

OFFICE OF THE U.S. TRADE REPRESENTATIVE

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

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THURSDAY
MAY 6, 2021

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The hearing convened, via video
teleconference, at 11:00 a.m., Benjamin Allen,
Office of the U.S. Trade Representative,
presiding.

Government Panelists

BENJAMIN ALLEN, USTR

PATRICK CHILDRESS, USTR

ROBERT TANNER, USTR

WON CHANG, Department of the Treasury

JESSICA HUANG, Department of Commerce

ANDREW STEPHENS, USDA

SARAH BONNER, U.S. Small Business Administration

DAVID MOO, Department of State

Witnesses

MIKE SAX, ACT - The App Association

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Benjamin Allen

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2 11:00 a.m.

3 MR. ALLEN: Good morning and welcome.

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

11 The United States Trade Representative
12 initiated this investigation on June 2nd, 2020.
13 In a notice published on March 31st, USTR
14 announced the proposed trade action in this
15 investigation. This notice may be found at
16 86 FR 16819.

17 Earlier today, we held a hearing with
18 respect to the proposed trade action in the
19 Section 301 investigation of the United Kingdom's
20 DST. Later today, we will hold hearings with
21 respect to the proposed trade actions in the
22 Section 301 investigations of DSTs adopted by

1 Spain and Austria.

2 The Section 301 Committee will
3 carefully consider the testimony provided at this
4 public hearing and the multijurisdictional
5 hearing held on Monday, May 3rd. The Committee
6 will also review the written comments received in
7 response to the March 31st notice of the proposed
8 trade action, as well as post-hearing rebuttal
9 comments from interested parties. The Section
10 301 Committee will then make a recommendation to
11 the U.S. Trade Representative.

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

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

21 Each witness appearing at the hearing
22 is limited to five minutes of direct testimony.

1 After the testimony from the panel, the Section
2 301 Committee will have an opportunity to ask
3 questions.

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

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

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

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

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

1 conclude your comments.

2 I would now like to introduce the U.S.
3 Government panel that will be presiding over this
4 hearing.

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

9 Also joining from USTR is our
10 colleague Rob Tanner from the Office of Services
11 and Investment.

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

15 From the Department of State, we have
16 David Moo.

17 From the Department of Commerce, we
18 have Jessica Huang.

19 From Treasury, we have Won Chang.

20 From the Department of Agriculture, we
21 have Andrew Stephens.

22 And from the Small Business

1 Administration, we have Sarah Bonner.

2 We will now proceed with testimony
3 from our panel. The panel is comprised of Mike
4 Sax of ACT, The App Association.

5 Mr. Sax, you may proceed with your
6 testimony when you are ready.

7 MR. SAX: Thank you for this
8 opportunity to share our views on the Italian
9 digital service tax and its impact on the
10 American small business digital economy
11 community.

12 The App Association represents
13 thousands of small businesses, software companies
14 and technology firms that create apps used on
15 mobile devices and in enterprise systems around
16 the world. This ecosystem today, which we call
17 the app economy, is valued at around \$1.7
18 trillion and is responsible for over 5.9 million
19 American jobs. Alongside the world's rapid
20 embrace of mobile technology, our members create
21 innovative solutions that power the internet of
22 things across modalities and segments of the

1 economy.

2 Italy is an important market for The
3 App Association members. Since 2014, annual net
4 revenue for apps on major platforms has increased
5 from nearly 189 million to just under 562 million
6 in 2020. That's a 198 percent increase. And
7 generally, The App Association believes that the
8 imposition of digital service taxes is
9 unreasonable and discriminatory; that they
10 disjoint the digital economy and impede U.S.
11 exports and investment abroad.

12 Their imposition on U.S. digital
13 exports directly impacts America's most
14 innovative service industries and the small
15 businesses that are driving those industries, in
16 particular, including software development and
17 connected devices.

18 Italy's DST, effective as of January
19 2020, is a sweeping tax imposed at a rate of 3
20 percent. It unduly discriminates against
21 American companies. It's retroactive and
22 extraterritorial and would unreasonably increase

1 administrative burdens. Such taxes are, in
2 effect, tariffs on the digital economy, and The
3 App Association agrees with the USTR that
4 unilateral digital taxes are significant trade
5 barriers.

6 The App Association also agrees that
7 the imposition of digital service taxes gives
8 rise to conflicts with international treaties and
9 taxation principles reflected in the OECD's Model
10 Taxation Convention on Income and Capital, the
11 U.N. Model Double Taxation Convention, and
12 numerous bilateral tax treaties. These
13 established approaches recommend the taxation of
14 income, and not revenue, and discourage assessing
15 taxes to entities without considering if they are
16 established in that country, and avoid assessing
17 taxes retroactively.

18 Further, digital service taxes
19 conflict with commitments made under the WTO
20 General Agreement on Trade in Services, and
21 especially Articles II and XVII. And, in effect,
22 we believe that, in its multijurisdictional and

1 country-specific investigations, we would like to
2 strongly encourage the USTR to reinforce the DSTs
3 at issue do not align with these important
4 multilateral and bilateral constructs; and that
5 the proposed unilateral DSTs at issue are
6 unreasonable and discriminatory.

7 The App Association notes agreement
8 that some changes may be needed with respect to
9 international taxation due to the rise of the
10 digital economy. We endorse and urge the U.S.
11 Government to support the ongoing OECD efforts to
12 reach consensus on needed tax changes and support
13 the development of such a solution as soon as
14 possible, which has seen significant progress as
15 of late.

16 Country-specific digital service taxes
17 put into place while the OECD solution is being
18 pursued will ultimately undermine the global
19 consensus needed to reach a workable
20 international taxation agreement and will damage
21 the ability of American small businesses and the
22 digital economy to innovate and create new jobs.

1 Should USTR decide that some or all of
2 the tax policies being investigated are
3 actionable under Section 301 of the Trade Act,
4 The App Association recommends that the U.S.
5 Government focus on attaining a consensus
6 multilateral agreement through the OECD process
7 and avoid imposition of retaliatory tariffs that
8 would most impact American small businesses like
9 the members of The App Association.

10 We really appreciate the opportunity
11 to provide our views, and we are very happy to
12 help you in any way we can moving forward. Thank
13 you.

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

16 We will now turn to questions from the
17 Section 301 Committee.

18 For that, we will start with Rob
19 Tanner from USTR.

20 MR. TANNER: Thanks again and good
21 morning.

22 So, I wanted to ask, many of the app

1 developers that you represent are small and
2 medium-sized business, and therefore, would not
3 appear to be covered directly by the national
4 digital service acts at issue. So, I was hoping
5 that you might be able to speak a bit to what
6 impact the DST would be on these smaller
7 businesses, particularly for small to medium-
8 sized U.S. app developers and other small
9 businesses in your association.

10 MR. SAX: Well, the most important
11 element of that is that our SMEs work in an
12 ecosystem that they have suppliers, that they are
13 suppliers to other companies. So, while they
14 might not directly always be affected by this, it
15 will affect their business partners and it might
16 impact their business partners' ability to afford
17 their services or complicate the business
18 interactions that they have. I think that is the
19 most important thing.

20 The second thing is that not all these
21 small businesses have the -- you know, they need
22 to understand what their obligations are. And

1 whenever there are regulations that might or
2 might not apply to certain businesses, just
3 finding out whether those regulations are
4 applicable to them may in itself become a burden,
5 especially for the medium-sized businesses that
6 are possibly on the threshold.

7 MR. TANNER: Thank you.

8 MR. ALLEN: All right. For our next
9 question, we'll go to Treasury.

10 MR. CHANG: Hi, Mr. Sax.

11 Following up on the last question,
12 could you elaborate on the relationship between
13 your members, particularly SMEs, small and
14 medium-sized companies, and the large digital
15 services companies, particularly U.S. digital
16 companies that appear to be subject to the
17 national DST at issue?

18 Thank you.

19 MR. SAX: Yes. So, a lot of our
20 members create apps that use digital platforms
21 like app stores to get their distribution. Their
22 apps are sold on these stores, and it's what our

1 companies essentially depend on to get their
2 international distribution and wide reach.

3 I'm not sure exactly if you would like
4 me to elaborate on specific aspects of that
5 relationship. I mean, they depend on these
6 platforms to sell their apps, and it's in most
7 cases the only mechanism that they use to reach
8 customers in those countries.

9 So, if those platforms end up being
10 affected, then that will end up affecting them
11 directly, actually, almost directly as well,
12 because it will impact their revenue and the
13 simplicity of their business process.

14 MR. CHANG: Thank you. Thank you for
15 that answer.

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

18 MR. MOO: Hi. Can you hear me, Ben?

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

20 MR. MOO: Great.

21 Thank you for your testimony, Mr. Sax.
22 It's very helpful.

1 In your testimony, you noted that you
2 do not support the imposition of tariffs on Italy
3 in connection with this dispute. But the
4 question I have is whether you believe that the
5 imposition of tariffs might be effective in
6 bringing about a change of policy at the Italian
7 government. Do you think that the tariffs would
8 be effective in this respect? Why or why not?

9 MR. SAX: Well, I think we're mostly
10 concerned that tariffs would end up causing a war
11 that ends up being very destructive, especially
12 for our members. If it starts escalating that
13 way, it goes into a direction that we are not
14 sure would be helpful for anyone. And overall, I
15 think we would advocate for a more whole-
16 government approach where we work to foster a
17 positive relationship and bring everybody to the
18 table towards an agreement.

19 MR. MOO: Okay. Thank you.

20 MR. ALLEN: Next, we'll move to
21 Commerce.

22 MS. HUANG: Hello.

1 MR. SAX: Hello.

2 MS. HUANG: Thank you for your
3 testimony.

4 You note that The App Association
5 strongly endorses efforts within the OECD. What
6 specific outcome would you like to see as a
7 result of the OECD negotiations? And also, you
8 just mentioned a whole-of-government approach
9 where everyone is at the table.

10 MR. SAX: Well, we would love to see
11 an approach that leads to no, as little trade
12 barriers or taxes imposed specifically on digital
13 goods as possible. We believe that these
14 conventions that have been in place for a long
15 time, or agreements that have been in place for a
16 long time, have really helped to make sure that
17 the internet does not get balkanized, that we
18 have a single -- or not a single market, but we
19 have a global reach for companies to do commerce,
20 and that digital companies have the ability to
21 compete on a global scale, regardless of their
22 size; and that, both financially and in terms of

1 business complexity, there are no barriers that
2 would impede their entry to specific markets or
3 their ability to compete in terms of having too
4 much overhead or too complex regulations that
5 make it very hard for smaller companies to figure
6 that out and deal with it.

7 MS. HUANG: Thank you.

8 MR. SAX: You're welcome.

9 MR. ALLEN: Okay. For our next
10 question, we'll go to USDA.

11 I think you're muted.

12 MR. STEPHENS: Here we go.

13 In your testimony, you noted that
14 Italy is a key market for The App Association
15 members looking to grow their customer base
16 abroad. Will you please tell us a bit more about
17 your members' companies' specific interest in
18 Italy? Is it games? Is it perhaps co-
19 applications? You know, what's the market like?

20 MR. SAX: We have a very diverse
21 membership. And so, many of our companies are
22 interested in both providing entertainment

1 services, like games, and everything, or media,
2 but also we have companies that create medical
3 applications and health applications. We have a
4 lot of industrial and logistics companies that
5 create software that helps companies essentially
6 run their business. So, it's a really diverse
7 membership, and the interest really ends up
8 covering pretty much all the aspects of the
9 economy.

10 MR. STEPHENS: Great. Thank you.

11 MR. SAX: Thank you.

12 MR. ALLEN: And lastly, we'll go to
13 SBA.

14 MS. BONNER: Hi, Mr. Sax.

15 MR. SAX: Hello. Yes?

16 MS. BONNER: The written comments
17 indicate that the Italian DST requires the
18 appointment of a tax representative in fulfilling
19 payment and filing obligations. Can you share
20 any estimate of what this local representative
21 could cost in terms of trade costs on U.S. SMEs?

22 MR. SAX: That is an excellent

1 question. I don't have a specific number for
2 you, but I can definitely follow up with that
3 information for you.

4 MS. BONNER: Thank you very much.

5 MR. SAX: Thank you.

6 MR. ALLEN: Great.

7 Before concluding this panel, we will
8 pause to see if any member of the Section 301
9 Committee has any remaining questions for our
10 witness.

11 (No audible response.)

12 Okay. Hearing none, finally, Mr. Sax,
13 would you like to make any final comment on the
14 matters we've discussed this morning?

15 MR. SAX: No. I want to thank you for
16 all your efforts, and we are very hopeful that a
17 positive agreement can be reached.

18 Thank you so much.

19 MR. ALLEN: Great. Thank you.

20 That concludes this panel. Thank you
21 for your time today. I would like you for
22 testifying today and your important contributions

1 to our investigations.

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

8 Today's hearing is now adjourned.

9 (Whereupon, the above-entitled matter
10 went off the record at 11:19 a.m.)

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In the matter of: Section 301 Investigations
Public Hearing

Before: U.S. Trade Representative

Date: 05-06-21

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