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Mr Joseph L. Barloon
General Counsel
Office of the United States Trade Representative
600 17th Street NW
Washington, DC 20508

January 13, 2020

Regarding: USTR-2019-0003: Section 301 Comments:
Review of Actions: Enforcement of U.S. WTO rights in large civil aircraft dispute

Dear Mr Barloon,

Drinks Ireland|Spirits (formally the *Irish Spirits Association*) is the representative body which represents ten of the 11 main brand owners including all main producers of *Irish Cream liqueur* and other liqueur products in Ireland. *Drinks Ireland|Spirits* is part of ***Drinks Ireland*** which itself is part of ***Ibec***, Ireland's largest business representative body.

Reason for submitting comments

On behalf of our member companies, a number of whom are either U.S. owned and others who have significant investments and holdings in the U.S. spirits industry, *Drinks Ireland|Spirits* welcomes the opportunity to provide comment to the review that the Office of the United States Trade Representative (USTR) is undertaking into the action being taken in the Section 301 investigation involving the enforcement of U.S. rights in the WTO dispute against the European Union (EU) and certain EU member states addressed to EU subsidies on large civil aircraft (Docket number: USTR-2019-0003).

USTR has asked for comment on the following four points:

- whether products listed in Annex I should be removed from the list or remain on the list
- whether the rate of additional duty on specific products should be increased up to a level of 100 percent
- whether additional duties should be imposed on specific products listed in Annex II, and
- on the rate of additional duty to be applied to products drawn from Annex II.

Drinks Ireland|Spirits would like to provide comment on the first two of these points. In providing comment we are focusing on the decision of USTR to place a 25 percent *ad valorem* tariff on Irish Cream liqueur and other Irish liqueurs[1] by way of the inclusion of *liqueurs and cordials* (HTS subheading: 2208.70.00) originating in Ireland on the list of products currently subject to additional duties in this dispute.

We would like to highlight the negative effect these import duties are having, such as reduced profitability and job losses along the U.S. supply chain, for the main brand owners and all main producers of *Irish Cream liqueur* and other Irish liqueurs which include a number of U.S. businesses. We would like to highlight the disproportionate nature of these tariffs on a non-Airbus consortium country and the corresponding danger they pose to the Good Friday Agreement. And finally we would like to request that *liqueurs and cordials* originating in Ireland be removed from the list.

Ireland, Airbus and Boeing

This dispute we are providing comment in relation to is between two commercial aircraft producing companies active in the transport sector. And yet we are commenting on tariffs that are being applied to agricultural products in this dispute.

The Airbus consortium has four participating nations and four home markets. They are France, German, Spain and the United Kingdom. Ireland is not part of the Airbus consortium and is not one of the consortium's home markets.

What Ireland is, in terms of the aviation industry Ireland is one of the largest centres for aircraft leasing in the world with over 60 percent of the world's leased aircraft being managed from Ireland.

EU Member States imported 533 large planes with a weight of 15 000 kg and above from non-EU countries in 2018, worth €21.9 billion[2]. 62 percent (329) of these planes came from the U.S. Of the total EU figure Ireland alone accounted for 53 percent of these purchase, that is 284 large planes. Almost all of these large planes came from the U.S. The aviation industry in Ireland does not discriminate in favour of Airbus. There are as many Boeing aircraft on the books of companies in Ireland such as *AerCap Holdings N. V.*[3], *SMBC Aviation Capital*[4] or *Avolon*[5] as there are Airbus aircraft. Indeed, some companies, such as Irish owned Ryanair, have entire fleets[6] which consists of only Boeing aircraft.

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[1] For example, *Irish Mist whiskey liqueur*, *the Dubliner whiskey liqueur, Celtic Honey liqueur* and *Cocalero*.
[2] European Commission: EU trade in large planes
[3] 580 owned/ordered Boeing aircraft.
[4] 310 owned/ordered Boeing aircraft.
[5] 333 owned/ordered Boeing aircraft.
[6] 450 Boeing aircraft with a further 210 on order.

And yet Ireland is being tariffed at a level that is 6.4 times the EU average and over four times the level of tariffs (as a proportion of economic output) which have been levied on the four Airbus consortium countries who are responsible for this dispute in the first place.

Impact of these tariffs on our members and their employees

Drinks Ireland|Spirits represents producers and brand owners of Irish Cream liqueurs a number of whom are U.S. companies[7]. These include some of the largest independent, family-owned and operated spirits producers and brand owners in the U.S.

Two of the top four selling Irish Creams sold are 100 percent U.S. owned and these tariffs directly target and negatively impacts the profitability of these American companies. The top selling Irish Cream brand is owned by a company that employs thousands of individuals across the U.S.[8]

The impact of these tariffs is, at the moment, being absorbed by these U.S. companies which is resulting in smaller profit margins and an intensification of the competitive disadvantages they encounter in particular from the mislabelled, and misleading imitation cream products that are on sale in U.S. stores.

The brands that these U.S. companies own and which they import into the U.S. are directly tied to U.S. consumer taste choices and desire for real Irish Cream, U.S. jobs and the continued, health and future growth of their U.S. holdings.

Without the ability to import these various products, or if the increased cost as a result of these tariffs is sustained for any length of time or increased by any margin, it has been clearly stated in previous comment to the USTR by our U.S. members that they will be unable to sustain current levels of production and sales in the U.S. with corresponding risks to the future of some of their U.S. workforce.

It is also worth pointing out at this stage that among it is not just our U.S. members who will be affected by these tariffs. U.S. businesses and workers all along the supply chain will and are being negatively affected by these tariffs. These are smaller, and in many cases, family run businesses (distributors, wholesalers, retail outlets, speciality sector operators, etc.) throughout the country who our U.S. members work with and who's ability to do business will and is being compromised by these tariffs.

Our U.S. sister organisation, the Distilled Spirits Council of the United States (DISCUS) has estimated that these U.S. tariffs applied in October 2019 could result in the loss of up to 8,000 good-paying jobs

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[7] A number of U.S. companies own Irish Cream liqueur brands. Heaven Hill Brands of Bardstown, Kentucky owns *Carolans Irish Cream liqueur* (the second largest Irish Cream brand) and *Irish Mist* whiskey liqueur. Luxco, headquartered in St Louis, Missouri, owns 'Niche Drinks' who produce *St. Brendan's Irish Cream Liqueur*. *Five Farms Irish Cream* is co-owned by the McCormick Distilling Company of Weston, Missouri. *Brady's Irish Cream* and *Celtic Honey* liqueur are produced by Castle Brands which has its headquarters in New York City.

[8] Diageo is the largest producer in the Irish Cream market with its *Baileys Irish Cream* brands. Other, Irish owned Irish Cream brands include *Avondhu* (Silver Pail Dairy), *Merrys* (Robert A. Merry & Co), *Molly's* (Terra Spirits & Liqueurs), *the Irishman Superior Irish Cream* (Walsh Whiskey Distillery) and *Feeney's* which is part of the UK's Quintessential Brands Group.

across the U.S. beverage alcohol sector, from importers, distributors, wholesalers, to the hospitality sector.

Our U.S. members also pay significant amounts in excise tax to the U.S. federal government every year for both their distilled spirits products imported into the U.S. and those distilled in the U.S. This is in addition to additional excise tax paid in individual states. The spirits sector in the U.S. more than pays its fair share in this respect. Additional taxes and tariffs imposed by the U.S. Government is having a direct impact on their profitability and ability to continue to grow and expand.

Whilst our U.S. owned members have worked with domestic and international business partners to absorb the tariffs, and balancing the impact to their businesses and their employees, this is something which cannot be reasonably expected to be maintained in particular if further additional tariffs are introduced by the U.S. government.

U.S consumer choice

Irish Cream is seen as a heritage brand for the large Irish American community in the U.S. and as an aspirational luxury drink by U.S. consumers of all socio-economic levels. U.S. consumers are clear in their desire for Irish Cream rather than any other type cream liqueur product.

The cost of these U.S. tariffs is likely to be passed on down the supply chain to U.S. consumers sooner rather than later and will constitute an additional tax (on products that already attract a high excise tax) which the consumer ultimately will have to pay.

It is the experience of our U.S. members that the American consumer demands and wants genuine spirits products from other parts of the world and that a critical element of their ongoing business success is the ability to maintain a diverse portfolio of products that consumers want. These companies cannot continue as successful businesses without including imported products such as genuine Irish Cream and other Irish liqueurs in their range of offerings to American consumers.

These tariffs not only threaten U.S. jobs they also threaten consumer choice and confidence by encouraging bootleg cream liqueur products to pass themselves off as Irish Cream. These are products which are mislabelled with the singular intent of misleading the U.S. consumer as to what they are, how they are produced and where they come from which is to the complete detriment of the U.S. consumer's choice and confidence.

EU tariffs

A further risk exists in that applying tariffs to *liqueurs and cordials* and other spirits products will result in the application of further EU tariffs on U.S. spirit products.

Further EU tariffs on U.S. spirits products, on top of those already in place on American whiskey and bourbon will lead to a significant decline in the industry's exports to, and sales in, Europe. Our members fear that if tariffs are placed on more U.S. spirits products or if those on whiskey and bourbon are increased then the market for their produce in the EU could be lost for at least a generation as they would not be able to compete with local produce.

Drinks Ireland|Spirits represents the Irish distilled spirits industry. As an industry we are very concerned by the EU's tariffs of 25 percent on U.S. whiskey and bourbon. These are tariffs we have disagreed with since day one as we feel they are unnecessary, unforgiving and will ultimately be unsuccessful in what they are seeking to achieve. We are, and will continue to, argue this with the relevant authorities in Dublin and Brussels.

However, these U.S. tariffs on *liqueurs and cordials* are seen as a U.S. escalation in your trade war with the EU and do not help the cause of reversing existing EU tariffs on U.S. whiskey and bourbon. Instead it means that additional EU tariffs on U.S. produce (vodka, rum and possibly further products) are likely and little chance for constructive engagement in advance of the automatic increase from 25 to 50 percent tariffs already in place on U.S. whiskey and bourbon.

The disproportionate impact on Ireland of these tariffs[9]

The complexity and scope of Ireland's enterprise base has developed significantly for both the domestic and multinational sectors in recent decades. Ireland has evolved from a country which sold mostly primary unprocessed agricultural products along with low value-added manufacturing to a high-tech manufacturing hub for areas like food, pharmaceuticals, information and communication technologies, and medical devices.

Bilateral trade between Ireland and the U.S. has grown in line with this rapid expansion in Irish trade. Irish exports to the U.S. grew from 12 percent of total exports in 1975 to 27 percent today. This growth in exports has also been accompanied by significant flows of foreign direct investment (FDI).

Irish investment in the U.S. also grew as Irish companies now employ almost as many workers in the US as US firms do in Ireland. Today Irish companies employ more than 100,000 people in the U.S. This Irish business footprint is focused on places not traditionally associated with the Irish diaspora. Despite Ireland accounting for only 0.4 percent of total global output Irish firms now account for over one-tenth of FDI jobs in Minneapolis-St Paul, and more than five percent in cities like St Louis, Charlotte, Dallas, and Kansas City.

There are significant differences between U.S. data (which shows a $47 billion goods trade deficit) and EU data (which shows one of $27 billion) on Irish trade but both tell a similar story. The Pharma sector accounts for $37.7 billion of Ireland's trade surplus (using the US figures). The remaining $9.3 billion is accounted for by the rest of Ireland's trade with the U.S. of which food and drink (the sectors impacted by these Airbus tariffs) account for less than a billion dollars.

It is also worth noting that Ireland ran a deficit on the services side of the ledger of $33 billion in the last year we have data for (2017) so overall the U.S. trade deficit is reduced to only $14 billion using USTR numbers or close to zero if one uses the EU's numbers.

[9] See Ibec's separate submission for more detailed information on this aspect of the tariffs.

The primary source of this deficit stems from specific sectors which Ireland has developed world class expertise and produces products which are exported throughout the world. Chemicals and pharmaceutical products account for almost two-third of total Irish exports. These are also the most common goods being exported to the US from Ireland.

Thus far the US have opted to apply circa $1.5-2bn in tariffs across $7.8bn total of imports (by U.S. customs value). Irish goods worth roughly $467 million are caught by these 25 percent tariffs. On a per capita basis, the total tariffs on Irish goods, at $23.84 per head is the highest in the EU. It is eight times the EU average, and five times higher than the tariff levels per-capita placed on the United Kingdom, France, Spain and Germany i.e. the Airbus consortium countries.

Measured otherwise, as a proportion of Gross Domestic Product (or the alternative official statistic GNI in Ireland's case) the total tariffs charged are equivalent to 0.043 percent of GDP in Ireland. This is 6.4 times the EU average and over four times the level of tariffs as a proportion of economic output which has been levied on the Airbus consortium countries.

Impact on the all-island economy and the Good Friday Agreement

The Irish Cream and liqueur industry runs on an integrated all-island basis with a deep network of supply chains that criss-crosses the Republic of Ireland and Northern Ireland border.

A significant portion of all Irish Cream is produced in Northern Ireland and the producers and brand owners make a significant contribution to the economy of Northern Ireland and to areas which had been historically depressed as a result of events in that province going back to the early 1970s.

The growth of global Irish spirits sales over the past decade, including in the U.S. has provided an important contribution to both the Northern Irish and all-island economies, and has supported the economic regeneration of Northern Ireland and Republic of Ireland's border regions since the signing of Good Friday Agreement in 1998.

There has been consistent and strong-held support by the U.S. Government and across all parts of the U.S. political system for the Good Friday Agreement since then.

Maintaining ongoing economic growth is important in maintaining local support for the Good Friday Agreement. Particularly at a time when the ongoing Brexit process poses significant challenges to the Northern Irish economy. The 25 percent tariff being applied to Irish Cream and other liqueur products pose further challenges.

There is real concern that current damage being inflicted on Irish cream exports to the U.S. could have a negative impact on the all-island economy, on Northern Ireland and on the Good Friday Agreement.

Conclusion

Drinks Ireland|Spirits would like to thank you for the opportunity to provide further comment in relation to this aircraft subsidies dispute and would like to reiterate our U.S. owned and Irish members dismay that Irish Cream and other liqueurs have had a 25 percent *ad valorem* tariff applied to their products.

Ireland does not participate in the Airbus project and we are disappointed that we have been brought into this dispute between two civil aviation companies. It is a dispute, which the application of tariffs to *liqueurs and cordials*, will in no way help resolve. These tariffs only serve to damage U.S. and Irish businesses, hurt consumer choice in the U.S. and possibly even damage U.S./Irish relations given their very arbitrary nature.

We do not understand the logical of using a commercial aircraft dispute to undo nearly 30 years of positive and mutually beneficial progress in the free trade of distilled spirits by industry and governments in the U.S. and Europe.

Given the U.S. believes it must impose tariffs in order to bring about EU compliance with its WTO obligations, we urge it to focus those tariffs on products in the aircraft sector given that this is a dispute between two civil aviation companies.

We also strongly urge that the U.S. engages as soon as possible in constructive and meaningful dialogue with its European counterparts to resolve this and other trade disputes. We urge that this dialogue also looks to restoring and recommitting to the bilateral tariff-free market access for distilled spirits that has worked to the benefit of U.S. and EU producers, consumers and economies on both sides of the Atlantic for nearly three decades.

And finally, to sum up and in doing so reply to the first two of the questions that the USTR requested comments on, Drinks Ireland|Spirits, on behalf of its U.S. and Irish members is of the view:

- that *liqueurs and cordials* should be removed from the list in Annex I, and
- the rate of additional duty on specific products should not be increased. It should instead be removed entirely.

Yours Sincerely,

Vincent McGovern
Head of Spirits in Drinks Ireland