

USTR proposes retaliatory tariffs on 326 products as countermeasure to EU subsidies

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Executive summary

On 8 April 2019, the United States Trade Representative (USTR) proposed tariff countermeasures in response to harm caused by European Union (EU) aircraft subsidies.¹ Under the authority of Section 301 of the *Trade Act of 1974*,² the USTR proposed the imposition of additional ad valorem duties of up to 100% on a list of 326 Harmonized Tariff Schedule of the United States (HTSUS) codes. The list of announced tariffs is preliminary and could be modified following issuance of the World Trade Organization (WTO) arbitrator report regarding appropriate value of acceptable countermeasures. The USTR is also requesting comments from industry on the potential effects of the tariffs through 28 May 2019 and has announced that a hearing will take place on 15 May 2019.

Detailed discussion

A long-standing position of the United States (US) has been that the EU, and specifically four of its Member States (France, Germany, Spain and the United Kingdom (UK)), unfairly subsidized non-US aircraft manufacturers in a manner that was adverse to US interests. Following unsuccessful discussions with the EU to cease subsidization, the US submitted a formal challenge to the WTO of EU subsidies provided to large civil aircraft in 2004, asserting that the governmental subsidies caused an estimated US\$11 billion³ per year in damage

to US sales and market share. The WTO determined that the assistance was inconsistent with the EU's obligations under the General Agreement on Tariffs and Trade (GATT) 1998 and Articles 5 and 6.3 of the Agreement on Subsidies and Countervailing Measures. The EU was granted until 1 December 2011 to become compliant with the WTO recommendations. While the EU did respond by adjusting some subsidies, the US requested a compliance panel in 2012 to evaluate the EU's overall actions and whether those remedies resolved the adverse effects as determined. In May of 2018, the WTO concluded that there were additional violations. The result permitted the US to seek countermeasures worth \$11.2 billion per year. The recent action is the initiation of these measures.

The ongoing disputes over subsidies prompted the USTR to assess and issue a preliminary list of tariff countermeasures which consists of two annexes of products. The first annex affects nine subheadings in Chapter 88 of the HTSUS from France, Germany, Spain or the UK. The second annex has a far broader reach, affecting imports from agricultural products to textiles and apparel as well as certain metals and other hard goods from any of the 28 EU Member States.⁴

The USTR Robert Lighthizer stated that the ultimate goal was to reach an agreement where the EU should "end all WTO-inconsistent subsidies to large civil aircraft."

Actions for businesses

While only a preliminary list of products has been published to date, the impact of any imports of identified products should be immediately considered. Close monitoring of the comments and public hearing, along with the final product list once determined, is warranted for US importers of EU-origin products.

Immediate actions for such companies to consider include:

- ▶ 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.
- ▶ Exploring strategies to minimize the customs value of imported products potentially subject to the additional duties such as re-evaluating current transfer pricing approaches and First Sale for Export.
- ▶ Consider submission of comments by the published deadline of 28 May 2019 and potential request to participate in the public hearing scheduled on 15 May 2019.

Endnotes

1. <https://ustr.gov/about-us/policy-offices/press-office/press-releases/2019/april/ustr-proposes-products-tariff>.
2. 19 U.S.C. § 2411.
3. Currency references in this Alert are to US\$.
4. https://ustr.gov/sites/default/files/enforcement/301Investigations/Preliminary_Product_List.pdf.

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