

USTR announces modifications to tariffs on EU goods under Section 301

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Executive summary

On 12 August 2020, the United States (US) Trade Representative (USTR) announced a determination of modifications regarding punitive tariffs taken against the United Kingdom (UK) and European Union (EU) under Section 301 of the *Trade Act of 1974* (Section 301),¹ following a review that had commenced in July of this year. The modifications are scheduled to go into effect 1 September 2020.

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 as 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

In February of this year, the USTR published modifications to the list of products subject to the punitive duties.⁴ While the initially proposed list was expansive, targeting goods such as sparkling wine, luxury handbags, olive oil, helicopters, and motorcycles, the USTR only made minor modifications to the items subject to additional tariffs.

The USTR announced plans to again modify the list of EU and UK products subject to punitive tariffs in late June and initiated the second review. The proposed list appeared to be expanding the US' intent to "carousel" and select additional products not impacted by the initial action.⁵ See EY Global Tax Alert, [USTR proposes carousel tariff retaliation on EU goods under Section 301](#), dated 26 June 2020. The proposed list included newly targeted goods originating in France, Germany, Spain, and/or the UK, and contained items such as coffee, beer, vodka, and gin. In sum, the list covered 30 tariff subheadings with an approximate annual trade value of US\$3.1 billion. The notice invited interested parties to comment on the proposed actions. The USTR received approximately 24,000 comments from the public.

On 12 August 2020, the USTR announced the determination of modification to the list of EU/UK products. Similar to the first round of modifications, only minor changes were made, despite the expansive list initially proposed. The specific actions taken are detailed below.

- ▶ Cheeses & substitute for cheese (including mixture), not elsewhere specified or included (nesoi), w/o cow's milk, w/butterfat over 0.5% by weight, not subject to General Note 15, imported under Harmonized Tariff Schedule of the US (HTSUS) 0406.90.99, was removed from Part 4, and added to Part 17
- ▶ Sweet biscuits imported under HTSUS 1905.31.00 were removed from Part 13 and added to Part 11
- ▶ The following items have been added to Part 16:
 - Lingonberry and raspberry jams imported under HTSUS 2007.99.05
 - Strawberry jam imported under HTSUS 2007.99.10
 - Currant and other berry jams, nesoi imported under HTSUS 2007.99.15
 - Apricot jam imported under HTSUS 2007.99.20
 - Cherry jam imported under HTSUS 2007.99.25
 - Peach jam imported under HTSUS 2007.99.35
 - Strawberry pastes and purees, being cooked preparations imported under HTSUS 2007.99.60

All above actions will now carry a 25% punitive tariff, effective 1 September 2020.

The Announcement noted that the annual trade value of the tariff subheadings subject to punitive duties under the revised action is approximately US\$7.5 billion, consistent with the WTO Arbitrator's finding on the appropriate level of countermeasures.

While the USTR decision to only make minor modifications to the actions against the EU/UK suggests negotiations between the parties are possible, it should be noted that the announcement further states that in the event the EU retaliates with an imposition of additional duties on US goods in connection with the Large Civil Aircraft dispute, or with the EU's WTO challenge to the alleged subsidization of U.S. large civil aircraft, the USTR will immediately revise actions as deemed appropriate.

Actions for business

Companies importing goods from the EU/UK currently subject to punitive tariffs under Section 301 should consider the business impact and explore duty mitigation options. Companies that import EU/UK origin goods that have been proposed for punitive tariffs by the USTR, but are not currently subject to the actions, should remain vigilant in contingency planning in the event to USTR moves to include additional goods.

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, and
 - 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 new 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. As these new Section 301 duties will take effect later this year, importers are well advised to address these requirements now in order that they be in place when the punitive duties are imposed.

Endnotes

1. <https://ustr.gov/sites/default/files/files/Press/Releases/FRN081220.pdf>.
2. World Trade Organization (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. 85 FR 10204.
5. 85 FR 38488.

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