

US Trade Representative announces new tariffs on EU-origin goods

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Executive summary

On 14 February 2020, the United States (US) Trade Representative (USTR) published a notification announcing modifications to punitive tariffs on European Union (EU)¹-origin goods currently assessed under Section 301 of the *Trade Act of 1974* regarding the EU's subsidies provided to civil aircraft manufacturers.²

The revisions include the increase in the duty rate for aircrafts from 10% to 15%, effective 18 March 2020, as well as the removal and addition of certain items, or rotation of items, subject to 25% punitive tariffs, effective 5 March 2020.

The next anticipated benchmark in this dispute is the expected World Trade Organization (WTO) penalties phase against US subsidies for Boeing that will allow the EU to apply punitive tariffs to some value of US exports to the EU. It is unclear if that event will provide the incentive for both sides to eventually come to the negotiating table to address both parties' subsidies, rather than resorting to punitive tariffs.

Detailed discussion

The US has historically taken the position that the EU countries, and specifically four of its Member States (France, Germany, Spain and the United Kingdom (UK)), have unfairly subsidized non-US aircraft manufacturers to an extent that was damaging to the US and its economy. Following unsuccessful discussions with the EU to cease subsidization, the US submitted a formal challenge to the WTO on EU subsidies provided to large civil aircraft in 2004.

The WTO determined that the assistance provided to non-US aircraft manufacturers was inconsistent with the EU's obligations under the General Agreement on Tariffs and Trade (GATT). The EU subsequently moved to adjust some subsidies, however, in May 2018 the WTO concluded these measures were inadequate. This result permitted the US to initiate the process to apply countermeasures.

In October 2019, the WTO Arbitrator issued its report regarding the appropriate value of acceptable countermeasures that the US could impose on the EU for providing subsidies to non-US aircraft manufacturers. The WTO arbitrators determined that the US was entitled to impose tariffs on US\$7.5³ billion of EU-origin goods.⁴

Following the issuance of the WTO Arbitrator's decision, the USTR announced countermeasure duties on certain EU products. These included 10% punitive tariffs on aircrafts and 25% punitive tariffs on items such as cheese, spirits and clothing with an effective date of 18 October 2019 (See EY Global Tax Alert, [WTO rules on US complaint regarding EU civil aircraft subsidies; US announces countermeasure duties on certain EU products and also takes further actions on China origin goods](#), dated 3 October 2019).

On 2 December 2019, the USTR published an announcement stating that in light of a recent WTO compliance panel decision finding that the EU's changes to its subsidies launched on large civil aircrafts were insufficient to bring the Member States into compliance with WTO rules, the USTR would review current punitive tariffs and consider the addition of new products to be subject to increased duty rates of up to 100%, as well as potentially increasing the duty rates of goods currently subject to punitive tariffs up to 100%.⁵

Following the announcement the USTR collected public comments regarding the proposed review. Subsequently, on 14 February 2020, the USTR announced modifications to the list of EU-origin goods subject to punitive tariffs.

The most notable modification to the original action is an increase of punitive duties imposed on aircrafts from France, Germany, Spain or the UK imported under Harmonized Tariff Schedule of the US (HTSUS) 8802.40.00 from 10% to 15%, beginning 18 March 2020. The full product description in the notice is as follows:

- ▶ New airplanes and other new aircraft, as defined in US note 21(b) (other than military airplanes or other military aircraft), of an unladen weight exceeding 30,000 kg (described in statistical reporting numbers 8802.40.0040, 8802.40.0060 or 8802.40.0070)

While the USTR did not increase the amount of the existing tariffs on other products, it did rotate the items covered. Specifically, the USTR removed the following product from the 25% tariff list, effective 5 March 2020:

- ▶ Prune juice, concentrated or not concentrated imported under HTSUS 2009.89.40 from all EU Member States except France

and added the following product, subject to 25% punitive tariffs, effective 5 March 2020:

- ▶ Butchers' or kitchen chopping or mincing knives (o/ than cleavers w/their handles), imported under HTSUS 8214.90.60, from France or Germany

It should be noted that all other items previously subject to the 18 October 2019 punitive tariffs will continue to be subject to the tariffs until otherwise noted by the USTR.

Actions for business

Companies that import EU-origin goods that are currently subject to punitive duties should closely monitor the progression of actions and plan accordingly for any further rotation of items, including negotiations between the US and the EU, or any EU-retaliatory actions.

Immediate actions companies can consider are:

- ▶ Mapping their complete, end-to-end supply chain to fully understand the extent of products impacted, potential costs, alternative sourcing options, and to assess any opportunities to mitigate the impact, such as tariff engineering to address potential increases in tariffs.
- ▶ Identifying strategies to defer, eliminate, or recover the excess duties paid such as bonded warehouses, Foreign Trade Zones, substitution drawback and Chapter 98.

- ▶ Where goods are sourced and/or manufactured in multiple countries, conducting comprehensive origin determinations to facilitate compliance as well as to consider opportunities for mitigation.
- ▶ Exploring strategies to minimize the customs value of imported products potentially subject to the additional duties such as First Sale for Export, unbundling non-product related costs from product pricing and re-evaluating current transfer pricing of imported products, being careful to align the income tax transfer price with the customs value to avoid inventory basis limitations under Internal Revenue Code Section 1059A.

Additionally, US distributors who purchase from related parties will almost certainly have transfer prices impacted by the imposition of 301 duties. Along with the strategic importance of mitigating duty impact while aligning the

income tax and customs approaches, mechanics for reporting any transfer pricing adjustments to US Customs should also be reviewed. This process may be particularly complex when duties are present for only a portion of the year, and in many cases, actions need to be taken in advance of importations.

US Customs has very specific rules for reporting adjustments to prices made after importation, such as transfer pricing adjustments. These rules require that the importer take specific actions before importation of goods for which prices may be adjusted, including adding customs specific language to transfer pricing policies.

Endnotes

1. EU Member States are Austria, Belgium, Bulgaria, Croatia, Cyprus, Czech Republic, Denmark, Estonia, Finland, France, Germany, Greece, Hungary, Ireland, Italy, Latvia, Lithuania, Luxembourg, Malta, Netherlands, Poland, Portugal, Romania, Slovakia, Slovenia, Spain, and Sweden. As of 31 January 2020, the UK is no longer a member of the EU but there is a transitional period until 31 December 2020 during which certain provisions still apply.
2. See USTR Notice, "[Notice of Modification of Section 301 Action: Enforcement of U.S. WTO Rights in Large Civil Aircraft Dispute.](#)"
3. Currency references in this Alert are to US\$.
4. See USTR Press Release "[United States Wins for the Sixth Time in Airbus Subsidies Dispute.](#)"
5. See 84 FR 67992.

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