

USTR Proposes New Import Tariffs on European Aircraft, Beverages, Food Items and Many Other Products

by Dave Townsend and T. Augustine Lo

The Office of the U.S. Trade Representative (“USTR”) proposed on April 8 to impose additional tariffs on \$11 billion of imported products, at 100% of the value of the goods, if they are made in any of the 28 member states of the European Union (“EU”), including aircraft and aircraft parts, beverages, food and other manufactured goods. The USTR has made this new proposal as retaliation against the EU after a World Trade Organization (“WTO”) finding that the EU has provided subsidies to Airbus, the EU-based producer of passenger aircraft, that are inconsistent with WTO agreements. The USTR’s action would be taken under the authority of Section 301 of the Trade Act of 1974 (“Section 301”), the same law invoked by the USTR in the pending U.S. trade disputes with China. Like the Section 301 tariffs on Chinese-origin goods, these tariffs on EU-origin goods would be in addition to any other import duties owed.

Interested parties may now comment on this latest USTR proposal. The USTR’s proposed retaliation list is quite broad, covering not only aircraft and certain aircraft parts from several key U.S. allies (France, Germany, Spain, and the United Kingdom), but also dozens of raw and processed food items, non-alcoholic and alcoholic beverages, fish, essential oils, handbags, paper products, yarn and textiles, ceramic products, precious metals, tooling, knives, bicycle parts, and clocks, and other items from all 28 EU member states generally. The full proposed USTR list, which is provided by 8- and 10-digit Harmonized Tariff Schedule of the United States (“HTSUS”) numbers, is available [here](#).

Under WTO rules, before imposition of such retaliatory tariffs, the USTR must first seek confirmation from a WTO arbitrator that the size of the proposed American retaliation is consistent with WTO rules, which USTR has promised to do. In that process, the WTO arbitrator could still significantly reduce the \$11 billion of EU-sourced goods to be made subject to the proposed retaliation, which would then likely result in items being removed from the list.

The particular dispute against Airbus, initiated in 2004, found that the EU had provided subsidies to Airbus that were inconsistent with WTO agreements and also found that the

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EU had not adequately changed or reduced those subsidies after the time given to the EU to comply with that earlier WTO decision. The WTO had also issued similar findings last month with respect to certain business tax relief measures given to Boeing, the American aircraft company, by Washington state that were deemed inconsistent with WTO agreements. Based on the WTO findings against Boeing, the EU could also impose similar tariff retaliation on European imports of goods from the United States. In light of both these WTO decisions, the USTR could potentially reach an agreement with the EU for each side to forego such tariff retaliation, and the USTR has stated that it hopes to reach such a negotiated settlement with the EU.

In the meantime, the USTR will consider comments on its proposed retaliation against the EU and could potentially modify the list of items subject to such tariffs in light of any public comments filed. U.S. importers of affected items from the EU should check the proposed retaliation list, assess the impact to their operations and, if appropriate, consider filing comments with USTR. Likewise, companies that compete with items from the EU may consider requesting that the final USTR list should cover such EU imports.

Dorsey & Whitney's international trade attorneys are prepared to assist companies in preparation and submission of public comments or testimony to the USTR regarding these proposed new Section 301 retaliatory tariffs or in reviewing such public comments or testimony offered by other companies. The USTR has set the date of **May 6, 2019**, as the deadline to request to give oral testimony on the USTR's retaliation proposal at a public hearing at the International Trade Commission in Washington DC to be held on **May 15, 2019**. The USTR deadline for submission of written comments on the retaliation proposal is **May 28, 2019**, including any written rebuttal to testimony given at the May 15 hearing.