



Melchionna PLLC

NEWSLETTER 2019 – SPECIAL ISSUE

IMPORTING TARIFFS ON PRODUCTS FROM ITALY: WINE, SPIRIT and CHEESE

September - October 2019

Alcohol Law - Wine, Liqueur and Spirit

October 6, 2019 - The United States is set to impose new tariffs on goods imported from certain countries of the European Union: the WTO DS316 Decision.

On 2 October, the World Trade Organization (WTO) issued a decision (DS316 European Communities and Certain Member States) authorizing the US to impose retaliatory tariffs on \$7.5 billion of European goods. The decision results from an ongoing dispute over subsidies Airbus received from certain European governments, which the American leaders say “seriously injured the US aerospace industry.”

(DS316 European Communities and Certain Member States – Measures Affecting Trade in Large Civil Aircraft (https://www.wto.org/english/tratop_e/dispu_e/cases_e/ds316_e.htm#bkmk316arb)).

Among other European goods, certain Italian imports will be affected by a 25% tariff. The affected goods include:

- Liqueurs and cordials;
- prepared or preserved pork hams and cuts thereof;
- Pork shoulders and cuts thereof (whether or not boned, cooked, or packed in airtight containers);
- prepared or preserved pork;
- pork sausages and similar products of pork (i.e. pork offal or blood, food preparations based on these products);
- Italian cheese from cow’s milk, processed cheese (incl. mixites) not grated or powdered;
- Emmentaler Cheese;
- Pecorino (cheese from sheep’s milk, in original loaves not suitable for grating) Reggiano, Parmesan, Provolone;
- Gruyere-process cheese (not grated or powdered);
- Blue-veined cheese (in original loaves), Cheddar cheese, Colby cheese;
- Fermented milk (dried milk whether or not with added lactic ferments);
- fats and oil derived from milk (i.e. butter substitute dairy spreads), yogurt (not in dry form, whether or not flavored or containing add fruit or cocoa);
- fruit and fruit juice (i.e. peaches, nectarines, cherries, cherry juice, and frozen fruit whether or not previously steamed or boiled);
- mixtures of fruit (excluding tropical fruit salad) and juice of any single vegetable (other than tomato);
- currant and berry fruit jellies;
- pear, pear juice, oranges, mandarins, clementines, Lemons;

- fish (i.e. products of clams, cockles, mollusks and arkshells containing fish meat, prepared meals;).

The additional duties will enter into effect on October 18, 2019.

Before the issuance of Decision DS316, the U.S. Government had previously identified certain EU goods eligible for additional US duties. On July 2019, the U.S. Trade Representative published a list of 89 tariff items with an appropriate trade value of \$4 billion. With respect to the original list of products selected in the July issue, certain goods have been excluded: uncooked pasta, coffee, olives and oil, wine.

The final list modifies the Official Harmonized Tariff Schedule (HTS). The U.S. Office of Tariff Affairs and Trade Agreements is expected to update the HTS shortly.

Update, October 10, 2019

Update on “The United States is set to impose new tariffs on goods imported from certain countries of the European Union: the WTO DS316 Decision.” Wines and Fortified (or Liqueur) wine

Based on the most recent US tariffs affecting European goods, Italian wines will not be subject to the new 25% tariff. However, Liqueurs and Cordials will be.

This area is highly regulated in the European Union and in the US, so this note is intended to compare applicable regulations in each jurisdiction.

European Regulations.

European Regulations (Reg. EU No. 1308/2013, Section II, Sub Section II and Annex VII, Part II;

EU Regulation No. 1925/2017 of the EU Commission, Section IV, Chapter 22) have a relatively narrow scope of application and are organized into three areas: manufacturing, labeling, and import/export.

For *Manufacturing Purposes*, the [Reg. EU 1308/2013](https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32013R1308&from=EN) (<https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32013R1308&from=EN>) subdivides wine products into:

- (a) DO (Designation of Origin), which means the name of a region or a specific place used to describe a wine type. DO is used to protect the quality and characteristics of wine from a particular geographic area (Article 93, paragraph (a));
- (b) GI (Geographical Indication), which means an indication referring to a region, a specific place, or, in exceptional and duly justifiable cases, a country. GI is used to describe a wine that possesses a specific quality, reputation, or other characteristics attributable to that geographical origin (Article 93, paragraph (b)); and
- (c) Generic Wine, which means a wine type not included in the categories listed above.

For *Sales Purposes*, EU Regulation No. 1308/2013, [Annex VII, Part II](https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32013R1308&from=EN) (<https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32013R1308&from=EN>) and EU Regulation No. 110/2008, (<https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32008R0110&from=EN>) subdivide wine and other alcoholic beverages (for marketing purposes) into:

DO or GI Wine (as described in Reg. EU1308/2013).

Wine (not included DO or GI wines) means still wine obtained exclusively from the total or partial alcoholic fermentation of fresh grapes, having a total alcoholic strength of not more than

15% by volume (however, by way of derogation, in certain cases, the upper limit for the total alcoholic strength may exceed 15%).

Wine from raisin grapes (i.e. Passito) is wine produced from grapes left in the sun or shade for partial dehydration without any enrichment that has a total alcoholic strength of between 9% and 16% by volume (or 272 grams sugar/liter).

Liqueur Wine is wine obtained from grape must or wine by the addition (during or after fermentation) of a product derived from the distillation of wine or of concentrated grape must, and having a total alcoholic strength by volume of not less than 15% but not more than 22%.

Liqueurs are spirit drinks produced by sweetening ethyl alcohol of agricultural origin, a distillate of agricultural origin, or one or more spirit drinks or a mixture thereof with products of agricultural origin or foodstuffs such as cream, milk or other milk products, fruit, wine or aromatized wine and, having a minimum alcoholic strength by volume of not more than 15%.

The Sales Description of a wine is the name under which the wine or other alcoholic beverages can be sold (i.e. type of wine/description label) and must be reported on the label.

Finally, for *Export Purposes*, [EU Regulation No. 1925/2017](#) of the EU Commission, Section IV, Chapter 22 (<https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32016R1821&from=it>) establishes nomenclature concerning the importation or exportation of wine from or to Europe. Import/export definitions are as follows:

Wine: a product that complies with the provisions of Regulation (EU) No. 1308/2013.

Wine fortified for distillation: means wine obtained exclusively by the addition of wine containing no residual sugar or of an unrectified product derived from the distillation of wine, having an actual alcoholic strength by volume between 18% vol. and 24% vol., a maximum actual alcoholic strength by volume of 86 % vol, and a maximum volatile acidity (as acetic acid) of 1,5 g/l.

Liqueur wine: which means the wine obtained from grape must or wine by the addition (during or after fermentation) of a product derived from the distillation of wine or of concentrated grape must, and having a total alcoholic strength by volume of not less than 15% but not more than 22% vol.

Liqueurs and Cordials are in the same category as “*Undenatured ethyl alcohol of an alcoholic strength by volume of less than 80 % vol; spirits, liqueurs and other spirituous beverages*” (nomenclature 2208).

U.S. Regulation

In the US, wine and other alcoholic beverages are distinguished for manufacturing, labeling, and import purposes.

Manufacturing Purpose. The U.S. Federal Code establishes the standard of identity determining the ingredients a product must (or may) contain for manufacturing and labeling purposes. For manufacturing purposes, wine is subdivided in the following way:

Grape wine is the wine obtained by the normal alcoholic fermentation of juice or ripe grapes (including restored or unrestored pure condensed grape must) with or without the addition, after fermentation, of pure condensed grape must, grape brandy, or alcohol, and

without other additions or abstractions (except as may occur in cellar treatment), provided that grape wine may be ameliorated before, during, or after fermentation by certain methodologies described by the Code (27 CFR §4.21(a)(1)).

Dessert wine is grape wine having an alcoholic content in excess of 14% but not in excess of 24% by volume and having the taste, aroma, and characteristics generally attributed to sherry (alcoholic content of not less than 17% by volume), angelica, madeira, muscatel, or port (alcoholic content of not less than 18% by volume), or, in other cases, “light sherry,” “light angelica,” “light madeira,” “light muscatel”, or “light port” (alcoholic content less than 18% by volume) (27 CFR §4.21(a)(3)).

Aperitif wine is wine having an alcoholic content of not less than 15% by volume, compounded from grape wine containing added brandy or alcohol, flavored with herbs and other natural aromatic flavoring materials, with or without the addition of caramel for coloring purposes, and possessing the taste, aroma, and characteristics generally attributed to “vermouth” (27 CFR §4.21(g)(1)(2)).

Liqueur and Cordials are obtained by mixing or redistilling distilled spirits with or over fruits, flowers, plants, or pure juices therefrom, or other natural flavoring materials, or with extracts derived from infusions, percolation, or maceration of such materials, and containing (individually or in combination) sugar, dextrose, or levulose, in an amount not less than 2.5% by weight of the finished product (27 CFR § 5.22(h)).

For *Tax Purposes* the classifications and definitions are slightly different.

Wine is defined as (a) Still wine, including vermouth or other aperitif wine, artificial or imitation wines or compounds sold as still wines, champagne or sparkling wine, and artificially carbonated wine, or (b) flavored or sweetened fortified or unfortified wines, by whatever name sold or offered for sale, containing not over 24 percent alcohol by volume” (27 CFR §27.11).

All wines (including imitation, substandard, or artificial wine, and compounds sold as wine) having not in excess of 24 % of alcohol by volume imported into the United States are subject to an internal revenue tax at the rates prescribed by law; such tax to be determined at the time of removal from customs custody for consumption or sale. The tax is imposed on each wine gallon and at a like rate on fractional parts of a wine gallon (27 CFR §27.42).

Also, a tax is imposed by 26 U.S.C. 5001 on all *liqueurs, cordials*, and similar *compounds* containing distilled spirits. The tax shall be determined at the time of importation, or, if transferred to the bonded premises of a distilled spirits plant, at the time of withdrawal therefrom.

Fortified or unfortified wines are wine containing not over 24 % alcohol by volume, to which sweetening or flavoring materials, but no distilled spirits, have been added but are not classified as liqueurs, cordials, or similar compounds. (27 CFR §27.43).

Finally, for *Importing Purposes* in the US the classifications and definitions are:

Still wine: wines that are not sparkling or effervescent and contain an alcohol strength by volume of 14% or less.

Includes Tokay wine, table wine, and wines classified by their color (red, white, other).

Fortified wine (dessert wine): wine that contains an alcoholic strength by volume of over 14%. The alcohol content has usually been increased by the addition of grape brandy. Includes Sherry, Port, and Madeira;

Liqueurs and cordials (nomenclature 2208): spiritous beverages to which sugar, honey, or other natural sweeteners and extracts or essences have been added (including Aperol and Amaretto).

###

For importing purposes, provided that the labeling and manufacturing requirements are met (either in the exporting and importing jurisdictions), liqueurs and cordials (nomenclature 2208 in exporting and importing jurisdiction) will be subject to the new 25% new tariff.

On the contrary, provided that their manufacturing requirements are met, Italian dessert and fortified wines will not be subject to the new 25% import tariff. However, they will still be subject to other applicable excise taxes and import duties according to the following tables.

###

For years 2018 and 2019, the following excise taxes apply to still and fortified wine:

- For wines 16% and under alcohol by volume
 - o For the first 30,000 gallons imported, the rate is \$0.07 per gallon;
 - o From 30,000 to 130,000 gallons, the rate is \$0.17 per gallon;
 - o From 130,000 to 750,000 gallons, the rate is \$0.535 per gallon; and

- o Over 750,000 gallons, the rate is \$1.07 per gallon.
- For wines from 16-21% alcohol by volume
 - o For the first 30,000 gallons imported, the rate is \$0.57 per gallon;
 - o From 30,000 to 130,000 gallons, the rate is \$0.67 per gallon;
 - o From 130,000 to 750,000 gallons, the rate is \$1.035 per gallon; and
 - o Over 750,000 gallons, the rate is \$1.57 per gallon.
- For wines over 24% alcohol by volume
 - o For the first 30,000 gallons imported, the rate is \$2.15 per gallon;
 - o From 30,000 to 130,000 gallons, the rate is \$2.25 per gallon;
 - o From 130,000 to 750,000 gallons, the rate is \$2.615 per gallon; and
 - o Over 750,000 gallons, the rate is \$3.15 per gallon.

Starting January 1, 2020, the rates will increase to:

- o \$1.07 per gallon for wine 14% and under alcohol by volume;
- o \$1.57 per gallon for wines between 14 and 21% alcohol by volume; and
- o \$3.15 per gallon for wines over 21% alcohol by volume.

In addition to the excise tax rate, the following schedule of import duties applies to imported wines:

- For fortified wines (dessert wines), according to the definition provided under “import purposes”

- \$0.169 per liter in containers holding 2 liters or less; and
- \$0.224 per liter in containers holding over 2 liters.
- For still wines, according to the definition provided under “import purposes”
 - \$0.063 per liter in containers holding 2 liters or less;
 - \$0.084 per liter in containers holding more than 2 liters but not more than 4 liters; and

\$0.14 per liter in containers holding more than 4 liters.

Food Law

October 18, 2019, Update on “The United States is set to impose new tariffs on goods imported from certain countries of the European Union: the WTO DS316 Decision.” Cheese imported from Italy.

On October 18, 2019, the additional tariff on goods imported from Italy will enter into effect. On October 09, 2019 The Office of U.S. Trade Representative published the “Notice of Determination and Action Pursuant to Section 301: Enforcement of U.S. WTO Rights in Large Civil Aircraft Dispute” on the Federal Register (Docket No. USTR–2019–0003, Vol.84 No.196, available at https://ustr.gov/sites/default/files/enforcement/301Investigations/Notice_of_Determination_and_Action_Pursuant_to_Section_301-Large_Civil_Aircraft_Dispute.pdf), which listed certain cheeses coming from Italy that will be affected by an additional ad valorem duty of 25%.

The cheeses subject to the new 25% duties are: cheese made with cow’s milk with at least 0.5% of butterfat; Pecorino Cheese (made with sheep’s milk); Romano; Reggiano; Parmesan; Provolone; and fresh Italian-type cheese (made of cow’s milk) grated, powdered or mixed.

Attached to this newsletter is a table that reflects the Harmonized Tariff Schedule (HTS) classification and definition of the affected cheese products coming from Italy.

The information provided here does not, and is not intended to, constitute legal advice but simply information for general purposes only and may not be the most up to date. Use of our website or any of its links or resources do not create an attorney-client relationship between the reader, user, or browser and the law firm. The views expressed at, or through, this site are those of the individual authors writing in their individual capacities only.

www.melchionnalaw.com

Melchionna PLLC
1700 Broadway, 41st Floor
New York, NY 10019

Tel. +1-646-898-8230
info@melchionnalaw.com

If you no longer wish to receive these emails, please inform us accordingly.

Copyrighted material © All rights reserved – Melchionna PLLC.

Type Cheese affected by Additional Tariff (HTS Sub.)	Type Cheese affected by Additional Tariff (product description)	Type Cheese's Definition By Harmonized Tariff Schedule (Chapter 4)	Duties Due
0406.90.95	Cheeses & subst. for cheese (incl. mixt.), nesoi, w/cow's milk, or w/butterfat less than 0.5% by wt., subject to Ch 4 US note 16 (quota)	Any cheese and substitute for cheese containing cow's milk (except cottage cheese) and/or 0.5% or less by weight of butterfat. Except: soft ripened cow's milk cheese; cheddar cheese; Italian-type cheeses made from cow's milk; Swiss or Emmentaler cheese without eye formation; Stilton cheese; Swiss and Emmentaler cheese with eye formation	10% / kg + 25% / valorem (\$)
0406.90.57	Pecorino cheese, from sheep's milk, in original loaves, not suitable for grating	<i>Similar</i>	Free / kg + 25 % / valorem (\$)
(0406.30.85)	Processed cheese (incl. mixtures), nesoi, n/o 0.5% by wt. butterfat, not grated or powdered, subject to Ch4 US note 23, not GN15	Any processed cheese (including mixtures), not grated or powdered, containing 0.5% or less by weight of butterfat. Except: cheese not containing cow's milk; blue-mold cheese; American type cheese; Edam and Gouda cheeses; Italian-type cheeses, made from cow's milk; Swiss or Emmentaler cheese without eye formation; Stilton cheese; Swiss and Emmentaler cheese with eye formation; and margarine cheese	10% / kg + 25% / valorem (\$)

0406.90.41	Romano, Reggiano, Parmesan, Provolone, and Provoletti cheese, nesoi, from cow's milk, subject to add. US note 21 to Ch.4	Italian-type cheeses, made from cow's milk, in original loaves (Romano made from cow's milk, Reggiano, Parmesan, Provolone, Provoletti and Sbrinz); Italian-type cheeses made from cow's milk, not in original loaves (Romano made from cow's milk, Reggiano, Parmesan, Provolone, Provoletti, Sbrinz and Goya); and cheese and substitutes for cheese containing, or processed from, such Italian-type cheeses, whether or not in original loaves	15% / kg + 25% / valorem (\$)
0406.90.42	Romano, Reggiano, Parmesan, Provolone, and Provoletti cheese, nesoi, from cow's milk, not subj to GN 15 or Ch4 US note 21	<i>Other*</i> *meaning any Romano, Reggiano, Parmesan, Provolone, and Provoletti cheese made from cow's milk	\$2.146 / kg + 25% / valorem (\$)
0406.90.97	Cheeses & subst. for cheese (incl. mixt.), nesoi, w/cow's milk, w/butterfat o/0.5% by wt, not subject to Ch4 US note 16, not GN15	<i>Other*</i> *meaning any cheese (including mixtures) containing cow's milk and/or 0.5% or less by weight of butterfat	\$1.509 / kg + 25% / valorem (\$)
0406.10.54	Fresh (unripened/uncured) Italian-type cheeses from cow milk, cheese/substitutes cont or proc therefrom, subj to Ch4 US note 21, not GN15	Any fresh Italian-type cheese and substitutes, made from cow's milk, in original loaves (Romano made from cow's milk, Reggiano, Parmesan, Provolone, Provoletti and Sbrinz); Italian-type cheeses, made from cow's milk, not in original loaves (Romano made from cow's milk, Reggiano, Parmesan,	10% / kg + 25% / valorem (\$)

		Provolone, Provoletti, Sbrinz and Goya); and cheese and substitutes for cheese containing, or processed from, such Italian-type cheeses	
0406.10.58	Fresh (unripe. /uncured) Italian-type cheeses from cow milk, cheese/substitutes containing or processed therefrom, not subj to Ch4 US note 21 or GN15	<i>Other*</i> *meaning any fresh Italian-type cheeses made from cow's milk, or cheese/substitutes containing or processed therefrom	\$2.146 / kg + 25% / valorem (\$)
0406.20.51	Romano, Reggiano, Provolone, Provoletti, Sbrinz And Goya, made from cow's milk, grated or powdered, subject to add US note 21 to Ch.4	Any grated or powdered Italian-type cheese, made from cow's milk, in original loaves (Romano made from cow's milk, Reggiano, Parmesan, Provolone, Provoletti and Sbrinz); Italian-type cheeses made from cow's milk, not in original loaves (Romano made from cow's milk, Reggiano, Parmesan, Provolone, Provoletti, Sbrinz and Goya); and cheese and substitutes for cheese containing, or processed from, such Italian-type cheeses	15% / kg + 25% / valorem (\$)
0406.20.53	Romano, Reggiano, Provolone, Provoletti, Sbrinz and Goya, made from cow's milk, grated or powdered, not subj to Ch4 US note 21 or GN15	<i>Other*</i> *meaning any Romano, Reggiano, Provolone, Provoletti, Sbrinz and Goya, made from cow's milk, grated or powdered	\$2.146 / kg + 25% / valorem (\$)
0406.20.77	Cheese containing or processed from Italian-type cheeses made from cow's milk, grated or powdered, subject to add US note 21 to Ch. 4	Any cheese containing or processed from Italian-type cheeses, grated or powdered and made from cow's milk, in original loaves (Romano made from cow's milk, Reggiano, Parmesan, Provolone, Provoletti and	10% / kg + 25% / valorem (\$)

		Sbrinz); Italian-type cheeses, made from cow's milk, not in original loaves (Romano made from cow's milk, Reggiano, Parmesan, Provolone, Provoletti, Sbrinz and Goya); and cheese and substitutes for cheese containing, or processed from, such Italian-type cheeses	
0406.20.79	Cheese containing or processed from Italian-type cheeses made from cow's milk, grated or powdered, not subject to add US note 21 to Ch. 4	<i>Other*</i> *meaning any Cheese containing or processed from Italian-type cheeses made from cow's milk, grated or powdered	\$2.146 / kg + 25% / valorem (\$)
0406.20.87	Cheese (including mixtures), nesoi, n/o 0.5% by wt. of butterfat, grated or powdered, not subject to add US note 23 to Ch. 4	<i>Other*</i> *meaning any Cheese (included mixture) grated powdered, containing 0.5% or less by weight of butterfat	\$1.128 / kg + 25% / valorem (\$)
0406.20.91	Cheese (including mixtures), nesoi, o/0.5% by wt of butterfat, w/cow's milk, grated or powdered, not subject to add US note 16 to Ch. 4	<i>Other*</i> *meaning any cheese (including mixtures), grated or powdered, containing cow's milk and/or containing 0.5% or less by weight of butterfat	\$1.509 / kg + 25% / valorem
0406.30.55	Processed cheeses made from sheep's milk, including mixtures of such cheeses, not grated or powdered	<i>Similar</i>	9.6% / kg + 25% / valorem
0406.30.79	Processed cheese containing or processed from Italian-type, not grated/powdered, not subject to add US note 21 to Ch. 4, not GN15	<i>Other*</i> *meaning any processed cheese not grated/powdered containing or processed from Italian-type cheeses	\$2.146 / kg + 25% / valorem

0406.90.43	Reggiano, Parmesan, Provolone, and Provoletti cheese, nesoi, not from cow's milk, not subject to gen. note 15	<i>Other</i> * *meaning any other Reggiano, Parmesan, Provolone, and Provoletti cheese, not from cow's milk	9.6% / kg + 25% / valorem
0406.90.68	Cheeses & subst. for cheese (incl. mixt.), nesoi, w/Romano/Reggiano/Parmesan/Provolone/etc, f/cow milk, not subj. Ch4 US note 21, not GN15	<i>Other</i> * *meaning any Italian-type cheeses (including mixtures), made from cow's milk	\$2.146 / kg + 25% / valorem
0406.90.94	Cheeses & subst. for cheese (incl. mixt.), nesoi, w/butterfat n/o 0.5% by wt, not subject to add. US note 23 to Ch. 4, not GN15	<i>Other</i> * *meaning any cheese (including mixtures) and substitutes for cheese, containing 0.5% or less by weight of butterfat	\$1.128 / kg + 25% / valorem

The information provided here does not, and is not intended to, constitute legal advice but simply information for general purposes only and may not be the most up to date. Use of our website or any of its links or resources do not create an attorney-client relationship between the reader, user, or browser and the law firm. The views expressed at, or through, this site are those of the individual authors writing in their individual capacities only.

www.melchionnalaw.com

Melchionna PLLC

1700 Broadway, 41st Floor
New York, NY 10019

Tel. +1-646-898-8230

info@melchionnalaw.com

If you no longer wish to receive these emails, please inform us accordingly.

Copyrighted material © All rights reserved – Melchionna PLLC.