

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 UNITED KINGDOM

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THURSDAY
MAY 6, 2021

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The hearing convened, via video
teleconference, at 9:30 a.m., Benjamin Allen,
Office of the U.S. Trade Representative,
presiding.

Government Panelists

BENJAMIN ALLEN, USTR

PATRICK CHILDRESS, USTR

REBECCA GUDICELLO, USTR

WON CHANG, Department of the Treasury

JESSICA HUANG, Department of Commerce

CHARIESE ELIZABETH WALTON, USDA

SARAH BONNER, U.S. Small Business Administration

JESSICA MAZZONE, Department of State

Witnesses

BRIAN SCARPELLI, ACT - The App Association

GRAHAM BROWN, Lush USA Inc. DBA Lush Handmade

Cosmetics ("LUSH")

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Benjamin Allen

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

2 9:30 a.m.

3 MR. ALLEN: All right. I think we're
4 ready to get started.

5 Good morning and welcome, everybody.

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

13 The United States Trade Representative
14 initiated this investigation on June 2nd, 2020.
15 In a notice published on March 31st, USTR
16 announced the proposed trade action in this
17 investigation. This notice may be found at
18 86 FR 16829.

19 Later today, we will be holding
20 hearings with respect to the proposed trade
21 actions and Section 301 investigations of DSTs
22 adopted by Italy, Spain, and Austria.

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

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

16 This hearing consists of one panel of
17 witnesses with two individuals scheduled to
18 testify. The provisional list of witnesses has
19 been posted to USTR's website.

20 Each witness appearing at the hearing
21 is limited to five minutes of direct testimony.
22 After the testimony from the panel, the Section

1 301 Committee will have an opportunity to ask
2 questions.

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

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

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

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

22 When you are speaking, you are

1 responsible for keeping time. As a reminder, you
2 are limited to five minutes of direct testimony.
3 Should you exceed this time, we will ask you to
4 conclude your comments.

5 I would now like to introduce the U.S.
6 Government panel that will be presiding over this
7 hearing.

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

12 Also joining from USTR is our
13 colleague Rebecca Gudicello from the Office of
14 Small Business, Market Access, and Industrial
15 Competitiveness.

16 We're also pleased to be joined today
17 by several international trade and economic
18 experts from a range of U.S. Government agencies.

19 From the Department of State, we have
20 Jessica Mazzone.

21 From the Department of Commerce, we
22 have Jessica Huang.

1 From Treasury, we have Won Chang.

2 From the Department of Agriculture, we
3 have Chariese Walton.

4 And from the Small Business
5 Administration, we have Sarah Bonner.

6 We will now proceed with testimony
7 from our panel. This panel is comprised of Brian
8 Scarpelli of ACT, the App Association, and Graham
9 Brown of Lush USA, doing business as Lush
10 Handmade Cosmetics.

11 Mr. Scarpelli, you may proceed with
12 your testimony when you're ready.

13 MR. SCARPELLI: I'm sounding okay?

14 MR. ALLEN: Yes.

15 MR. SCARPELLI: Great. Thank you so
16 much. Thank you.

17 Thank you for this opportunity to
18 share views on the UK's digital service tax and
19 its impact on the American small business digital
20 economy community that our association
21 represents.

22 ACT, The App Association more

1 specifically, represents thousands of small
2 businesses in the software development,
3 application development, and tech industry. Our
4 members are creating these software apps used on
5 mobile phones and in enterprise systems around
6 the globe, as well as connected devices.

7 And today, the ecosystem that our
8 association represents, which we call the app
9 economy, we value at approximately \$1.7 trillion,
10 and we estimate that it's responsible for over
11 5.9 million American jobs.

12 Alongside the world's rapid embrace of
13 mobile technology, our members have been creating
14 innovative solutions that power the internet of
15 things across modalities and segments of the
16 economy. The UK is an important market for our
17 members. Since 2014, annual net review for apps
18 on major platforms has increased from over 754
19 million to over 2 billion by 2020.

20 And generally, we believe that the
21 imposition of digital service taxes are
22 unreasonable and discriminatory, disjoint the

1 digital economy, and impede U.S. exports and
2 investment abroad. The imposition of DSTs on
3 U.S. companies directly impacts America's most
4 innovative service industries and the small
5 businesses that are driving those industries,
6 including software development in which our
7 members lead.

8 The UK's DST, which became effective
9 in July of 2020, and is retroactive to April 1 of
10 2020, we think unduly discriminates against
11 American companies in that it's retroactive,
12 extraterritorial, and unreasonably increases
13 administrative burdens. This DST and others that
14 are being investigated by USTR right now are, in
15 our view, in effect, tariffs on the digital
16 economy, and The App Association agrees that
17 unilateral digital service taxes are significant
18 trade barriers.

19 We also agree that the imposition of
20 DSTs gives rise to conflicts with international
21 treaties and taxation principles reflected in the
22 Organization for Economic Cooperation and

1 Development's Model Tax Convention on Income and
2 Capital, the U.N. Model Double Taxation
3 Convention, and numerous bilateral tax treaties.
4 These established approaches recommend the
5 taxation of income, not revenue; discourage
6 assessing taxes to entities without considering
7 if they're established in that country, and avoid
8 assessing taxes retroactively.

9 Further, digital service taxes
10 conflict with commitments made, in our view,
11 under the WTO's General Agreement on Trade in
12 Services, Articles II and XVII, and contravene,
13 in effect, the WTO moratorium on custom duties
14 and electronic transmissions that has been place
15 since 1998.

16 Across the hearings that USTR is
17 holding, we are strongly encouraging USTR to
18 reinforce how the DSTs at issue don't align with
19 these important multilateral and bilateral
20 constructs in that they are unreasonable and
21 discriminatory.

22 We also note our agreement that some

1 changes may be needed with respect to
2 international taxation. We endorse and urge the
3 U.S. Government to support the ongoing OECD
4 efforts to reach consensus on needed tax changes
5 and support the development of such a solution as
6 soon as possible, which I'm happy to say we've
7 seen significant progress in that construct of
8 late.

9 Country-specific digital service
10 taxes, either in place or proposed, while this
11 OECD solution is being pursued, we think will
12 ultimately undermine the global consensus needed
13 to reach a workable international taxation
14 agreement that addresses the global digital
15 economy and will damage the ability of the
16 American digital economy's small businesses to
17 innovate and create new jobs.

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

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, we
4 recommend that the U.S. Government focus on
5 attaining a consensus multilateral tax agreement
6 through the OECD process and avoid the imposition
7 of retaliatory tariffs that would most impact
8 America's small businesses like our members.

9 Thanks for the opportunity to provide
10 these views, and I'm happy to help moving forward
11 in any way that we can. Thank you.

12 MR. ALLEN: Thank you, Mr. Scarpelli.

13 Mr. Brown, you may now proceed with
14 your testimony when you're ready.

15 MR. BROWN: Thank you very much.
16 We've had some difficulties. My apologies. I'm
17 ready to go now.

18 Good morning. My name is Graham
19 Brown. I'm here on behalf of Lush Handmade
20 Cosmetics, where I have served as the Director of
21 Products and Manufacturing for the past 25 years.

22 We are testifying against the

1 imposition of Section 301 tariffs on fragrances,
2 bath bombs, and cosmetics products classified in
3 3303.00.30, 3307.30.10, and 3304.99.50 of the
4 Harmonized Tariff Schedule.

5 Lush is a manufacturer and retailer of
6 innovative, environmentally friendly, and
7 socially conscious cosmetics products. Since the
8 opening of our first shop in Vancouver in Canada
9 in 1996, Lush has expanded to 214 U.S. locations
10 employing more than 1200 hardworking Americans,
11 which ramps up to up to 3800 seasonal workers
12 over the Christmas season in 44 different states.

13 We are a diverse group united by our
14 values and a commitment to animal protection,
15 human rights, and environmental justice. Our
16 values extend to our sourcing strategies, which
17 emphasize total supply chain transparency;
18 ethical buying, and humane treatment.

19 Lush currently imports certain
20 proprietary fragrances from the UK and plans to
21 source bath bombs and handmade cosmetics from the
22 UK in the near future. These products are

1 included on the USTR's preliminary list of
2 products that may be subject to Section 301
3 tariffs in connection with the digital services
4 tax assessed by the UK.

5 These products are not related to the
6 DST and our company has received no assistance
7 from the U.S. Government or from the EU. A
8 tariff on these particular products will not
9 eliminate the UK DST. Instead, it will cause
10 disproportionate harm to Lush and our employees
11 and customers and partners in the U.S.

12 Our implicated fragrance products must
13 be imported from the UK. For over 20 years,
14 Lush's iconic fragrances have been supplied by a
15 UK supplier under an exclusive license agreement
16 which prevents our company from sourcing from any
17 other supplier or country. In fact, the UK
18 licensor exclusively controls the Lush brand
19 proprietary fragrances and product formulations
20 and supplies all the Lush retail locations
21 globally for these products.

22 The UK supplier also controls the

1 specifically developed and heavily vetted supply
2 chain to ensure all ingredients suppliers comply
3 with the brand's corporate social responsibility
4 initiatives. As a result, even if Lush were able
5 to reposition our supply chain to source these
6 proprietary fragrances from an alternate
7 location, doing so would require a lead time of
8 several years and investments of millions of
9 dollars, and an agreement with and investment
10 from the licensor, which is not under our direct
11 control.

12 For these reasons, it is not possible
13 for Lush to quickly reposition our supply chain
14 to shift production of our fragrances out of the
15 UK in response to the proposed tariffs.

16 The tariffs on fragrances, bath bombs,
17 and cosmetics products not only have a negative
18 impact on our U.S. operations employment levels
19 and expansion plans; the proposed tariffs would
20 likely trigger the discontinuation of Lush's
21 fragrance line in the U.S. and the elimination of
22 associated American jobs, because neither Lush

1 nor consumers can absorb the increased costs.
2 Lush will be forced to pass any tariffs on bath
3 bombs and cosmetics to consumers because Lush's
4 raw material costs are already so high.

5 These proposed tariffs will result in
6 decreased sales, less funds for U.S. expansion,
7 and reduced accessibility of ethically sourced
8 and sustainable products for American consumers.
9 For these reasons, we respectfully request that
10 the proprietary fragrances, bath bombs, and
11 handmade cosmetics products from the UK be
12 removed from the USTR's preliminary product list
13 and excluded from any Section 301 tariffs.

14 Lush's products are unrelated to the
15 USTR's objectives in the DST dispute, and their
16 exclusion will promote the continued success and
17 expansion of medium-sized businesses like Lush.

18 Thank you very much for your time and
19 consideration.

20 MR. ALLEN: Thank you, Mr. Brown, for
21 your testimony.

22 We will now turn to questions from the

1 Section 301 Committee. And for that, we will
2 start with Treasury.

3 MR. CHANG: Hi. Thank you very much
4 for your testimonies.

5 My first question goes to Brian
6 Scarpelli of ACT, The App Association. In
7 comparison to some of the other national digital
8 services taxes on the investigation, the UK law
9 provides an alternative method of calculating tax
10 liability under its DST for companies with very
11 low profitability. Does this additional feature
12 change your assessment of the potential impact of
13 the tax on your members, particularly for small
14 and medium-sized companies?

15 Thank you.

16 MR. SCARPELLI: Thank you for that
17 question.

18 I think I would say that you're
19 pointing out something that is true I think maybe
20 in a couple of other facets, too, for the UK DST,
21 in that there are some flexibilities, is maybe
22 the word I'm looking for, and other -- you know,

1 it's a little bit less of a one-size-fits-all
2 than some of the other DSTs that we're also
3 troubled by. So, in that respect and the
4 calculation method that you just mentioned, it
5 does ease, yes, it would ease the burden to some
6 degree.

7 But I would have to add that that we
8 remain concerned about our members who are in the
9 UK right now and considering trying to enter the
10 UK market right now and the impact on them. That
11 can be difficult to measure that.

12 But also the precedent. Especially I
13 think that the Commonwealth Network, if it's fair
14 to call it that, I think the UK's laws and
15 policies and practices have a pretty significant
16 impact on a wide range of other countries' laws
17 and policies, too. So, that's also a concern.

18 MR. CHANG: Thanks very much.

19 I also wanted to ask, we note that
20 your organization is testifying at a number of
21 our hearings in various investigations. In light
22 of this, would you like to comment on whether

1 there any other unique aspects of the UK DST that
2 might be relevant to the proposed Trade Act?

3 MR. SCARPELLI: I mean, sure, sure,
4 and thank you for that. Thank you for that.

5 So, I think we'd flag concern -- well,
6 it would be in the vein of what are we
7 particularly concerned about, I think is things
8 that we would call out specifically about the UK
9 DST, but we've widely called out that we're
10 particularly concerned with retroactivity, for
11 example, as an aspect of some of these DSTs. And
12 as I understand it, the UK DST does have that
13 characteristic. So, that might be one example
14 one.

15 I think our written testimony might
16 call out one or two other things, but, yes,
17 you're right, we're participating in all of the
18 hearings related to the DST. And so, we're
19 certainly trying to elevate our concerns widely
20 about the DSTs, but, you know, also calling out
21 what might jump out to us as particularly
22 troublesome. So, I guess I might call out

1 retroactivity as far as the UK.

2 MR. CHANG: Thanks very much for your
3 participation. Thanks.

4 MR. ALLEN: Okay. Thank you.

5 Next, we will go to the Small Business
6 Administration.

7 (No audible response.)

8 Sarah, are you on or are you ready?

9 If not, we can move on.

10 (No audible response.)

11 Okay. In that case, we'll move on to
12 -- the next question will be asked by the USTR.

13 Rebecca, you can go ahead when you're
14 ready.

15 MS. GUDICELLO: Thank you.

16 Mr. Brown, this question is for you.
17 You testified that Lush will be forced to pass on
18 tariffs on any bath bombs and cosmetics to its
19 consumers. Is your assumption that it would not
20 be possible for your UK-based supplier to absorb
21 some of these additional costs? And if so, why?

22 MR. BROWN: Lush's strategy has been

1 to put all of its resources into the raw
2 materials. So, the cost of our products is
3 substantially related to the raw materials,
4 essential oils, and all the ingredients that go
5 in. A lot of other cosmetics companies spend
6 money on packaging and marketing. We don't have
7 the marketing budget of any kind. So, 80 percent
8 of our product cost is in raw materials. And so,
9 these proposed tariffs would increase everybody's
10 costs to bring these products into the market,
11 and there's no other place to source them from.
12 And the costs have been increasing year over
13 year, as the costs of all the raw materials have
14 been increasing over the years as well.

15 In North America, I'm not in control
16 of the license agreement which dictates allowed
17 price increases, substantiated price increases
18 due to raw material increases. And so, those
19 have been passed onto us, and they provided the
20 information on what the price increases are based
21 on. And it's all based on the increase in the
22 cost of the raw materials.

1 We actually use the full essential oil
2 blends, sandalwood, rose oil, sourced all over
3 the world as fair trade sourced, and those are
4 very expensive, long-lead supply chains to set
5 up. And those costs have only been increasing.

6 And I hope that answers that question.

7 MS. GUDICELLO: Yes. Thank you very
8 much.

9 MR. ALLEN: Great. Next, we will move
10 on to Commerce for the next question.

11 Jessica, I think you're on mute. You
12 might need to unmute yourself.

13 (Pause.)

14 Still can't hear you. Okay. Well,
15 we'll let you work this out for a sec.

16 We'll move on to State next.

17 MS. MAZZONE: Hello? Is this working?

18 My question is for Mr. Brown. In your
19 testimony, you reference that Lush employs over
20 1200 individuals in the United States. Can you
21 elaborate on the types of employment that Lush
22 provides in the United States? And can you also

1 elaborate on how including the referenced
2 products in this action might impact that
3 employment?

4 MR. BROWN: Yes, I can. As I
5 mentioned, we're in manufacturing and retail. In
6 the U.S., we have 200-plus retail locations and
7 the support of positions that support those
8 actual retail location employment jobs. So, for
9 example, we have everything from retail store
10 manager through to supervisors and sales
11 associates. In the retail locations, we have
12 what we call our retail support team. I suppose
13 the best analogy, the closest analogy for those
14 types of support roles in the U.S. would be
15 regional managers, although we don't call them
16 that. So, we have every sort of job related to
17 retailing and supporting the retail business
18 across a large geographic area.

19 I'm sorry, could you repeat the second
20 part of that question?

21 MS. MAZZONE: The second part was, can
22 you also elaborate on how including the

1 referenced products in this action might impact
2 that employment?

3 MR. BROWN: Right. So, pre-COVID, we
4 had an expansion plan to open 100 new U.S. retail
5 locations over a three-year period. So, that was
6 put on hold during the pandemic. Where that
7 impacts existing and future jobs is Lush is all
8 about the perfume and fragrance control of the
9 bath bombs and the actual perfumes themselves.
10 And so, it's going to impact our expansion plan
11 because I do not believe we will be able to
12 afford -- we'll have to discontinue the fragrance
13 lines, and that's a very key part to selling the
14 whole Lush experience of the retail experience in
15 the stores, is to get a full family experience
16 through the range.

17 And the bath bombs we invented,
18 there's a whole knockoff economy that's copied
19 our bomb baths because they're so good. But, as
20 I said earlier, the other related question is all
21 our cost is in our raw materials. And so, any
22 increase, further increase, in those costs will

1 either result in us discontinuing those product
2 lines or passing on the cost to the consumers,
3 which I do not believe will keep us competitive
4 in the marketplace, and it will impact employment
5 of all the sales associates and supporting team
6 in the U.S., especially the expansion piece. It
7 will affect our expansion plans to employ more
8 people in the United States.

9 MS. MAZZONE: Thank you.

10 MR. ALLEN: Great. For the next
11 question, we'll move on to USDA.

12 MS. WALTON: Good morning.

13 This question is for Mr. Graham Brown
14 as well. You note that consumers turn to Lush
15 products when looking for ethically sourced and
16 sustainable products. Can you speak to the
17 effect brand loyalty has on your company's
18 pricing decisions?

19 Thank you.

20 MR. BROWN: Okay. Brand loyalty, yes,
21 I'd like to say that brand loyalty, the impact
22 that brand loyalty has on our pricing decisions

1 is that we, obviously, do our best to keep an eye
2 on the competitive landscape. But we believe
3 that we have what we call bare value, but I would
4 argue excellent for our products. And so, we are
5 pricing the products as low as we can, based on
6 the cost of the materials.

7 And a lot of times, those aren't
8 really -- it's an affordable luxury. Let me say
9 it that way. It's affordable not for everybody
10 already. And so, the brand loyalty allows some
11 people to overcome that barrier because they know
12 they're putting their money into -- they're
13 voting with their dollars to improve the planet
14 from an environmental perspective, animal rights
15 issues and human rights issues, because we try to
16 use all our dollars throughout our whole supply
17 chain to do good things on the planet and in the
18 United States. And so, brand loyalty has the
19 impact of people overcoming those price barriers,
20 and hopefully, choosing to purchase our products,
21 even when it's a stretch financially in that sort
22 of affordable luxury price range.

1 So, I think my answer to your question
2 is brand loyalty allows people to continue
3 purchasing, even at the higher price points, up
4 to a point. We do see a barrier where the brand
5 loyalty doesn't quite keep people there, if it's
6 really out of the price range of what they can
7 afford. And so, we're at the very high end of
8 that range already.

9 I hope that answers your question.

10 MR. ALLEN: Okay. For the next
11 question, let's move back to Commerce and see,
12 Jessica, is your mic issue resolved?

13 MS. HUANG: Can you hear me now?

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

15 MS. HUANG: All right. Thank you, Mr.
16 Brown, for your testimony.

17 You state that Lush imports certain
18 proprietary fragrances from the UK. Does Lush
19 import fragrance products from any other sources
20 or does it produce fragrance products
21 domestically?

22 MR. BROWN: That's a great question.

1 No, for over 25 years, and the whole structure of
2 the business -- because that's when the business
3 actually started globally -- we're governed by a
4 license agreement that requires us to purchase
5 them exclusively from the UK. So, we cannot in
6 practice, or at all, source from any alternate
7 countries.

8 MS. HUANG: Can you elaborate if the
9 bath bombs and cosmetics products are produced
10 domestically or do we import them as finished
11 products?

12 MR. BROWN: We do both. So, the
13 fragrances themselves are imported, and that's
14 the proprietary nature of the products. There is
15 domestic manufacturing of the bath bomb products
16 and some of the other cosmetics ingredients. And
17 the U.S. business, the only two options they have
18 are to purchase from the UK licensor directly or
19 through domestic manufacturing and/or the
20 Canadian business. All those businesses are
21 governed by the same license agreement structure,
22 the same license agreement structure which

1 requires the fragrances and bath bombs to be made
2 locally or imported -- in the case of bath bombs,
3 made locally, or in the case of fragrances,
4 they're all 100 percent imported.

5 We have a project underway to
6 manufacture in the U.S. and that was temporarily
7 paused during the pandemic. It's a proprietary
8 manufacturing process which requires training by
9 either our UK partners or through other markets,
10 which requires a lot of open travel. And it's a
11 multiyear, multimillion dollar project to get
12 manufacturing set up in the U.S.

13 And I hope that answers your question.

14 MS. HUANG: Yes. So, I gather your
15 import sources are the UK, domestic, or Canada.
16 Is it possible to give us an idea of the
17 percentage of the product lines that are made of
18 by these three different sources? And you can
19 provide these after the hearing as well.

20 MR. BROWN: Domestic in terms of the
21 U.S. is zero at the moment because it's not set
22 up yet. And as far as the split, yes, I'll have

1 to provide the exact split between Canada and the
2 U.S. -- Canada and the UK. It is worth to note
3 that the U.S. business has no control over the
4 Canadian license agreement. And so, the supply
5 from Canada is uncertain to be secured for the
6 future. So, really, it is zero percent domestic
7 manufacturing in the U.S. and 100 percent from
8 the UK and Canada. And the Canadian supply is up
9 for renegotiation, and the U.S. business has no
10 direct control over the result of that license
11 agreement renegotiation for Canadian supply. And
12 the UK can control and dictate where the bath
13 bombs and cosmetics are made. So, as I testified
14 earlier, the supply chain is controlled by the
15 UK.

16 MS. HUANG: Okay. Thank you.

17 MR. BROWN: You're welcome.

18 MR. ALLEN: I think now we'll move to
19 the Small Business Administration.

20 (No audible response.)

21 It looks like we may still be having
22 some technical issues with SBA.

1 So, before I conclude this panel, we
2 will pause to see if any member of the 301
3 Committee has any remaining questions.

4 MS. HUANG: I would like to ask one
5 more question.

6 MR. ALLEN: Go ahead, Jessica.

7 MS. HUANG: Thank you.

8 Mr. Brown, your testimony indicated
9 that consumers understand that Lush is a value-
10 led, ethically sourced company. I'm wondering,
11 what's the price difference between your Lush
12 products and cosmetics versus other products that
13 are not tied to being value-led, ethically
14 sourced, focused on the raw material cost? And
15 if customers are already paying a premium price
16 for Lush products, if they are able to then
17 absorb an additional tariff cost if they're
18 already paying for a premium product?

19 MR. BROWN: I think there's a limit to
20 what the consumer is willing to pay for
21 -- unfortunately, it's become more commoditized
22 since we invented the bath bombs. There are lots

1 of competitors that don't put the same quality of
2 ethically sourced ingredients in the products.

3 And so, we are already at our price limit in the
4 marketplace, I believe. And 25 percent tariff on
5 the fragrances and products that are proposed, I
6 do not believe that the consumer can absorb a 25
7 percent price increase on already expensive
8 products across the ranges that we supply.

9 And I can't speak to the other brands
10 because, if they had a 25 percent increase on
11 their raw material costs, that's a lower
12 percentage of their overall cost. Whereas, with
13 Lush, because of the ethically sourced supply
14 chain, all the ingredients through the whole
15 supply chain, they would directly increase the
16 cost by the tariff amount.

17 MS. HUANG: Thank you.

18 MR. ALLEN: I would like to ask a
19 question. I've been in touch with SBA. So, I
20 have the question that they were going to ask.

21 This question is for Mr. Scarpelli.
22 You mentioned that the UK tax is retroactive and

1 may involve services that are taxed in more than
2 one jurisdiction. Have your SME members shared
3 any insights into the compliance costs associated
4 with the UK DST?

5 MR. SCARPELLI: Thank you for that
6 question. It's a great question. It's one that
7 we're continuing to still research and survey the
8 members on.

9 I mean, I can tell you, it's
10 anecdotal, but, I mean, we have seen already
11 where digital service taxes are applied generally
12 that, like, for example, on a platform, that
13 those costs are pretty clearly passed on down to
14 the small businesses that are operating and
15 innovating on the platform. And we know that
16 that's going to happen, is happening. It is
17 happening.

18 Hopefully, this OECD construct will
19 help solve that problem, but we are still
20 looking. We hear that it is a big problem. We
21 hear that, but we don't have detailed data just
22 yet. I would love to follow up with you, if

1 that's okay, after the hearing. Sorry.

2 MR. ALLEN: Certainly, yes, you can
3 follow up in your post-hearing brief or your
4 post-hearing submission.

5 Are there any other comments or
6 questions from the Section 301 Committee?

7 (No audible response.)

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

13 (No audible response.)

14 Okay. Great. That concludes this
15 panel. Thank you for your time today.

16 I would like to thank the parties that
17 testified today for their important contributions
18 to our investigations.

19 As a reminder, the deadline for
20 rebuttal comments, which may include written
21 answers to questions posed at today's hearing, is
22 one week from today. Those comments should be

1 submitted through USTR's online portal at
2 comments.ustr.gov.

3 Today's hearing is adjourned. Thank
4 you.

5 (Whereupon, the above-entitled matter
6 went off the record at 10:06 a.m.)

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C E R T I F I C A T E

This is to certify that the foregoing transcript

In the matter of: Section 301 Investigations
Public Hearing

Before: U.S. Trade Representative

Date: 05-06-21

Place: teleconference

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