

## USTR proposes carousel tariff retaliation on EU goods under Section 301

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### Executive summary

On 23 June 2020, the United States (US) Trade Representative (USTR) announced a review of products from the European Union (EU) subject to punitive tariffs under Section 301 of the *Trade Act of 1974*.<sup>1</sup> The review, officially announced in a Federal Register Notice (FRN) on 26 June 2020, contemplates modifying the products currently subject to the tariffs through a concept known as carousel retaliation. The USTR is considering tariffs of up to 100% on 395 new products, as well as potential increases to the tariffs currently imposed.

### Detailed discussion

The US and the EU have an ongoing dispute about subsidies provided by the EU and four individual countries, Germany, France, Spain, and the United Kingdom (UK), for manufacturing civil aircraft, which the US maintains has harmed US aircraft manufacturers. The US filed an action in 2004 challenging the subsidies as violative of World Trade Organization (WTO) obligations, and following a series of WTO actions, in October 2019 the WTO arbitrators authorized the US to impose countermeasures on US\$7.5 billion<sup>2</sup> of EU-origin goods.<sup>3</sup> Accordingly, effective on 18 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. The actions were separated into 16 sections, where each section covered a listing of products originating in specified UK and/or EU Member States.

In February of 2020, the USTR announced proposed modifications to the list of products<sup>4</sup> subject to the punitive duties. While the initially proposed list was expansive, targeting goods such as sparkling wine, luxury handbags, olive oil, helicopters, and motorcycles, the USTR made only minor modifications to the items subject to the punitive tariffs. Specifically, tariffs levied on new aircrafts from France, Germany, Spain and the UK were increased to 15% effective on 18 March 2020, while prune juice imported under HTSUS<sup>5</sup> 2009.89.40 was removed from the punitive tariff list.

On 23 June 2020, the USTR announced plans to again modify the list of EU products subject to punitive tariffs. This periodic revision of the product list is known as “carousel retaliation” and has the effect of pressuring trade partners by continually disturbing different industries. The FRN requests public comment on three Annexes, which include tariffs currently implemented as well as proposed tariffs, broken out as follows:

- ▶ Annex I: products currently subject to additional duties of 15% or 25%
- ▶ Annex II: products for which tariffs were previously proposed, but which are currently not subject to the punitive tariffs
- ▶ Annex III: new products on which the USTR is considering imposing duties of up to 100%

Annex III, the newly proposed tariff list, applies only to goods with French, German, Spanish or UK origin. Notable products listed in Annex III include:

- ▶ Decaffeinated coffee imported under HTSUS 0901.12.00
- ▶ Bread, pastry, cakes, biscuits and similar baked products, and puddings, whether or not containing chocolate, fruit, nuts or confectionery imported under HTSUS 1905.90.10
- ▶ Olive products including those imported under HTSUS 2005.70.02, 2005.70.04, 2005.70.50, 2005.70.60, 2005.70.70, 2005.70.75, 2005.70.97
- ▶ Beer made from malt imported under HTSUS 2203.00.00
- ▶ Vodka imported under HTSUS 2208.60.10, 2208.60.20, 2208.60.50
- ▶ Gin and Geneve imported under HTSUS 2208.50.00

- ▶ Self-propelled works trucks powered by an electric motor, fitted with lifting and handling equipment imported under HTSUS 8427.10.80
- ▶ Trucks, fitted with lifting or handling equipment, imported within HTSUS 8427.90.00

The FRN provides a comment period of 26 June 2020 through 26 July 2020 with specific aspects open for comments, varying by Annex. Information the USTR is requesting with regard to each Annex is as follows:

*With respect to Annex I:*

- ▶ Whether specific products should be removed from the list
- ▶ Whether specific products should remain on the list
- ▶ Whether the current rate of additional duty should be increased to as high as 100% for any product that remains on the list

*With respect to Annex II and III:*

- ▶ Whether additional duties should be imposed on specific products listed
- ▶ What rate of additional duty of up to 100% should be applied to any products drawn from Annex II and III

## Actions for businesses

To date the US has imposed tariffs on only about half of the value authorized by the WTO, therefore, additions to the current list of products could be significant.

Immediate actions companies should consider are:

- ▶ Fully understanding the extent of products impacted on the proposed list of 8-digit Harmonized Tariff codes
- ▶ Filing comments in response to the announcements by the 26 July 2020 deadline
- ▶ 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
  - Adjusting approaches to reduce the customs value of US imports such as first sale for export or adjustments to transfer prices
- ▶ Determining 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 any 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, if implemented, will likely take effect later this year, importers should address these requirements now in order that they be in place when the punitive duties are imposed.

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## Endnotes

1. [https://ustr.gov/sites/default/files/enforcement/301Investigations/Review\\_of\\_Action\\_Enforcement\\_of\\_U.S.\\_WTO\\_Rights\\_in\\_Large\\_Civil\\_Aircraft\\_Dispute\\_June\\_23\\_2020.pdf](https://ustr.gov/sites/default/files/enforcement/301Investigations/Review_of_Action_Enforcement_of_U.S._WTO_Rights_in_Large_Civil_Aircraft_Dispute_June_23_2020.pdf).
2. Currency references in this Alert are to US\$.
3. See WTO Dispute Number WT/DS316/ARB.
4. 85 FR 10204.
5. HTSUS: Harmonized Tariff Schedule of the United States.



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