Industry reps fear new portal will suppress comments on Airbus tariffs
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The Office of the U.S. Trade Representative received more than 25,000 public comments the last time it reviewed tariffs being imposed on EU member states for what the World Trade Organization ruled improper subsidies provided to Airbus. But for a new round of tariff reviews, USTR plans to launch a portal for comments that some stakeholders worry will deter public submissions.

USTR expects to initiate its second review of the Airbus tariffs in August, as required by law, and will solicit public comments for that tariff review on June 23, according to a May 27 Federal Register notice. The agency estimates that with the new portal, submitting a comment will take about two hours and cost $200 per submission, the notice says.

“USTR carefully evaluated the cost and complexity of establishing its own portal to receive and evaluate public comments based on the level of public interest in response to the first revision notice, the difficulties in processing the comments using Regulations.gov, and USTR’s experience in handling a large volume of public input in connection with the Section 301 Portal,” the notice said.

Some stakeholders say the agency has made things worse, however. Instead of submitting comments through the standard regulations.gov form, those seeking to comment on the new tariff review now will be required to fill out a six-page form with numerous, detailed questions. (The standard process allows stakeholders to type their comments into text boxes and submit them along with any relevant attachments.)

The new form requires that stakeholders select the product category and specific product their comment addresses, including the HTSUS code or statistical reporting number, and the EU member state in question. The questionnaire also asks for comments on “whether maintaining or imposing additional duties on a specific product of one or more specific EU member State (or former member State) would be appropriate to enforce U.S. WTO rights or to obtain the elimination of the WTO-inconsistent measures, and/or would be likely to result in the implementation the DSB recommendations in the Large Civil Aircraft dispute or in achieving a mutually satisfactory solution.”

By requiring that stakeholders answer a series of questions, “you’re forcing people to answer things they may not know, may not have an opinion on, or may not be qualified to answer,” North American Olive Association Executive Director Joseph Profaci told Inside U.S. Trade. The new form may discourage small-business owners who don’t file submissions with counsel from commenting, he added.

Each new step in the commenting process turns more stakeholders away, Ben Aneff, the president of the U.S. Wine Trade Alliance and managing partner of Tribeca Wines, told Inside

U.S. Trade. According to Aneff, the new form “looks like it was created by the department of form producers.”

USTR acknowledged the “huge outcry” sparked by its proposed tariffs the last time they were reviewed and responded by making it harder to submit comments, Aneff said. USTR launched that review last December and received nearly 26,000 comments.

That overwhelming response “should be a clue that what they’re doing is upsetting a lot of people,” Profaci said. “The answer is not to shut them up.”

Small businesses’ ability to easily comment on tariffs is particularly important for the wine industry, which is dominated by mom-and-pop shops and small retailers and distributors, Aneff said. A bottle of wine purchased from a small U.S. business has already passed through the hands of a U.S. distributor, which bought it either from a U.S. winemaker or a U.S. importer, he noted. According to Aneff, there are roughly 47,000 small wine retailers in the U.S. and another 6,500 small-business distributors -- and wine tariffs have the potential to impact each one.

The Section 301 statute requires USTR to review the Airbus tariffs four months after they were imposed and conduct regular reviews every six months thereafter. The second review of the tariffs is set for “on or about” Aug. 12, according to the Federal Register notice, and USTR says it expects “at least as many comments as it received” during the first review.

The review comes as the U.S. wine industry is reeling, Aneff said. The coronavirus pandemic has prompted governments to close a host of businesses, and that has reduced 50 to 75 percent of wine distributors’ customer base, according to Aneff. Tariffs, he said, are just “another millstone around their neck.” On top of that, spending an additional two hours and $200 to oppose the tariffs is not appropriate when many small businesses are struggling to stay afloat, he said.

Stakeholders had until June 9 -- only two weeks -- to comment on USTR’s proposed comment portal. USTR requested an “emergency review” for the portal “because it cannot reasonably comply with normal clearance procedures,” according to the Federal Register notice.

“To meet the statutory schedule for revisions, USTR must open the Large Civil Aircraft Dispute Portal on or about June 23, 2020,” the notice said.

Aneff and Profaci said they attempted to comment on the establishment of the portal but ran into difficulties because the Federal Register notice’s instructions were incorrect. The notice instructed stakeholders to use reginfo.gov, which is run by the Office of Management and Budget’s Office of Information and Regulatory Affairs.” That website did not allow for comment submissions, Aneff and Profaci said. Instead, both emailed comments directly to USTR.

Aneff asked that USTR extend the deadline for comments on the portal because of the incorrect instructions in the Federal Register notice that he said deterred comment submissions. Profaci asked that USTR not move forward with the portal because of the inability to submit comments.

USTR did not respond to a request for comment on the establishment of the new portal or answer questions about the commenting process. -- Brett Fortnam (bfortnam@iwpnews.com)