



FedEx Regulatory Alerts & Updates

Regulatory Alert: WTO Arbitrator Rules U.S. Can Retaliate with \$7.5 Billion in Tariffs for EU Airbus Subsidies

October 10, 2019

BACKGROUND

On October 2, 2019, the World Trade Organization (WTO) issued an arbitration decision in European Communities and Certain Member States – Measures Affecting Trade in Large Civil Aircraft, WT/DS316/ARB. The decision authorizes the U.S. to impose annually \$7.5 billion in tariffs on European Union (EU) imports for illegal subsidies certain EU members provided to Airbus. This is the largest ruling in the WTO's history and could be only the initial retaliation ruling in this 15-year, long-running WTO dispute.

The Boeing/Airbus litigation dates back to 2004 when the U.S. initiated WTO proceedings arguing that EU subsidies to Airbus violated the WTO Agreement on Subsidies and Countervailing Measures and the 1994 General Agreement on Tariffs and Trade. Nine months later, the EU initiated proceedings alleging that the U.S. was providing WTO-inconsistent subsidies to Boeing.

Since then, the WTO has ruled that the U.S. and EU both provided infringing subsidies. The U.S. and EU have each made changes to comply with these rulings, but the WTO has found continued infringements.

The EU is awaiting a damage award in a WTO counter-complaint against the U.S. and Boeing where it has sought authorization to levy duties on \$12 billion worth of U.S. products.

WHAT HAS CHANGED?

Based on the WTO Arbitrator ruling, the U.S. Trade Representative (USTR) announced that the Trump administration plans to impose tariffs beginning October 18, 2019.

USTR stated that the bulk of these tariffs will be applied to imports from France, Germany, Spain, and the United Kingdom. The tariff increases will be limited to 10% on large civil aircraft and 25% on agricultural and other products.

Q&A

Q1: Can these WTO tariffs on the EU be increased?

A1: Yes, the WTO did allow a tariff rate of up to 100% in the ruling. The USTR did point out that it can raise these tariffs at any time or change the products on the retaliation list.

Q2: How long do these specific tariffs continue; is there an end date?

A2: No, there is not a pre determined end date. This case has been ongoing for 15 years within the WTO, and the tariffs were just announced. The tariffs only end if both sides come to an agreement on how to settle this dispute within the WTO framework.

Q3: Does this WTO announcement end this dispute?

A3: It is doubtful, since the EU can simply wait a few months for the WTO arbitrator to rule on their Boeing subsidy counter-complaint against the U.S. The dispute ends when both parties negotiate a settlement on their respective subsidy issues.

REFERENCES:

WTO announcement on decision:

https://www.wto.org/english/tratop_e/dispu_e/316arb_e.pdf

USTR announcement:

<https://ustr.gov/about-us/policy-offices/press-office/press-releases/2019/october/us-wins-75-billion-award-airbus>

List of EU products receiving tariffs (note that the list of all product HTS codes and descriptions by specific country begins in Annex B on page 54256):

[https://ustr.gov/sites/default/files/enforcement/301Investigations/Notice of Determination and Action Pursuant to Section 301-Large Civil Aircraft Dispute.pdf](https://ustr.gov/sites/default/files/enforcement/301Investigations/Notice_of_Determination_and_Action_Pursuant_to_Section_301-Large_Civil_Aircraft_Dispute.pdf)