

EU imposes countermeasures on US origin goods

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Executive summary

On 9 November 2020, the European Union (EU) announced countermeasures to be imposed against the United States (US) pursuant to a decision issued by a World Trade Organization (WTO) arbitrator in October 2020.¹ The countermeasures, published in the *Official Journal* of the EU, consist of a 15% punitive tariff on civil aircrafts and a 25% punitive tariff on an array of other US origin goods, such as spirits, food products and machinery, and were made effective 10 November 2020.²

Detailed discussion

The long-standing US and EU dispute regarding subsidies provided for manufacturing civil aircraft began in 2004. The US has maintained that the EU provided subsidies which have harmed US aircraft manufacturers. Conversely, the EU has taken the position that the US provided subsidies to domestic civil aircraft producers, causing harm to EU manufacturers.

In October 2019, WTO arbitrators authorized the US to impose countermeasures of \$7.5 billion of EU-origin goods as a result of the dispute. The US subsequently assessed punitive duties on a number of EU-origin products, including a 10% punitive tariff on certain new aircraft imports with countries of origin of France, Germany, Spain and the UK, as well as a 25% punitive tariff covering more than 150 categories of non-aircraft goods from specified EU countries, including wines, single malt whiskey and olive oil.³

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.

Last month, the WTO arbitrators issued a similar decision in favor of the EU, authorizing the EU to impose nearly \$4 billion on US origin goods as a result of subsidies provided by the US to domestic civil aircraft manufacturers. The US responded at the time of the decision that due to the repeal of the tax subsidy, actual tariff imposition by the EU would be unwarranted under WTO rules.

See EY Global Tax Alert, [USTR issues Statement asserting lack of legal basis in response to WTO Authorization of EU Countermeasures on US goods under Aircraft Dispute](#), dated 16 October 2020 for more information.

However, following indications by the EU to seek retaliation due to the US' continued imposition of tariff measures, on 10 November 2020, the EU announced two Annexes of products that the countermeasures would be applied to, in the form of punitive duties to be assessed at time of entry. Annex I covered parts of civil aircrafts and carried a punitive tariff of 15%; Annex II covered various US origin goods and carried a punitive tariff of 25%. Products impacted by the measures under Annex II include:

- ▶ Chocolate bars imported into the EU under Harmonized Tariff Schedule (HTS) 1806.31.00
- ▶ Tomato ketchup imported into the EU under HTS 2103.20.00
- ▶ Rum imported into the EU under HTS 2208.40.11
- ▶ Vodka imported into the EU under HTS 2208.60.11
- ▶ Light air-cured tobacco imported into the EU under HTS 2401.10.35
- ▶ Agricultural tractors and forestry tractors imported into the EU under HTS 8701.91.10

Following the announcement by the EU, USTR Robert Lighthizer issued a statement reiterating disappointment in the EU's decision and noting the USTR is still in negotiations with the EU, with hopes to resolve the years long matter. The statement again asserts that the alleged tax subsidy was repealed and therefore no action is warranted. The EU has made similar arguments with respect to their measures which they note are no longer in place. Based on prior statements made by President Trump and Mr. Lighthizer, increased tariffs or expansion of the affected list of EU products are possible as counter retaliation.

Actions for business

EU tariffs are immediately applicable. Companies may consider options to mitigate the impact of any potential duties, such as:

- ▶ Utilizing bonded warehouse storage mechanisms to provide tariff deferral, and eliminate tariffs on products re-exported
- ▶ Usage of inward processing regimes

Similarly, companies should expect US action to increase the list of EU/UK origin goods that will be subject to US duties. Companies with potentially impacted goods should consider:

- ▶ Reviewing options to mitigate the impact of any potential duties, such as:
 - Utilizing US Foreign-Trade Zones or bonded warehouse storage mechanisms to provide tariff deferral, and eliminate tariffs on products re-exported
 - Structuring transactions to obtain refunds of the Section 301 tariffs paid through the US drawback program
 - Utilizing techniques to reduce the customs value of US imports such as first sale for export or adjustments to transfer prices
- ▶ Assessing whether US customs bonds are adequate to support any potential increase in tariffs.

Transfer pricing considerations

Additionally, companies who have operations in both the US and EU, with subsequent related party sales in either direction, will almost certainly have transfer pricing impacts. As each transaction flow may be subject to a different transfer price before and after the imposition of duties, companies should begin to evaluate the manner in which the transfer prices may be adjusted, and both the income tax and customs consequences and reporting obligations in each country of import.

Related party pricing for EU importers has become particularly complex with a divergence in implementation amongst member countries around retroactive adjustments to the transfer price, and the impact on the value reported to the customs authorities, following the Court of Justice of the European Union (CJEU) decision in the *Hamamatsu* case (C-529/16).⁴ Companies with multiple EU importation points may have differing obligations for reporting adjustments based upon the importing jurisdiction. Transfer pricing adjustments become particularly complex in instances where punitive tariffs are in place for only a portion of the year, as is the case with the EU countermeasures.

From a US import perspective, 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. 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. With proper planning, refunds may be obtained on duties paid should transfer prices be reduced. Importers are well advised to address these requirements now in order that they be in place if additional punitive duties are imposed.

Endnotes

1. See European Commission Press Release, "[Boeing WTO case: The EU puts in place countermeasures against U.S. exports.](#)"
2. See [Commission Implementing Regulation \(EU\) 2020/1646](#).
3. 84 FR 54245.
4. For more information see EY Tax Alert, [CJEU issues ruling on determining transaction value for customs valuation](#).

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