India, thanks USTR and Section 301 Committee for giving this opportunity to present its testimony. I am Sivakumar Kunapuli, adviser to SEAI, a trade association, and presenting the entire Indian seafood industry.

We believe that the USTR's present tariff action on certain merchandise from India is not justified at this stage. Indian and the U.S. economies are recovering from the pandemic. And I assure you, larger freight and economic priorities than DST. Therefore, all efforts should be directed to such priorities and the DST should be resolved through bilateral negotiations and other resolution processes at their disposal.

If USTR recommends that it is appropriate to continue with the present action, then we oppose proposed tariffs on any shrimp products because such tariffs will not help to obtain elimination of DST. And on the other hand, they cause disproportionate hardship to U.S. businesses and consumers. As I generally noted, all shrimp products exported from India account for less than two percent of India's merchandise exports, and less than 1.25 percent of aggregated merchandise and services exports. In value terms, India has international exports rank around 15, merchandise exports, and farther down in combined merchandise and service exports. The core concern, which is the main source of shrimp, accounts for a relatively smaller share of employment in India. Shrimp is of course entirely unrelated to DS, which is the cause of the present action.

There's -- the economic relevance of shrimp is not, relatively speaking, significant and certainly not pursuable from the point of view to obtain elimination of DST. If however USTR's own assessment in this regard is to the contrary, then we request USTR for an opportunity to study their assessment and comment on it. As a general note that tariffs on certain products will hurt U.S. businesses and consumers were entirely unrelated to DST. Shrimp is an important source of protein and it is widely consumed across all U.S. consumer segments.

Products under Chapter 3, which is the subject of the proposed tariffs, are not meant for human consumption. Shrimp consumption in the U.S. is increasing steadily over the years, each year about 4.60 pounds per capita in 2018. The tariffs on any shrimp product will adversely affect the consumer prices that will be felt across all consumer segments in the U.S.

The U.S. imports about 85 percent of shrimp it consumes because the domestic sources of shrimp are limited and have no prospect of increase in output. The shrimp imports have very much a share of customs duty, which signifies its importance with the U.S. consumers. And reaches the U.S. consumers in retail sectors, passing through a network of freezers, distributors and transporters. Any dislocation or disruption in shrimp trade caused the tariffs who have consequent disruptive effect. This would cause disproportionate harm to U.S. small and medium businesses and consumers.

In light of what was stated previously

-- the proposed tariffs on three shrimp products in the name of remedying an entirely unrelated DST is unreasonable and arbitrary. That's an action that disproportionately affects three shrimp products from imports of identical products from other countries, or potentially violating the United States commitment to the USTR. As a matter of fact, the proposed tariffs on any shrimp products will -- in the face of evidence, if it is an ineffective measure to obtain the elimination of DST. And retaliatory action that goes against the governments all our of promoting free and fair trade. Of course, as previously stated, it hurts U.S. consumers and small businesses. For these reasons, we urge USTR to exclude all shrimp products from the scope of its proposed tariffs if at all USTR determines that it is appropriate to impose the tariffs. I am open for any questions. Thank you.

MR. ALLEN: Thank you for your testimony. I would now like to invite John

Williams of the Southern Shrimp Alliance to present their testimony. You may begin when you're ready.

MR. WILLIAMS: Good afternoon. Can you hear me okay?

MR. ALLEN: Yes, we can hear you.

MR. WILLIAMS: Great, okay. Good afternoon to the Committee. My name is John Williams. I am the Executive Director of the Southern Shrimp Alliance. The Southern Shrimp Alliance was formed at 2002 to address unfairly traded shrimp imports. We organized as an industry and we filed petitions that led to antidumping duties on frozen warm-water shrimp from six different countries, including India.

The humanitarian crisis taking place in India is of enormous scale. I am not here today to pile onto the problems confronting that country and its people. Everyone in my industry hopes that India is able to gain control of the pandemic quickly. I do not intend to compare what is happening over there because of this horrible virus with the impact that Indian shrimp imports have had on our shrimp industry. But I do not want to -- I do want to explain why, if the USTR decides to take action under Section 301 to impose additional tariffs, these duties should be imposed on imports of shrimp from India.

For the last decade, the shrimp industry has been directly confronted by India's unfair trade practices -- massive subsidies, citations for rampant use of antibiotics in shrimp aquaculture, and easy access to a labor force vulnerable to forced labor practices that have led to Indian shrimp dominating the United States market. Today, roughly two out of every five pounds of shrimp imported into the United States is of Indian origin. The rapid growth in Indian shrimp imports has coincided with Indian merchandise export from India's scheme. This export subsidy program provided Indian exporters with subsidies where there was $7 billion annually and led to the USTR successfully challenging this program at the WTO.

Now that India's shrimp exporters are aggressively advocating for benefits under a new export subsidy program, the remission of duties and taxes on exported products scheme. In addition to being forced -- being forced to compete in the market place with subsidized Indian shrimp, production costs in India are artificially low because of the rampant use of banned antibiotics in their aquaculture. While the other large shrimp importing marketplaces such as the E.U. and Japan have cracked down on imports of contaminated Indian shrimp, there are no equivalent measures in the United States. As a result, the Indian shrimp industry has redirected exports to the U.S. market. Moreover, production costs in India are artificially low because of the proliferation of contract peeling in that country's shrimp supply chain, despite the fact that the use of unregulated contract peeling in Thailand was found to be the nexus of forced labor in that shrimp supply chain. Shrimp importers in the United States simply shifted their product purchases to India, continuing to take advantage of the massive, unregulated, contract peeling sector.

With this production model, India now supplies well over half of all the peeled shrimp imported into the United States. Because of this experience, the Southern Shrimp Alliance strongly supports the USTR's proposal to impose additional tariffs on Indian shrimp products. However, instead of placing a 25 percent tariff on shrimp imported under 3-H-T-S subheading, we are requesting that in the Section 301 action, place a 2 percent tariffs on the Indian imports under all seven shrimp-specific H-2-S subheadings. An additional 2 percent tariff on all the Indian shrimp imports would have resulted in the assessment of another $47.1 million in duties based on 2020 import values.

I believe our proposal is more than effective proposed to a response -- in India's response to digital service tax. First, the 2 percent additional duty is on par with the 2 percent rate of the Indian Digital Service Tax that this Section 301 action is addressing.

Second, applying additional duties to all shrimp imports would make the 301 actions more enforceable by eliminating opportunities for misclassification. Third, the two percent duty proposed would have a minimal impact on American consumers as domestic shrimp and -- as well as shrimp imports from other countries are readily available. Both at the same time -- a two percent duty would impact a large and politically powerful segment of India's exporting industry, a segment that is currently openly advocated for the return of a large export subsidy program.

The Southern Shrimp Alliance is grateful that the proposed Section 301 action covers shrimp imports. However, we believe that the proposed Section 301 action would be more effective if it took the form of 2 percent of all imports of Indian shrimp. And again, on behalf of members of the Southern Shrimp Alliance, I thank the Committee for its time and attention today. Thank you.

MR. ALLEN: Thank you for your testimony. I would now like to invite David Veal of the American Shrimp Processors Association to present their testimony. Mr. Veal, you may begin when you're ready.

MR. VEAL: Good morning, or afternoon I guess -- depending on where we might be now. I am David Veal, Executive Director of the American Shrimp Processors Association who is an organization created in 1964 to foster the interest of the domestic wild-caught, warm-water shrimp processing industry. Members of ASPA range from Texas to North Carolina.

I appreciate the comments by John Williams, a longtime friend, and we support the -- the proposals just made by John on behalf of the Southern Shrimp Alliance. We both agree that in order to accomplish its goals regarding India's digital service tax, USTR should apply 301 duties to warm-water shrimp from India.

India is one of the world's largest

producers of warm-water shrimp. It also happens to be located on the Indian Ocean, not in an area conducive to producing any significant quantities of cold-water shrimp. As detailed in the comments we've submitted in addition to my comments here, India is highly supportive of warm-water shrimp farming, especially where shrimp are farmed for export. India currently is many times over the leading source warmwater shrimp imports covered by four U.S. antidumping orders on warmwater shrimp; orders that are intended to provide relief to the U.S. shrimp industry from unfairly traded, mostly farmed shrimp.

But even with those orders in place over the past years, the volume of warmwater shrimp coming from India has exploded, driven in large part by government support -- support and subsidies. Warmwater shrimp is India's single largest export product, and most of the warmwater shrimp that India exports is sent to the United States. Not only are coldwater shrimp not found in Indian water, but they're also not farmed in India. Only warmwater species of shrimp are farmed. So it seems unlikely that any volume of allegedly coldwater shrimp entering the U.S. from India is likely, at least in part, warmwater shrimp that has been mis-declared to avoid current antidumping duties. Applying the 25 percent, 301 duty to these categories of imports would only cause those shipments to immediately switch back to warmwater shrimp categories to avoid the higher duty.

Further, for any coldwater shrimp that is caught in a distant coldwater fishery and brought to India to be processed and then exported to the United States, exporting Indian processors would likely switch to abundant supplies of farmed warmwater shrimp in India to avoid a 25 percent duty.

In short, applying a 301 duty to the proposed coldwater shrimp category would only result in a rapid avoidance of that duty with minimal effort by exporters, and little impact on the government of India. By contrast, as ASPA and the Southern Shrimp Alliance are proposing, applying 301 duties to imports of warmwater shrimp instead would get the immediate attention of the government of India. As I mentioned, warmwater shrimp are India's single largest export product and the U.S. is the single largest market for that product.

Since it is a product that India has shown a great deal of interest in supporting, particularly for export to the United States, a duty applied to these products is likely to get the immediate attention of the Indian government. Due to the huge volume of warmwater shrimp coming from India, applying a 25 percent duty on imports of warmwater shrimp would far overshoot the $55 million target USTR has set.

That is why we propose, like SSA, a 2-percent 301 duty on key warmwater shrimp HTS categories already covered by antidumping duty orders. That two percent is the same rate the government of India applies through its DST --

applying this rate is an -- to an important Indian export will send a powerful message about the effects that such measures can have. Additionally, applying the 301 duty to these HTS categories would have the added advantage of benefitting a U.S. industry that is suffering from ongoing industry -- or from unfairly traded products -- shrimp products from India. Thank you for your time today and I hope you'll give this proposal serious consideration. Thanks.

MR. ALLEN: Thank you very much for your testimony. We will now proceed with questions from the Section 301 Committee. And for our first question, we'll go to Commerce.

MR. ABBYAD: Thank you. My question is for Mr. Kunapuli from the Seafood Export Association of India. You mentioned in your testimony that the U.S. will be first to pass on any tariffs on shrimp to consumers and that U.S. employment opportunities and the supply chain would be disrupted. Is your assumption that consumer demand in the U.S. is not elastic enough to shift to other sources of shrimp available worldwide? Is the assumption that the shrimp supplies from India would not be able to absorb some of the costs from additional tariffs? And if so, why? Thank you very much.

MR. KUNAPULI: The global future is highly dynamic. Even in the normal time -- the many constellations made with prices fluctuated by an extra ten percent in a year -- in a normal year. So in a scenario like that when there is a tariff that is immediately imposed, possibly what it will do is cause a disruption immediately.

Now there's a precedent to this where that -- where ten years ago Thailand used to account for about 30 percent of the shrimp supplied to the U.S. Well, Thailand was hit by a devastating shrimp disease. And the supply went down. But at the same time, some supplies from India have increased. But the consequence of this disruption is that prices went up. (indiscernible) more than a year, 30 percent.

So where does the price increase go?

We do not know. Because like I said, it is so dynamic. You know, you could look at Thai precedent which is -- what happened about 10 years ago. The U.S. consumer paid the price. But what is the consequence of it? Indian producer absorb some part of anything benefit caused to work at -- we do not know. The market is so dynamic that when the price goes up, somebody benefits. When the price goes down, somebody else loses. That again, the study of who -- who is underselling on anything.

Given these factors, we are not aware of what the cost will be. But generally what will happen is, given, like I said -- the only fact that even in the normal -- in a normal year the prices fluctuate anywhere between six to ten percent. And of course, supply demand dynamics. The immediate -- person affected by any -- any reason that upsets the trade, it needs to be the U.S. consumer. It is the U.S. consumer.

How much of an effect goes down the chain to U.S. consumers -- you mentioned farmers

-- we are not going to be able to assess that.

MR. ABBYAD: Okay, thank you for your response.

MR. ALLEN: For our next question we will go to USDA.

MS. KARIMIHA: My question is for Mr. Kunapuli. You mentioned in your written testimony that two-thirds of shrimp from India is exported globally. And you argued that any adverse impacts from these proposed trade actions could be mitigated by shifting exports to other markets. Could you please explain the basis for this view? For example, is it your view that various unsatisfied demand in other export markets? Thank you.

MR. KUNAPULI: The purpose of mentioning about India's share of the U.S. market and share of other exports is this -- the only basis on which USTR has asked for comments is whether imposing duties on certain products will help in eliminating the DST. From that perceptive we were trying to analyze whether these tariffs, if they are imposed on shrimp, can the government of India eliminate the duties. As I explained in my -- well, I mean, my testimony now, we believe it does not compel the government of India to eliminate DST.

Now what is the reason? One reason, like I said, okay we are not a very powerful contributor to the economic growth. The other reason is, they come to a justification like this. Well, Indian shrimp industry exports 34, 35 percent to the U.S. in two years, 65 percent to other markets. So they can shift the 35 percent to other markets and mitigate the impact of these duties. The purpose for which I mentioned that point is to the reinforce the view that imposing these tariffs on shrimp will not serve the purpose of compelling the Indian government to withdraw the DST. I hope that answers your question.

MS. KARIMIHA: Yes, thank you.

MR. ALLEN: For our next question we'll go to Labor.

MS. LAURY: Hello, thank you. My question is for Mr. Williams. Thank you for your testimony, Mr. Williams. In it you advocate for a 2 percent tariff on all shrimps that take HTS subheadings, in part because you argue it will have a minimal impact on U.S. consumers. However, you also state that the domestic shrimp, and shrimp from other countries are readily available. If this was the case, why would the proposed trade action also have a minimal impact on U.S. consumers. Why or why not?

MR. ALLEN: Mr. Williams, I think you may need to unmute. We can't hear you at this moment.

MR. WILLIAMS: How about now?

MR. ALLEN: Yes, we can hear you now.

MR. WILLIAMS: Okay, I'm sorry. I tell you, in 2020 the force of Indian shrimp declined a little bit. And immediately Indonesia, Ecuador, and Vietnam were there to take their place. And there is an increase to -- we don't see a problem with anything with a decline in certain amount of shrimp based on tariffs or anything else from India. Someone would immediately take their place for domestic industry -- and international industry there also to make up for the loss.

MS. LAURY: Thank you.

MR. ALLEN: For our next question we will go to State.

MS. NOLAN: Hello, yes, my question is also for Mr. Williams of the Southern Shrimp Alliance. Thank you for your testimony, Mr. Williams. In your testimony you state that the 2 percent -- a 2 percent duty on all shrimp products of India would impact a large and politically powerful segment of India's exporting industry. Do you expect that a 25 percent tariff on certain shrimp products of India outlined in USTR's proposed action would have a similar or greater effect? Why or why not?

MR. WILLIAMS: I think anything that does not -- does not -- does not include all shrimp -- HT U.S. codes -- that there will be a certain amount of misclassification to avoid paying duties on one -- one code as opposed to another. And that is something that we see pretty regular, sometimes, and we just don't -- we don't agree with it for sure. The -- whether it be 25 percent -- that would -- I think that would include more misclassification. Two percent on all codes, that would -- that would make everyone have the same type of duty on the Section 301 and misclassification would be very much harder because CBP would have to learn a different species between cold water and warm water, and the misclassification may come in the form of putting something -- even the shrimp -- under a different code, such as crab, lobster -- anything. And you could just look at that -- that particular issue and see that it's been labeled -- misclassified. So -- did that make sense?

MS. NOLAN: Yes, thank you for your response.

MR. ALLEN: Next we'll go to CBP.

MR. AMDUR: Good afternoon. Thank you, Mr. Veal, for your testimony. I really appreciate it. Just have a follow-up question. You talked about, like a -- again -- also talked about a proposal for a 2 percent duty on -- on various HTS classifications of shrimp from India. Can you talk about how that would impact the U.S. market? You've talked about of course the -- the impact on the domestic -- domestic producers of shrimp. Can you talk about the impact on consumers and importers?

MR. VEAL: I don't believe -- even at 25 percent tariff -- assuming that -- that all of that product continued to come to the U.S., would make much difference on the categories that are there now. Coldwater shrimp generally go into -- into a slightly different market. They're -- they're a -- typically a much smaller shrimp than we see in warmwater shrimp. And the individual consumer will likely never see that package of shrimp that is -- that is sent into the U.S.

The 2 percent on warmwater shrimp --

the price disparity between shrimp from India and shrimp from the rest of the world, including domestic shrimp, is so significant that -- that you just simply won't notice it. Some -- some products from India -- when I look at individual competitor's prices featuring Indian shrimp are as much as $3 a pound -- $3.50 a pound, depending on the size of the shrimp. Makes it very difficult for us to compete with -- with anybody.

And in fact when you talk to producers in other countries, they have that same problem. And it's simply a matter of -- of not the product, it's the matter of subsidies going into the Indian marketplace that distorts the Indian marketplace and the cost of the -- the value of the product of the Indian marketplace. They're -- they're more than capable of absorbing a 2 percent, or even larger, duty if -- if they wanted to make that choice.

MR. AMDUR: Thank you.

MR. ALLEN: Next we will go to Treasury.

MR. YAM: Hello, my question is also for Mr. David Veal of the American Shrimp Processors Association. And it's a related question about the similar proposal to Mr. Williams that you mentioned in your testimony about broadening the shrimp-specific HTS subheadings subject to the proposed action to include warmwater shrimp. Do you share Mr. Williams's sentiment that shrimp from other sources, other than India, are readily available in the United States? Thank you.

MR. VEAL: Certainly. And in fact we often see countries replace each other. It hasn't been all that many years ago that India was a relatively small player, as opposed to the 40 percent of the product they provide now. And when I visited with other countries, one of them -- a close -- in fact, a very close neighbor to India -- two years ago, one of the things they were concerned about is how we could all compete with India. And -- and those will be -- they have since had their production reduced and shipped to other markets. So they will -- they will readily come back here. This is the market of choice for every producer of shrimp.

MR. ALLEN: Next we'll have Sarah Short from USTR.

MS. SHORT: Thank you. My question goes to Mr. Kunapuli with the Seafood Exporter Association of India. To your knowledge have any of your members reached out to the government of India to request that India address U.S. concerns with India's DST? And have you considered making such a suggestion to your members?

MR. ALLEN: Mr. Kunapuli, you're on mute.

MR. KUNAPULI: Yes --

(Simultaneous speaking.)

MR. ALLEN: We can hear you now.

MR. KUNAPULI: Okay. To the best of my knowledge, we have not asked the government of India -- we have not approached the Government of India to reexamine the DST. As I explained in my testimony a short while ago, we are not an economic heavyweight in India. And with possibility of government really paying attention to our plea is not significant. Maybe in the future we may do that. I am not sure. But as of now we have not done that, for the reasons I explained.

MR. ALLEN: Thank you very much for that response. Before concluding this panel, I will pause to see if any of the members of the Section 301 Committee have any further questions?

MR. AMDUR: I have one additional question.

MR. ALLEN: Go ahead.

MR. AMDUR: So again, this is a question for Mr. Kunapuli. Can you elaborate on the impact of the proposed tariff on the -- the coldwater shrimp industry in India, figuring what we've heard in other testimony that some of this coldwater shrimp, you know, actually might not be even -- that's imported to the United States might not even be coldwater shrimp, might be warmwater shrimp? And also the ability for the industry in India to shift exports to warmwater shrimp?

MR. KUNAPULI: We are not very familiar with coldwater shrimp exports. If you look at the value of the exports -- volume or value, either way -- it is very insignificant -- very, very small. So one possibility why that line item was there in exports was that some means that somebody will have imported coldwater shrimp, reprocessed them to be exported. Generally it happens a lot in seafood industry that seafood is caught on high seas, which is rather complicated, reprocessed there, frozen there, and re-exported to the consumer markets. So while it was presumed it was rather small bit of coldwater shrimp exposed, somebody else probably trying to develop a market of it by reprocessing it. So a unfortunately I do not have any further information on that.

MR. AMDUR: Okay, thank you.

MR. ALLEN: Are there any other questions from the Section 301 Committee?

Okay, hearing none, finally I would ask if any of the witnesses would like to address questions that we posed to other witnesses or make final comment on any of the matters we've discussed this afternoon?

Great. Hearing none, that concludes this panel. Thank you for your time today.

I would like to thank the parties that testified today for their important contributions to our investigations. As a reminder, the deadline for rebuttal comments, which may include written answers to questions posed at today's hearing, is one week from today. Those comments should be submitted through USTR's online portal. Today's hearing is adjourned. Thank you very much.

(Whereupon, the above-entitled matter went off the record at 12:54 p.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 Investigation

Before: US Trade Representative

Date: 05-10-21

Place: teleconference

was duly recorded and accurately transcribed under my direction; further, that said transcript is a true and accurate record of the proceedings.

Neal R Gross

Court Reporter