



FedEx Regulatory Alerts & Updates

Regulatory Alert: U.S. Modification to the WTO Large Civil Aircraft Dispute

September 4, 2020

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 United States to impose tariffs on EU (European Union) imports worth \$7.5 billion annually for illegal subsidies certain EU members provided to Airbus.

The Boeing/Airbus litigation dates back to 2004. Over the years, the WTO has ruled that the United States and European Union both provided infringing subsidies despite both sides making some changes to comply with the rulings. However continued violations by both parties were found by the WTO.

The U.S. Trade Representative (USTR) initiated tariffs on imports from France, Germany, Spain, and the United Kingdom beginning October 18, 2019. The initial tariff increases were 10% on large civil aircraft and 25% on agricultural and other products. The USTR made it clear that it can raise these tariffs at any time or change the products on the retaliation list.

The USTR announced a review of the 301 actions and requested public comments on December 12, 2019. Based on that review, the USTR issued on February 21, 2020 a Modification to the large civil aircraft (LCA) dispute to revise the action being taken by increasing the rate of additional duties on certain LCA, and by modifying the list of other products of current and former EU member states.

On June 26, 2020, the USTR published a notice announcing another review of the action and establishing a docket to receive public comments. The notice included a proposal to impose additional duties of up to 100% on a new list of products covered by 30 tariff subheadings.

WHAT HAS CHANGED?

The Section 301 statute provides for periodic review and modification of the tariff action. On August 18, 2020, the USTR published a Modification to the LCA Dispute in a Federal Register Notice - 85 FR 50866. The changes were made on the list of products subjects to additional

duties of 25% ad valorem. There were also changes made to tariffs in subheadings 0406.90.99 and 1905.31.00 which had been announced in prior actions.

The Chapter 99 subheading that applies to the list of products is 9903.89.55 and is used in addition to the Chapter 1-97 HTS product classification at the time of entry.

The changes made to 0406.90.99, 1905.31.00, and the new list under 9903.89.55 became effective on September 1, 2020.

Q&A

Q1: Is there a list detailing the products from Europe and their applicable tariff rates?

A1: Yes, the impacted products are detailed in 85 FR 50866 as well as in the Cargo System Messaging Service (CSMS) #43784137 notice listed in the REFERENCES section. The CSMS list is a PDF sheet with dates, assigned Chapter 98 tariff code, and HTS subheadings of all impacted items.

Q2: Is there a set end date for these WTO tariffs?

A2: There is not a pre-determined end date. This case has been ongoing for over sixteen (16) years within the WTO. The tariffs only end if both sides come to an agreement on how to settle this dispute within the WTO framework.

REFERENCES:

USTR Notice:

<https://ustr.gov/about-us/policy-offices/press-office/press-releases/2020/august/ustr-modifies-75-billion-wto-award-implementation-relating-illegal-airbus-subsidies>

85 FR 50866:

<https://www.federalregister.gov/documents/2020/08/18/2020-17973/notice-of-modification-of-section-301-action-enforcement-of-us-world-trade-organization-wto-rights>

CSMS #43784137:

[https://content.govdelivery.com/accounts/USDHSCBP/bulletins/29c17c9?utm_source=live&utm_medium=live&utm_term=\(not%20provided\)&utm_content=undefined&utm_campaign=\(not%20set\)&gclid=undefined&dclid=undefined&GAIID=974438581.1589471364](https://content.govdelivery.com/accounts/USDHSCBP/bulletins/29c17c9?utm_source=live&utm_medium=live&utm_term=(not%20provided)&utm_content=undefined&utm_campaign=(not%20set)&gclid=undefined&dclid=undefined&GAIID=974438581.1589471364)