

## Importers to Face Additional Duties on European Goods

April 11, 2019

### Key Points

- USTR has proposed to impose additional duties of up to 100 percent *ad valorem* on \$21 billion of imports from EU member states as a result of a dispute concerning aircraft subsidies.
- The proposed duties would apply to products classified in 326 subheadings of the Harmonized Tariff Schedule of the United States (HTSUS), including (among other items) cheese and other dairy products, seafood, fruit, jams and jellies, juices, brandy and wine, clothing and other textile articles, tools, housewares, certain metals, motorcycles and mopeds, bicycle components and aircraft.
- USTR seeks comment and testimony on the proposed imposition of duties on \$21 billion in imports, and has indicated that the final amount of imports subject to such additional duties may depend on the level of countermeasures authorized by the WTO.
- USTR has scheduled a public hearing for May 15, 2019, will accept public comments on the proposal until May 28, 2019, and has signaled that it intends to implement final duties as early as this summer.

### Introduction and Background

In a [notice released on April 9, 2019](#) and scheduled for publication in the Federal Register on April 12, 2019, The Office of the U.S. Trade Representative (USTR) announced that it has initiated an investigation under Section 302(b) of the Trade Act of 1974 and proposes an action to impose additional duties of up to 100 percent *ad valorem* on \$21 billion of imported goods from various European Union (EU) member states. If enacted, the proposed duties would apply to products of these member states that are classified in 317 separate eight-digit subheadings and nine separate 10-digit (statistical) subheadings of the HTSUS. USTR has proposed the additional duties pursuant to Section 301 of the Trade Act (19 U.S.C. § 2411) for the purpose of enforcing U.S. rights in a dispute with the EU.

The dispute concerns subsidies which the EU and certain EU member states provide to aircraft manufacturer Airbus, and which the United States has challenged in World

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Trade Organization (WTO) arbitration proceedings since 2004. In 2011, the WTO issued a report confirming that the subsidies violated the WTO member obligations of the EU and the relevant EU member states. The report also provided recommendations for mitigating the adverse effects of the subsidies. While the EU asserted that it adopted the recommendations, the WTO concluded in a May 2018 report that the subsidies continued to impermissibly harm U.S. interests. Currently, the WTO is in the process of determining the level of countermeasures the United States may take against the EU and relevant EU member states.

In anticipation of the WTO's report, USTR will investigate whether the subsidies deprive the United States of its rights as a WTO member. USTR intends to confirm that this is the case and to impose additional duties on \$21 billion of imports from the EU member states for the purpose of enforcing its rights.

#### Products Potentially Affected by the Proposed Additional Duties

The 326 total HTSUS provisions targeted for additional duties cover a broad range of products, including (but not limited to):

- Fish, clams, crab, lobster, octopus, oysters and other seafood.
- Butter, yogurt, chocolate milk and numerous cheese varieties.
- Oranges, bergamots, mandarins, grapefruits, lemons, limes and other citrus fruits.
- Various jellies, jams, pastes, purees and juices.
- Brandy, liqueurs, various wines and other alcoholic beverages.
- Olives and olive oil.
- Various essential oils, resinoids and oleoresins.
- Various paper products.
- Books, pictures, photographs, transfers, lithographs and other printed materials.
- Various fibers, yarns and other textile materials.
- Handbags with a certain value threshold.
- Sweaters, sweatshirts, suits, ski wear, anoraks, pajamas, swimwear and other clothing.
- Blankets, linens, rugs, carpets, tapestries and other textile furnishings.
- Various stone materials.
- Stemware, other household glassware, glass tiles and mosaics and other glass materials.
- Ceramic tiles, mugs, cups, spoons, shakers and other ceramic housewares.
- Palladium, rhenium, vanadium and other metals in various forms.
- Various wooden implements.
- Various types of knives and cutlery.
- Pliers, tweezers, shears, pipe cutters, axes, bolt cutters, screwdrivers, nails, tacks, staples and other tools and construction items.
- Motorized handheld tools and vehicular machinery.

- Motorcycles, mopeds, and their components.
- Bicycle components;
- Lenses for projectors, certain cameras, and photographic equipment.
- Wall clocks and clock components.
- Helicopters, airplanes, other aircraft and certain aircraft components.

The additional duties on aircraft and certain components would apply to products of France, Germany, Spain and the United Kingdom. The remaining additional duties would apply to products of Austria, Belgium, Bulgaria, Croatia, Cyprus, Czechia, Denmark, Estonia, Finland, France, Germany, Greece, Hungary, Ireland, Italy, Latvia, Lithuania, Luxembourg, Malta, Netherlands, Poland, Portugal, Romania, Slovakia, Slovenia, Spain, Sweden or the United Kingdom.

It is possible that USTR will adjust the list of targeted HTSUS provisions and countries before implementing the additional duties. USTR has indicated that it will take into account the WTO's countermeasures report when finalizing the list of products subject to these duties.

#### Key Dates in the Timeline

- **May 6, 2019: Deadline for Requests to Appear at Public Hearing**

Interested parties who wish to appear at the May 15, 2019 public hearing must submit a request to appear: via the Federal eRulemaking Portal at <http://www.regulations.gov> (docket number USTR-2019-0003); and via an email message submitted to [301aircraft@ustr.eop.gov](mailto:301aircraft@ustr.eop.gov). Requestors must include a summary of the testimony they expect to present at the hearing, and may also include a full transcript of the expected testimony. Remarks at the hearing may be no longer than 5 minutes.
- **May 15, 2019: Public Hearing**

USTR will convene a public hearing at the U.S. International Trade Commission (located at 500 E Street SW, Washington, DC 20436). The hearing will begin at 9:30 a.m. ET.
- **May 28, 2019: Deadline for Written Comments and Post-Hearing Rebuttal Comments**

Interested parties may submit comments through the Federal eRulemaking Portal at <http://www.regulations.gov> (docket number USTR-2019-0003). USTR specifically invites comments on:

  - The specific products targeted by the proposed additional duties, including whether these products should be retained, removed, or supplemented with additional products.
  - The extent of the duty rate increase (if any).
  - The appropriate aggregate level of trade to be covered by the additional duties.
  - Any adverse effects the additional duties may have on U.S. stakeholders, including small businesses and consumers.

Interested parties may also submit comments concerning the testimony presented at the May 15, 2019, hearing.

- “Summer of 2019”: Possible Implementation?

In a press release issued April 8, 2019, U.S. Trade Representative Robert Lighthizer indicated that the Trump administration is “preparing to respond immediately” when the WTO issues its countermeasures report. In the Federal Register notice, USTR estimates that the WTO will issue its report “in the summer of 2019.”

#### Recommendations and Next Steps

- Importers should carefully review the HTSUS provisions included in Annexes 1 and 2 of the Federal Register notice to determine whether they import any goods that could potentially be subject to the additional duties. To obtain certainty, importers can validate their product classifications by requesting a binding tariff classification ruling from U.S. Customs and Border Protection (CBP). Akin Gump can advise on tariff classification and can assist in preparing a ruling request.
- Importers should consider appearing at the May 15, 2019, public hearing and/or filing comments by the May 28, 2019, deadline. Akin Gump can assist in drafting and submitting comments and testimony.
- For imports covered by the proposed additional duties, importers should ascertain whether alternative sources are available. Importers may, in some circumstances, wish to confirm country of origin by obtaining a binding ruling from CBP. Akin Gump can advise on how to proceed in confirming, declaring or marking the country of origin of imported goods.
- Importers should consider reaching out to their elected municipal, state and congressional representatives to express their position on the additional duties.

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