

USTR announces modifications to tariffs on EU goods under Section 301 including punitive tariffs on new items of French and German origin

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Executive summary

On 30 December 2020, the United States (US) Trade Representative (USTR) announced additional modifications to the punitive tariffs previously imposed on certain products originating from the United Kingdom (UK) and European Union (EU) under Section 301 of the *Trade Act of 1974* (Section 301).¹ The latest modifications, which include punitive tariffs on new items of French and German origin, will go into effect on 12 January 2021.

Detailed discussion

In October 2019, the US took action under Section 301 to impose an additional 10% tariff on certain new aircraft imports with countries of origin of France, Germany, Spain and the UK, as well a 25% punitive tariff covering more than 150 categories of goods from specified EU countries.² The actions were separated into 16 sections, where each section covered a listing of products originating in specified UK and/or EU member jurisdictions.³

Throughout 2020, the USTR made various modifications to the original action, carouseling the items subject to the punitive tariffs. See EY Global Tax Alerts, [US Trade Representative announces new tariffs on EU-origin goods](#), dated 18 February 2020 and [USTR announces modifications to tariffs on EU goods under Section 301](#), dated 14 August 2020.

In response to these actions, on 9 November 2020, the EU announced countermeasures to be imposed against the US pursuant to a decision issued by a World Trade Organization (WTO) arbitrator in October 2020.⁴ The countermeasures, published in the Official Journal of the European Union, 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 2020.⁵ See EY Global Tax Alert, [EU imposes countermeasures on US origin goods](#), dated 11 November 2020.

Following these EU actions, the USTR announced on 30 December 2020 that the EU's use of trade data during the period of August 2019 through July 2020 to determine affected products included impacts from the economic downturn of the COVID-19 pandemic. As a result, the US asserts that the EU was able to include a greater number of designated imported items in its application of the tariffs than if the economic implications of the pandemic had been removed from the data set, and consequently the US has imposed additional tariffs on French and German goods:

- ▶ Brandies and Cognac valued at over US\$38 per proof liter. Punitive tariffs of 25% are assessed on grape brandies imported under Harmonized Tariff Schedule (HTS) US 2208.20.40 which are valued at over US\$38 per proof liter. The value threshold is specific to the punitive tariffs (only some of the HTS subheading is subject to the tariff).
- ▶ Wines other than sparkling wines. Table wines (wines in containers of less than two liters with alcoholic strength less than 14%--HTSUS 2204.21.50) are already subject to the 301 tariffs. This notice adds wines classified in 11 separate subheadings (such as effervescent, fortified, and bulk wines) as also subject to the 25% punitive tariff. Notably, sparkling wines (HTSUS 2204.10.00) remain excluded from the 301 tariffs.
- ▶ Specified aircraft parts. Fuselages and fuselage sections, wings and wing assemblies (other than wings having exterior surfaces of carbon composite material), horizontal stabilizers, and vertical stabilizers, suitable for use solely or principally with new airplanes and other aircraft of an unladen weight over 30,000 kg as described in imported under HTSUS 8803.30.00, are subject to a 15% punitive tariff. The notice contains more detailed definitions of the covered parts.

The punitive tariffs will go into effect on 12 January 2021. In the announcement, the USTR detailed the actions would only apply to items of France and Germany as these countries have provided the greatest level of WTO-inconsistent large civil aircraft subsidies.

Actions for business

Companies importing goods from the EU/UK subject to punitive tariffs under Section 301 should consider the business impact and explore duty mitigation options.

Immediate actions companies should consider are:

- ▶ 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 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 the increase in tariffs.

Additionally, US distributors who purchase from related parties will almost certainly have transfer prices impacted by the imposition of Section 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. 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.

Endnotes

1. See USTR press release "[United States Modifies Tariffs on EU Products in Large Civil Aircraft Dispute.](#)"
2. WTO arbitrators authorized the US to impose countermeasures on US\$ 7.5 billion of EU-origin goods as a result of an action filed by the US challenging EU subsidies provided to large civil aircraft corporations as violative of WTO obligations.
3. 84 FR 54245.
4. See European Commission Press Release, "[Boeing WTO case: The EU puts in place countermeasures against U.S. exports.](#)"
5. See [Commission Implementing Regulation \(EU\) 2020/1646](#).

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