

USTR Seeks Comments on WTO Dispute Related to EC Tariffs on Certain Information Technology Products

On May 28, 2008, the Office of the United States Trade Representative, ("USTR") requested consultations with the European Communities ("EC") regarding the EC's tariff treatment of certain information technology products.

For years, the United States has asserted that the EC has improperly imposed tariffs on products that should be afforded duty-free treatment according to the EC's commitment to bind its tariffs under the *General Agreement on Tariffs and Trade 1994* ("GATT 1994") and the *Information Technology Agreement* ("ITA").

The recent USTR action was taken under the World Trade Organization's ("WTO's") *Understanding on Rules and Procedures Governing the Settlement of Disputes*. The dispute involves the tariff treatment afforded to several categories of goods by the EC, including set-top boxes with a communication function; flat panel displays; "input or output units;" and facsimile machines. The United States contends that the EC and its member states have reclassified these products under the Harmonized Commodity Description and Coding System ("HS"), thereby increasing duties on the products in violation of the EC's obligations under the GATT 1994 and the ITA.

Specifically, through an amendment to the *Explanatory Notes of its Combined Nomenclature*, the EC has removed set-top boxes with certain types of modems (e.g., Ethernet modems) and set-top boxes with recording or reproduction functions (e.g., a hard

disk or DVD drive) from the duty-free "set-top boxes with a communication function" heading.

These products from the United States will now be subject to import duties by the EC, including a rate of 13.9 percent for set-top boxes with recording or reproduction functions. Similar action has been taken through new regulations and amendments with respect to flat panel displays with certain attributes, including DVI, and those using LCD technology that are able to reproduce video images from sources other than automatic data-processing machines. The EC also imposed duties on "output units" or facsimile machines capable of photocopying more than 12 monochrome pages per minute. Certain of these "output units" will be subject to duties of six percent.

The USTR has invited comments on the issue. See **73 Fed. Reg. 34,350 (Jun. 17, 2008)**. Though the USTR will accept comments throughout the duration of the dispute, it recommends that comments be submitted on or before **July 11, 2008**, in order to guarantee their consideration.

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