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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 and the United Kingdom (UK) (hereinafter collectively referred to as the EU). The action, authorized by World Trade Organization (WTO) dispute settlement procedures, followed an investigation by the Office of the United States Trade Representative (USTR), under “Section 301” (Title III of the Trade Act of 1974, 19 U.S.C. §§2411-2420). The USTR determined that the EU had denied U.S. rights under WTO agreements. Specifically, the USTR concluded that the EU and certain current member states and the UK 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 dispute settlement (DS) panel 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 parallel dispute case against the United States, the EU also received WTO authorization to take countermeasures against the United States for failing to abide by WTO subsidies rules in supporting Boeing. In November 2020, the EU began imposing additional tariffs on approximately \$4.0 billion worth of EU imports from the United States (15% on aircraft and 25% on agricultural and other products). The USTR claims that the United States fully implemented the WTO’s DSB recommendations as of early 2020, and therefore “there is no valid basis for the EU to retaliate against any U.S. goods.” 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 states—France, Germany, Spain, and the 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 as research and development funds from the National Aeronautics and Space Administration (NASA), 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 WTO case (DS316) and withdrew from the LCA Agreement. In response, the EU immediately initiated a WTO case against the United States (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**), in October 2019, the WTO issued its final ruling on countermeasures in the U.S. case against the EU.

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.** The final 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. They 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.
- **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 a 2012 U.S.-EU 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.
- **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.
- **December 2, 2019.** A WTO compliance panel rejected the EU's claims that EU subsidies had been brought in line with WTO rulings.

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 subject to additional duties. The list targeted mainly U.S. imports from the states responsible for the illegal subsidies—France, Germany, Spain, and the UK, but was not limited to the aircraft industry. The tariffs affected approximately \$7.5 billion worth of imports, or about 1.5% of all U.S. goods 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 indicated that the tariff increases would be limited to 10% on large civil aircraft and 25% on agricultural and other products.

By broad product category, aircraft (mainly from France and Germany) accounted for roughly 40% of the \$7.5 billion of trade affected, while whiskies, liqueurs, and wine (mainly from the UK and France) accounted for another 40%, and food and agricultural products (mainly from Spain and France) accounted for the remaining 20%.

February 2020 Revision. In December 2019, the USTR announced a review of the initial Section 301 action taken in October 2019. The agency specifically requested comments on whether (1) products covered by the action should remain on or be removed from the tariff list, (2) the current rate of additional duty should be increased to as high as 100% for products that remain on the list, and (3) additional EU products should be added to the list. Based on this review, the USTR increased the rate of additional duties on large civil aircraft to 15%, effective March 18, 2020, and modified the list of other products subject to additional 25% duties (by removing prune juice and adding knives to the list), effective March 5, 2020. The number of product lines and trade affected remained unchanged.

“Carousel Retaliation”

Section 306 of the Trade Act of 1974 requires the USTR to periodically revise (e.g., rotate) the list of products subject to retaliation when the targeted foreign government does not implement a recommendation made pursuant to a DS proceeding under the WTO. This periodic revision is known as “carousel retaliation,” and the intent of rotating products (and/or increasing the level of additional duties) is to exert pressure on the government, through their domestic exporters, to change its position on the disputed practice. The USTR has 120 days after the date in which an action is first taken (and every 180 days thereafter) to review the list of products or action and revise it—in whole or in part. In revising any list or action, the USTR must act in a manner that is most likely to result in the targeted government implementing the DSB's recommendations or achieving a mutually satisfactory solution to the issue(s) raised. No revision is required if the USTR determines that compliance is imminent or agrees with the affected U.S. industry that revising the list is not necessary.

August 2020 Revision. In June 2020, the USTR initiated a second review of the Section 301 action and requested public comments. While in July the EU announced amendments to certain French and Spanish Airbus launch aid contracts, the USTR determined that these changes did not fully implement the DSB's recommendations. As a result, in August the agency altered the composition of the list of non-aircraft products subject to additional duties (2 product lines removed and 9 added of an equivalent amount of trade), effective September 1, 2020. The amount of trade affected and level of additional duties remained unchanged.

December 2020 Revision. Following WTO authorization, in November 2020 the EU began imposing tariffs on U.S. products. In response to concerns with the methodology used by the EU to exercise this authorization, the USTR determined to adjust the reference period of the Section 301 action to mirror that of the EU. According to the USTR, the August 2019-July 2020 benchmark reference period used by the EU to determine U.S. product coverage is one in which trade volumes had been severely affected by the pandemic-related economic downturn. The approach enabled the EU to cover a greater volume of imports than if it had used, like the United States, data from the previous calendar year. Also, while the EU excluded UK trade when calculating the amount of trade to be covered by its action, U.S. goods exported to the UK were subject to additional EU tariffs while the UK remained in the EU customs union. As a result, the USTR added certain aircraft manufacturing parts, wine, cognac, and brandies from France and Germany to the list of products currently subject to additional 25% duties, effective January 12, 2021. The total annual trade value of the tariff subheadings subject to additional duties remained unchanged.

Outlook

Both the United States and EU have contested each other's tariff actions and expressed their desire to seek a negotiated solution to the dispute. The EU is reportedly considering a six-month moratorium on its tariffs once President-elect Biden takes office, which could facilitate progress towards reaching a resolution to the dispute in the coming months. The USTR has indicated that it will continue to reevaluate U.S. Section 301 tariff actions periodically based on the progress of U.S.-EU negotiations.

Andres B. Schwarzenberg, Analyst in International Trade and Finance

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