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Boeing-Airbus Subsidy Dispute: Recent Developments

On October 18, 2019, the United States imposed additional tariffs on \$7.5 billion worth of U.S. imports from the European Union (EU). The action, authorized by World Trade Organization (WTO) dispute settlement procedures, followed an investigation by the U.S. Trade Representative (USTR), under Section 301 of the Trade Act of 1974. The USTR determined that the EU had denied U.S. rights under WTO agreements. Specifically, the USTR concluded that the EU and certain member states had not complied with a WTO Dispute Settlement Body (DSB) ruling recommending the withdrawal of WTO-inconsistent subsidies on the manufacture of large civil aircraft. In 2011, the DSB confirmed that these subsidies breached the EU's WTO obligations under the 1994 General Agreement on Tariffs and Trade (GATT) and the Agreement on Subsidies and Countervailing Measures (SCM Agreement).

The authorization to take countermeasures against the EU—the largest amount in the WTO's history—comes after nearly 15 years of litigation at the WTO. The litigation involves the world's two largest aerospace manufacturers, U.S.-based Boeing and EU-based Airbus, which have competed for years for dominance in the commercial airline supply market. The United States successfully argued that Airbus had received billions of dollars in illegal subsidies, which resulted in a loss to Boeing of significant market share throughout the world. The U.S. action to impose tariffs, consistent with the WTO arbitrator's finding on the appropriate level of countermeasures, aims to pressure the EU into either ending the subsidies or negotiating an agreement with the United States. In a pending parallel dispute case against the United States, the WTO is expected to authorize the EU to seek remedies in the form of tariffs on U.S. exports to the EU, after the WTO determined earlier this year that the United States had also failed to abide by WTO subsidies rules in supporting Boeing.

Due to the magnitude of U.S.-EU trade (of which civilian aircraft, engines, and parts are a major component) and ongoing trade frictions, some Members of Congress are closely monitoring developments in the WTO litigation and in U.S.-EU negotiations.

Background

The United States and the EU have long claimed that the other either directly or indirectly subsidizes their domestic civil aircraft industry. According to the United States, the EU and the governments of certain EU member states—France, Germany, Spain, and the United Kingdom (UK)—have provided, over the years, subsidies to their respective Airbus-affiliated companies to aid in the development, production, and marketing of large commercial aircraft (e.g., through equity infusions, debt forgiveness, debt rollovers, marketing assistance, and alleged political and economic pressure on purchasing governments). The EU, on the other hand, claims that Boeing benefits from U.S. government support, mainly in the form of research and development funds from the National Aeronautics and

Space Administration (NASA), the U.S. Department of Defense, and other agencies. Furthermore, the EU claims that Boeing receives subsidies in the form of tax reductions and exemptions, as well as infrastructure support to develop and produce new aircraft.

During the 1970s and 1980s, the United States and the EU engaged in bilateral and multilateral negotiations to address their concerns. While these efforts ultimately failed, they led to two major agreements still in place today: the 1979 GATT Agreement on Trade and Civil Aircraft and the 1986 Civil Aircraft Sector Understanding (an annex to the Organisation for Economic Co-operation and Development's Arrangement on Officially Supported Export Credits). The United States also initiated dispute settlement cases under the GATT's 1980 SCM Agreement. The United States and the EU subsequently reached a bilateral agreement in 1992: the U.S.-EU Agreement on Large Civil Aircraft (LCA Agreement). The agreement placed limits on government subsidies affecting large civil aircraft manufactured by Airbus and Boeing, and it included a ban on future production support, a cap on development support, a ceiling on indirect support, and conditions on repayment terms.

Dispute Settlement at the WTO

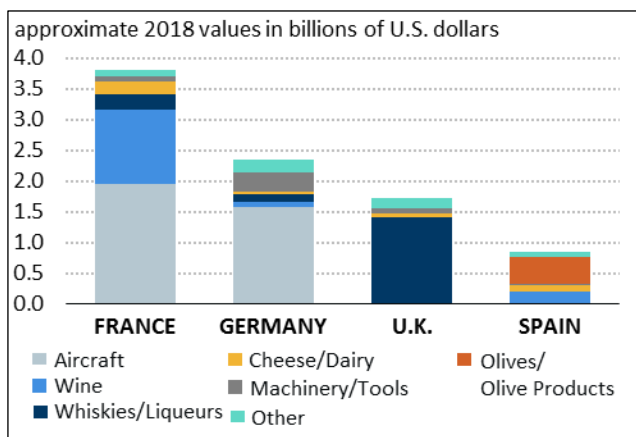
Citing dissatisfaction with EU compliance with the 1992 Agreement and failure to negotiate a more comprehensive deal on subsidies, the United States resorted to WTO dispute settlement in 2004. It filed a case with the WTO (WTO case DS316) and withdrew from the LCA Agreement. In response, the EU immediately announced the initiation of a WTO dispute settlement case against the United States (WTO case DS353) and rejected the U.S. termination of the 1992 Agreement. After intense discussions in late 2004 and early 2005, both sides reached an agreement on the terms of a new bilateral deal. They also agreed not to request WTO panels relating to the pending disputes and not to commit new government support for aircraft development or production during negotiations for the new deal. However, negotiations ultimately stalled and both sides requested the establishment of WTO panels in May 2005. After multiple phases of proceedings since the WTO first ruled in favor of the United States in 2010 (see **text box**), on October 2, 2019, the WTO issued its final ruling on the U.S. case against the EU, pursuant to Article 22 of the Dispute Settlement Understanding (Compensation and the Suspension of Concessions).

Key Developments in the U.S. Case since 2010

- **June 2010.** The WTO dispute settlement panel ruled in favor of the United States. It determined that some of the subsidies provided by the EU and certain member states for the manufacture of large civil aircraft violated the EU's WTO commitments and had caused harm to the interests of the United States. The EU appealed the panel's findings before the WTO Appellate Body (AB).

- **May 2011.** A WTO panel report, as amended by an AB report, confirmed that EU and certain member state subsidies were WTO-inconsistent.
- **June 2011.** The DSB adopted the panel and AB reports and recommended that the EU and certain member states bring the WTO-inconsistent measures into compliance with WTO rules. The EU and certain member states had until December 2011 to bring the measures into compliance.
- **December 2011.** The EU asserted that it had implemented the DSB recommendations. The United States disagreed and requested authorization from the DSB to impose countermeasures commensurate with the adverse effects of the WTO-inconsistent measures. The EU referred the matter to arbitration to assess the proper level of any countermeasures.
- **January 2012.** The United States and the EU entered into a procedural agreement pursuant to which arbitration would be suspended until after the WTO compliance panel and any appellate proceedings determined whether the EU had implemented the DSB recommendations.
- **May 2018.** The DSB adopted the compliance panel and AB reports confirming that the EU subsidies are WTO-inconsistent and continue to cause adverse effects to U.S. interests.
- **July 2018.** At the request of the United States, and in accordance with the 2012 procedural agreement, the WTO arbitrator resumed its work (suspended in January 2012) to determine the level of countermeasures to be authorized as a result of the EU's WTO-inconsistent subsidies.
- **April 12, 2019.** The USTR initiated an investigation, under Section 301 of the Trade Act of 1974, to enforce U.S. rights in the WTO case against the EU and certain member states.
- **October 2, 2019.** The WTO arbitrator concluded that the appropriate level of countermeasures for the United States to take in response to the EU's WTO-inconsistent subsidies amounts to approximately \$7.5 billion annually.
- **October 9, 2019.** Pursuant to Sections 301, 304, and 306 of the Trade Act of 1974, the USTR determined to impose additional *ad valorem* duties of 10% and 25% on \$7.5 billion worth of U.S. imports from the EU.
- **October 18, 2019.** Section 301 tariffs on certain U.S. imports from the EU went into effect.

Figure 1. Top EU Trade Partners Affected by Section 301 Tariffs



Source: CRS with data and information from the U.S. International Trade Commission and the Office of the USTR.

Section 301 Tariff Actions

Following the USTR's Section 301 investigation and its determination to enforce U.S. WTO rights, the USTR published a list of 158 eight-digit product lines on the Harmonized Tariff Schedule of the United States (HTSUS)

subject to additional duties. The list targets mainly the imports of the EU member states responsible for the illegal subsidies, but it is not limited to the aircraft industry (**Figure 1**). The additional tariffs are expected to affect approximately \$7.5 billion worth of imports, or about 1.5% of all U.S. imports from the EU in 2018. The WTO authorized the United States to impose additional *ad valorem* duties—that is, based on the value of the import—of up to 100%; however, the USTR has indicated that “at this time the tariff increases will be limited to 10 percent on large civil aircraft and 25 percent on agricultural and other products” from the EU (**Table 1**). The tariffs are intended to target primarily France, Germany, the UK, and Spain, but the two other countries whose exports to the United States will be affected the most by the tariffs—in relative terms—are Cyprus and Greece. By product category, aircraft (mainly from France and Germany) accounts for approximately 39% of the \$7.5 billion of trade affected, while whiskies, liqueurs, and wine (mainly from the UK and France) account for 38% and food and agricultural products (mainly from Spain and France) account for 18%.

Table 1. Select U.S. Imports from the EU Affected by Section 301 Tariffs

Top U.S. Imports from the EU Targeted by the Tariff Action	Approximate Share of Targeted Imports (%)	Average Tariff in 2018 (%)	Additional Tariff as of October 18, 2019 (%)
Aircraft	39	0	10
Whiskies, Liqueurs	21	0	25
Wine	17	0.7	25
Cheese, Dairy	9	10.8	25
Olives, Olive Products	5	1.5	25
Machinery, Tools	4	0.5	25
Pork, Pork Products	2	0.1	25
Biscuits, Wafers	2	0	25
Fruit, Fruit Products	1	9.0	25
Other	2	1.9	25

Source: CRS with data and information from the U.S. International Trade Commission and the Office of the USTR.

Notes: The analysis is based on USTR's lists of products in Annex B, which the agency published in the *Federal Register* on October 9, 2019 (84 FR 54245) and October 18, 2019 (84 FR 55998). According to the USTR, the product descriptions in Annex B are provided for informational purposes, may cover only a portion of the HTSUS eight-digit subheadings, and do not necessarily delimit the scope of the action. For detail, refer to formal language in Annex A of the aforementioned *Federal Register* notices, which governs the tariff treatment of the products that the tariff action covers. The estimated average tariff rate is illustrative, applies only to the subheadings in Annex B covered by the tariff action, and is calculated by dividing estimated import duties collected by import value in 2018.

Outlook

The USTR has indicated that it will reevaluate the tariff actions periodically based on the progress of its negotiations with the EU. Negotiations could be affected if the EU retaliates and imposes tariffs on U.S. exports, in response to either these U.S. actions or an upcoming WTO decision in the parallel EU dispute case against the United States. The WTO arbitrator has yet to estimate the harm caused by U.S. illegal subsidies and authorize any EU countermeasures, but a decision is expected in early 2020.

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