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 SPAIN

THURSDAY MAY 6, 2021

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The hearing convened, via video teleconference, at 1:00 p.m., Benjamin Allen, Office of the U.S. Trade Representative, presiding.

Government Panelists
BENJAMIN ALLEN, USTR
PATRICK CHILDRESS, USTR
JENNIFER CARTON, USTR
WON CHANG, Department of the Treasury
NABIL ABBYAD, Department of Commerce
SIMONETTA SIMMONS, USDA
SARAH BONNER, U.S. Small Business Administration
JESSICA MAZZONE, Department of State

Witnesses

PETER CHARLES, Stuart Weitzman

MIKE SAX, ACT - The App Association

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

1:00 p.m.

MR. ALLEN: Hello, everyone. Good afternoon 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 the digital services tax, or
DST, adopted by Spain.

The United States Trade Representative initiated this investigation on June 2nd, 2020.

In a notice published on March 31st, USTR announced a proposed trade action in this investigation. This notice may be found at 86 FR 16813.

Earlier today, we held hearings with respect to the proposed trade actions in the Section 301 investigations of DSTs adopted by the United Kingdom and Italy. Later today, we will hold a hearing with respect to the proposed trade

action and the Section 301 investigation of DST adopted by Austria.

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

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.

This hearing consists of one panel of witnesses with two individuals 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 testimony from the panel, the Section 301

Committee will have an opportunity to ask

questions.

Post-hearing comments, including any written responses to questions from the Section 301 Committee, are due by May 12th. 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 after the conclusion of this hearing.

Now 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 off and your microphone muted. If you would like to respond to a question posed to another witness on your panel, you may unmute your video. This 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. 1 2 When you are speaking, you are responsible for keeping time. As a reminder, you 3 are limited to five minutes of direct testimony. 4 5 Should you exceed this time, we will ask you to conclude your comments. 6 7 I would now like to introduce the U.S. 8 Government panel that will be presiding over this 9 hearing. I am Benjamin Allen from USTR's Office 10 11 of General Counsel. I'm joined in the room by my USTR colleague Patrick Childress, also from 12 USTR's Office of General Counsel. 13 14 Also joining from USTR is our colleague Jennifer Carton from the Office of 15 16 Europe and the Middle East. 17

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

From the Department of State, we have Jessica Mazzone.

From the Department of Commerce, we

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have Nabil Abbyad. 1 2 From Treasury, we have Won Chang. From the Department of Agriculture, we 3 have Simonetta Simmons. 4 And from the Small Business 5 Administration, we have Sarah Bonner. 6 We will now proceed with testimony 7 8 from the panel. This panel is comprised of Peter 9 Charles of Stuart Weitzman and Mike Sax of ACT, 10 The App Association. 11 Mr. Charles, you may proceed with your 12 testimony when you are ready. 13 MR. CHARLES: Thank you, and good 14 afternoon. My name is Peter Charles, and I'm 15 16 proud to represent Tapestry, Inc., and one of our 17 brands, Stuart Weitzman. Stuart Weitzman was 18 founded in 1986 and is a leading footwear and 19 accessory brand that is proudly synonymous with strength and femininity. Stuart Weitzman is 20 21 known for its unique approach in melding fashion,

function, and fit in every silhouette.

This brand employs over 700 people worldwide, but the majority, approximately 500, are based in the United States. This includes our headquarters, retail, logistics supply chain, as well as our designers and marketing professionals.

Stuart Weitzman strongly opposes the inclusion of footwear on the list of Spanish products potentially subject to Section 301 tariffs today. Such action would cause great harm to Stuart Weitzman concerning U.S. jobs and retail store closures. This action would cause even greater harm to our business than it would to the Spanish manufacturers.

There are five critical points that I would like to make today.

Firstly, we have a longstanding
heritage in Spain and have spent the last 35
years sourcing from that country. Each of our
partner factories specializes in a certain type
of footwear. Most of Stuart Weitzman's product
is produced in a few small footwear-dependent

towns where shoemaking has become a way of life, where jobs are even passed down through generations. No other company has made the kind of positive and powerful economic impact to the area as ours.

A modification of the company's supply chain away from Spain will be very detrimental to the Stuart Weitzman brand itself. The company's "Made in Spain" label has become synonymous with the Stuart Weitzman brand. The American consumer buys a Stuart Weitzman product because of its unique heritage and craftsmanship. Any disruption in the current Spanish supply chain would harm the brand, causing a significant financial impact to the business and possibly American job losses.

Second, imposing tariffs on the proposed HTS subheadings would have harmful consequences for our company, leaving us with virtually no short- to medium-term options to shift our supply chain. Simply put, imposing tariffs on these particular HTS subheadings would

de facto be targeting Stuart Weitzman disproportionately and cause irreparable harm.

For the categories at issue, Spain accounts for only approximately 8 percent of total U.S. imports of footwear in 2020. Spain is clearly not the top supplier to the U.S. market in these footwear HTS categories, it represents a very substantial source to my company, which allows us to better compete against European luxury brands. In our business confidential filing, we detailed the precise percentage share my company covers for the proposed tariff lines. As you will see from the data, Stuart Weitzman believes it is the majority and the major importer of such footwear from Spain, and that such punitive tariffs will disproportionately hurt the company.

Thirdly, Spain is a niche producer that supplies women's high-end fashion shoes.

Based on publicly available trade data, Spain's closest competitor is Italy, which imports under similar tariff lines, but has limited capacity.

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Spain is facing its own DST Section 301 tariffs, but only four footwear tariff lines are included. This potentially puts large European luxury footwear brands at a significant competitive advantage to Stuart Weitzman. It is unlikely Stuart Weitzman could shift production to Italy.

If punitive tariffs are imposed,

Stuart Weitzman would have no choice but to try
to develop new sources. However, new sources for
a brand deeply rooted in Spain is complex. The
majority of the suppliers of footwear are China
and Vietnam, but they are not utilized
extensively for higher-end footwear and, also,
face their own Section 301 investigations or the
imposition of tariffs. It would be difficult to
find sourcing alternatives to meet Stuart
Weitzman's specific needs and the sophistication
of our products.

Beyond the technical challenges of shifting, our customers define Stuart Weitzman with European fashion. Thus, the shift in sourcing from Spain would require a huge

investment in developing the expertise and capability.

Fourthly, if tariffs are applied,
Stuart Weitzman, our employees, and our customers
will face disproportionate harm. While Stuart
Weitzman produces footwear in Spain, all other
activities driving the supply value chain are in
the United States, along with the vast majority
of our employees.

Our business is optimized for our current sourcing levels centered in Spain. A 25 percent tariff on our footwear, which already faces 10 percent duty rates, would make sourcing from Spain untenable for the long term. This will negatively impact our business and hurt the American consumer. A total tariff of 35 percent would, no doubt, have a long-lasting negative impact on the business and may result in a reduction in staff, store closures, current logistics and distribution centers centered on the footwear operations from Spain.

In addition, shifting our supply chain

may lead to delays and cancellations of product.

This would further negatively impact our

customers and generate rising costs.

Finally, I would like to comment
briefly on the DST that has brought us together
today. Stuart Weitzman believes that concerns
over DSTs are legitimate, but are best addressed
at the OECD level. DSTs have emerged as an issue
requiring a global resolution. Responding to
them country by country will likely result in a
range of outcomes and potentially undercut
efforts to create global standards on taxation.
Imposing tariffs on a one-off country basis will
not create a viable solution to this problem, but
is more likely to create a lengthy process with a
vastly different outcome.

Stuart Weitzman understands the effort to prevent trading partners from taxing U.S. digital service providers. However, causing irreparable harm to a U.S. brand that has nothing to do with DSTs just as it recovers from a global pandemic is not the way to achieve the desired

result. Stuart Weitzman strongly supports an approach centered around multinational negotiation and not punitive tariffs.

I appreciate the time to address the panel today and thank you. And I'll be happy to answer any questions.

MR. ALLEN: Thank you, Mr. Charles.

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

MR. SAX: Thank you, Mr. Allen. Thank you for this opportunity to share our views on the Spanish digital tax service and its impact on the American small business digital economy community.

The App Association represents
thousands of small business software companies
and technology firms that create the apps on
mobile devices and in the enterprise systems
around the world. Today, this ecosystem, which
we call the app economy, is valued at \$1.7
trillion and is responsible for 5.9 million
American jobs. And alongside the world's rapid

embrace of mobile technology, our members also create innovative solutions that power the internet of things across modalities and segments of the economy.

Spain is a very important market for App Association members. Since 2014, annual net revenue for apps on major platforms has increased from 100 million to nearly 374 million in 2020, which is a 273 increase.

Generally, The App Association
believes that the imposition of digital service
taxes is unreasonable and discriminatory. It
disjoints the digital economy and they impede the
U.S. exports and investments abroad. Their
imposition on U.S. digital exports directly
impacts America's most innovative service
industries and, in particular, the small
businesses that are driving those industries,
including software development and connected
devices.

Spain's DST, effective as of January 2021, is a sweeping tax imposed at a rate of 3

percent. It is unduly discriminating against
American companies. It's extraterritorial and
would unreasonably increase administrative
burdens. Such taxes are, in effect, tariffs on
the digital economy, and The App Association
agrees with USTR that unilateral digital taxes
are significant trade barriers.

We also agree that the imposition of digital service taxes also gives rise to conflicts with international treaties and taxation principles reflected in the OECD's Model Taxation Convention on Income and Capital, the U.N. 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 are established in that country, and avoiding assessing taxes retroactively.

Further, digital service taxes

conflict with commitments made under the WTO

General Agreement on Trade in Services, Articles

II and XVII, and contravene, in effect, the WTO moratorium on custom duties on electronic transmission that has been in place since 1998. In its multijurisdictional and country-specific investigations, we strongly encourage USTR to reinforce our DSTs at issue which do not align with these important multilateral and bilateral constructs; and that the proposed unilateral DSTs at issue are unreasonable and discriminatory.

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

Country-specific digital service taxes put into place while the OECD solution is being pursued will ultimately undermine the global consensus needed to reach a workable solution and will damage the ability of American small

businesses and the digital economy 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 American small businesses like The App Association's members.

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

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

1 We'll now turn to questions from the 2 Section 301 Committee. And the first question will come from 3 4 USTR, from Jennifer Carton. 5 Hi. Thanks, Ben. MS. CARTON: you hear me? 6 7 MR. ALLEN: Yes, we can hear you. 8 MS. CARTON: Great. 9 Mr. Sax, my question is for you. 10 Thanks for your testimony. 11 MR. SAX: Thank you. 12 MS. CARTON: So, in your testimony, 13 you note that Spain is an important market for 14 association members. Will you please tell us a bit more about your member companies' specific 15 16 interests in Spain? 17 MR. SAX: Yes. Our member companies 18 cover a very diverse portion of the economy. 19 have companies that provide entertainment and 20 game services. We have people building medical 21 solutions. We have people creating logistical solutions that help businesses run their 22

business.

So, we have a lot of businesses that
have customers in Spain or that deal with
suppliers in Spain, either being a supplier or
having suppliers in the country of Spain. So,
trade with Spain is very important, and our
companies, because they're small businesses,
either directly are a part of the value chain or
the ecosystem of these different companies
working together or they sell their products,
such as apps, directly to customers through
platforms, digital platforms, like app stores.
And so, many of our customers have Spanish
versions of their apps. They consider Spain to
be an important market for them.

MS. CARTON: Okay. Thank you.

MR. SAX: Thank you.

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

MR. CHANG: Thanks again for your testimony, Mr. Sax, of the association.

We note that your organization is

testifying at a number of the hearings in the various investigations. And in light of this, would you like to comment on whether there are any other unique aspects of Spain's DST that might be relevant to the proposed trade action?

Thank you.

MR. SAX: Well, I think in the case of Spain we don't like the fact that it's extraterritorial. I don't believe that in the Spanish case it is retroactive, which is a positive difference. So, those are the main things that come to mind with regards to that question.

MR. CHANG: Thank you.

MR. SAX: Thank you.

MR. CHANG: My next question goes to Mr. Charles at Stuart Weitzman.

In your testimony, you state that Spain represents a very substantial source of supply to your company, suggesting that your company sources products from some sources outside of Spain. Could you please give us an

idea of these other sources of supply?

Thank you.

As I stated in my MR. CHARLES: Yes. testimony, Spain has been synonymous with the Stuart Weitzman brand for the last 35 years. Ιt is at the very core of our brand DNA. consumers respond and react positively to the "Made in Spain" label. And although we do manufacture a very small percentage of our product in other markets, Spain is essentially the cornerstone of our entire supply chain, and it is really built around a history of craftsmanship, capability, product innovation, speed, and agility, which is absolutely fundamental to the success of our brand. therefore, we're, obviously, incredibly concerned around what we believe is the punitive imposition of a 25 percent tax tariff on Spanish footwear into the HTS codes into the United States.

MR. CHANG: Thank you. Thank you very

MR. ALLEN: For our next question,

much.

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we'll go to Commerce.

MR. ABBYAD: Good afternoon.

My question is also for Mr. Charles.

In the public comments submitted by your company,
you state that Spain's closest competitor for the
production of women's high-end fashion shoes is

Italy, but that Italy's capacity to produce such
products is limited. Could you please elaborate
on these capacity constraints? Further, to your
knowledge, do the four footwear lines included in
the proposed actions regarding Italy's DST
include products produced by your company?

MR. CHARLES: Yes, thank you for the question.

Stuart Weitzman, obviously, has spent its entire history really building the supply chain ecosystem in Spain. There is small amounts of production capacity available in high-end women's footwear out of Italy. But, frankly, the Italian luxury brands dominate that sector. In the same way Stuart's has put really its efforts into developing the Spanish footwear

manufacturing capability, the Italians really 1 2 drive and dominate that particular manufacturing origin and market. Therefore, we believe that 3 4 there would be extremely limited capacity 5 available to us to shift production in the short to medium term into the Italian manufacturing 6 market. 7 8 And as I also stated on my previous 9 answer, our entire brand is based around the "Made in Spain" label. It is part of our DNA. 10 It is part of what our consumers react to. 11 12 this is purely beyond a manufacturing issue for This is around a brand identity issue. 13 us. 14 therefore, we would be incredibly concerned if 15 these tariffs were imposed. 16 MR. ABBYAD: Thank you very much. 17 appreciate it. 18 MR. ALLEN: We'll go to State for the 19 next question.

MS. MAZZONE: Hello. My question is for Mr. Charles as well.

If footwear is included on the final

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product list and subject to tariffs, do you 1 2 expect your Spain-based suppliers will be able to absorb any of the cost of the additional tariffs? 3 MR. CHARLES: Clearly, if an 4 5 imposition of 25 percent tariffs was imposed on Spanish manufacturing, it would clearly have a 6 significant impact on that market. 7 But we 8 believe, as a U.S.-based company with a U.S.-9 based brand, with U.S.-based consumers and U.S.based retail stores, it actually would have 10 11 disproportionately more impact on our business 12 than, actually, the Spanish manufacturers who 13 potentially could pivot into other markets. 14 for us where our entire, as I said, our entire 15 business model has been based around Spanish 16 manufacturing, we believe it would have a very 17 significant detrimental impact. 18 MS. MAZZONE: Thank you. 19 MR. CHARLES: You're welcome. 20 MR. ALLEN: We'll go to USDA for the 21 next question. 22 MS. SIMMONS: Thank you.

1 Are you able to hear me? 2 MR. ALLEN: Yes, we can hear you just fine. 3 4 MS. SIMMONS: Wonderful. Hello, 5 everyone. My question is for Peter Charles as 6 7 well. Thank you for your testimony. 8 In your testimony, you state that, if 9 tariffs are applied, your company and employees will experience disproportionate harm. Can you 10 11 please elaborate more on how including the 12 referenced products in this action would impact 13 your company's employment? 14 MR. CHARLES: Yes. So, as I've 15 stated, being a U.S.-based company, a significant 16 proportion of our sales and consumers are based 17 in the U.S., as well as other parts of the world. 18 And certainly, if these tariffs were imposed, it 19 would make it incredibly difficult to continue to 20 operate with the existing Spanish supply chain. 21 It would leave us very limited options in picking

up and moving. When you've spent 35 years

developing relationships, as we have in Spain, it is incredibly difficult to pick those relationships up and move them and create the same level of consistency of product, fit, quality, which is synonymous with our brand. So, we believe it would have a really very significant impact on our ability not only to manufacture, but would also affect our consumers and a U.S.-based company.

MS. SIMMONS: Thank you.

MR. ALLEN: Now, we will go to SBA.

MS. BONNER: Hi. Thank you.

This question is for Mr. Sax, The App Association. Mr. Sax, thank you very much for your testimony.

In the written comments, you reference an article that stated that non-EU residents would need to appoint a tax representative for DST purposes. Can you share any insights into whether this would be a barrier for any SMEs interested in opening or expanding and staying, and if there's any estimated trade costs? And if

you don't have that right now, it's fine if you put that in your post-hearing submission, but we would be very interested in knowing.

MR. SAX:

Thank you for the question. Yes, that is a very significant concern, especially for small companies. I don't at this point have specific numbers for you, but I can follow up with those.

In general, knowing that tax representation will be necessary creates a level of uncertainty and delay and administrative burden that, in addition to the cost itself, will cause small businesses to hesitate whether to enter the Spanish market in itself. And the ones that do will, basically, be delayed and have significant additional overhead, both in terms of executive time and cost, and people focusing on, essentially, administrative hassles instead of actually developing the markets and the products and the relationships in those countries. it's a significant barrier for small businesses. And I will follow up with you on the numbers, the

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actual cost numbers.

Thank you for your question.

MS. BONNER: Thank you very much.

MR. ALLEN: Great.

I have one question for Mr. Charles.
Mr. Charles, to your knowledge, have any of your
Spanish suppliers reached out to the government
of Spain to request that Spain address U.S.
concerns with the Spanish DST? Have you
considered making such a suggestion to your
suppliers?

MR. CHARLES: Yes, it is my
understanding -- thank you for the question -- it
is my understanding that all of our Spanish
suppliers, as well as, in fact, the entire
footwear industry within Spain, has mobilized
pretty significantly in the last few weeks and
months around lobbying with the Spanish
government; incredibly concerned, obviously,
about what this will do to their individual
businesses as well. So, we believe that they've
made some significant overtures into the Spanish

government to try to resolve this issue.

And we believe, as they do, that the right approach to this is to develop and use a vehicle of the OECD to try to resolve this issue. Clearly, we don't, particularly in our sector, have anything particularly to do with the imposition of DSTs, but we believe that the OECD is the right vehicle to try to create some kind of multinational resolution to this issue, rather than doing it on a piecemeal, country-by-country punitive tax approach. So, that's our position and it's the position of the Spanish manufacturers as well.

MR. ALLEN: Great. Thank you very much for that.

Before concluding this panel, I'd like to pause to see if any of the members of the Section 301 Committee has any remaining questions for the panel.

Hearing none, I would like to ask if either of the witnesses would like to address questions that we have posed to other witnesses

or make a final comment on the matters we've 1 2 discussed this morning. MR. CHARLES: Not from my side. 3 Thank 4 you very much. 5 MR. ALLEN: Okay. MR. SAX: No, thank you for the 6 7 opportunity, and we are happy to help in any way 8 moving forward. 9 MR. ALLEN: Great. Thank you very much. So, this will conclude this panel. 10 11 Thank you both for your time today. I'd also 12 like to thank you for your important contribution to our investigations. 13 14 As a reminder, the deadline for rebuttal comments, which may include written 15 16 answers to the questions posed at today's 17 hearing, is one week from today. Those comments 18 should be submitted through USTR's online portal 19 at comments.ustr.gov. This hearing is now 20 adjourned. 21 (Whereupon, the above-entitled matter went off the record at 1:29 p.m.) 22

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<u>C E R T I F I C A T E</u>

This is to certify that the foregoing transcript

In the matter of: Section 301 Investigations

Public Hearing

Before: U.S. Trade Representative

Date: 05-06-21

Place: teleconference

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

Court Reporter

Mac Nous &