

## USTR Considering Additional \$4 Billion in European Products for Special Duties

July 3, 2019

### Key Points

- The USTR will consider a second list of products, totaling \$4 billion in imports, to include in its proposed duties of up to 100 percent *ad valorem* on EU imports.
- The additional list covers 89 separate 8-digit HTSUS subheadings that apply to various food, chemical and metal products.
- The final list of subject products, if implemented, may include products from both the April 12, 2019 preliminary list and the second list.
- The USTR seeks comment and testimony on the second list and will convene a public hearing on August 5, 2019, accept public comments until August 5, 2019 and accept post-hearing rebuttal comments until August 12, 2019.

### Introduction and Background

The Office of the United States Trade Representative (USTR) will now consider a second list of products as part of its proposal to impose duties of up to 100 percent *ad valorem* on European Union imports pursuant to Section 301 of the Trade Act of 1974 (19 U.S.C. § 2411). The second list, which is set forth in a forthcoming *Federal Register* notice, covers \$4 billion in EU imports classified in 89 subheadings of the Harmonized Tariff Schedule of the United States (HTSUS). Please see our [earlier Alert](#) for details on the USTR's [preliminary list of April 12, 2019](#), which includes 325 separate 8-digit and 10-digit subheadings covering \$21 billion in EU imports.

The USTR published the second list following a May 15-16, 2019 hearing and its receipt of over 600 public comments on the initial proposal. According to the USTR, the new list responds to a number of comments requesting that the USTR consider additional products absent from the preliminary list.

The USTR will potentially draw products from both lists if it decides to move forward with the proposed action. However, the forthcoming *Federal Register* notice does not indicate when the USTR will decide on the action and which products it will cover. The latter will depend in part on a World Trade Organization (WTO) determination, which is still pending, on the level of countermeasures the United States may impose on the

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European Union and its member states for harm caused by subsidies to aircraft manufacturer Airbus.

#### Products Included on the Second List

The 89 HTSUS subheadings on the second list include:

- Various cheeses not covered by the preliminary list
- Butter substitutes, whey protein concentrates and other dairy products
- Certain olives not covered by the preliminary list
- Various fruits, fruit juices and fruit preserves not covered by the preliminary list
- Roasted and instant coffees
- Various pork products
- Pastas
- Waffles and wafers
- Certain condiments and seasonings
- Whiskies
- Ammonia
- Certain nitrogenous fertilizers, including urea
- Ferrovandium
- Certain cast iron pipes and pipe fittings
- Copper and copper alloys in various forms.

If implemented, the additional duties would apply to products of any of the 28 EU member states.

#### Key Dates in the Timeline

- July 24, 2019: Deadline for Requests to Appear at Public Hearing  
Interested parties who wish to appear at the August 5, 2019 public hearing must submit a request to appear via the Federal eRulemaking Portal at <http://www.regulations.gov> (docket number USTR-2019-0003); and via an email message submitted to [301aircraft@ustr.eop.gov](mailto:301aircraft@ustr.eop.gov). Requests must include a written version of the expected testimony (rather than a summary). Remarks at the hearing may be no longer than five minutes.
- August 5, 2019: Public Hearing  
USTR will convene a public hearing at the U.S. International Trade Commission, 500 E Street SW, Washington, DC 20436. The hearing will begin at 9:30 a.m. ET.
- August 5, 2019: Deadline for Written Comments  
Interested parties may submit comments through the Federal eRulemaking Portal at <http://www.regulations.gov> (docket number USTR-2019-0003). USTR specifically invites comments on:
  - The specific products on the second list.
  - The extent of the duty rate increase (if any).

- Any adverse effects the additional duties may have on U.S. stakeholders, including small businesses and consumers.
- August 12, 2019: Deadline for submission of post-hearing rebuttal comments

Interested parties may submit comments on hearing testimony through the Federal eRulemaking Portal at <http://www.regulations.gov> (docket number USTR-2019-0003).

#### Recommendations and Next Steps

- Importers whose products are covered by the second list should consider presenting their views to the USTR and the Section 301 interagency committee by filing comments and presenting testimony. Akin Gump can assist in drafting comments, and preparing and presenting testimony.
- Importers may also, in some circumstances, wish to confirm tariff classification or country of origin by obtaining a binding ruling from U.S. Customs and Border Protection. Akin Gump can advise on how to proceed in confirming or declaring the tariff classification and country of origin of imported goods.
- Importers should consider reaching out to their elected municipal, state and congressional representatives to express their position on the additional duties.

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