

US and EU Release Preliminary Tariff Lists Amid WTO Aircraft Subsidies Disputes; Launch Comment Processes

April 2019

UPDATE: On April 17, 2019, the European Commission launched a public consultation period on a preliminary list of products from the US to be considered for countermeasures in its own separate case against the US. The announcement comes following a ruling by the World Trade Organization's (WTO) Appellate Body, finding that the illegal US subsidy support for Boeing continues to cause harm to Airbus' market opportunities, and is the latest development in an escalating trade dispute between the US and the EU. In a [press release](#), EU Trade Commissioner Cecilia Malström pressed for dialogue to resolve the tensions: "We must continue to defend a level-playing field for our industry. But let me be clear, we do not want a tit-for-tat. While we need to be ready with countermeasures in case there is no other way out, I still believe that dialogue is what should prevail between important partners such as the EU and the US, including in bringing an end to this long-standing dispute. The EU remains open for discussions with the US, provided these are without preconditions and aim at a fair outcome."

The [proposed list](#) includes a variety of agri-food products, aircrafts and chemicals, among others, that represent about US\$20 billion in US exports to the EU. Ultimately, the exact amount of countermeasures will be determined by a WTO-appointed arbitrator. Once that number is finalized, the EU will produce a final list of products to match that amount. Stakeholders are invited to submit their comments to the European Commission on the proposed list through May 31, 2019. Our team in Brussels stands by ready to assist with the public comment process.

Background

For many years, Boeing and the US government have cried unfair and illegal trade practices over EU subsidies of Airbus aircraft. Likewise, Airbus has alleged unfair US subsidies of Boeing planes. The two sides took their cases to the World Trade Organization (WTO), where the fight continues to this day – and a wide range of US and European products could soon find themselves in the crosshairs of this fight.

In May 2018, the WTO affirmed a previous ruling in favor of the US in its case, finding that Airbus had indeed received illegal subsidies.

In March 2019, the WTO appellate ruled separately in favor of the EU in its case, finding that Boeing continues to benefit from illegal subsidies from the US government despite being compelled to eliminate these subsidies in a previous ruling.

While the US' case against support for Airbus is expected to conclude this summer – and the EU's proceedings will be resolved later on – [the US has proposed US\\$11 billion in preliminary tariffs on EU goods](#). This is the amount that the Office of the United States Trade Representative (USTR) estimates the US has incurred in damages as a result of the subsidies. A final ruling on damage is expected from the WTO this summer.

Although the preliminary list includes a wide range of consumer goods, such as cheese and wine, according to US Trade Representative Robert Lighthizer, the ultimate focus is on European aircrafts: "Our ultimate goal is to reach an agreement with the EU to end all WTO-inconsistent subsidies to large civil aircraft. When the EU ends these harmful subsidies, the additional U.S. duties imposed in response can be lifted."

The European Commission responded a day later, with a spokesperson for the commission confirming that it will prepare to respond in kind in its proceedings: "The Commission is starting preparations so that the EU can promptly take action based on the arbitrator's decision on retaliations rights in this case."

Impact

The [preliminary list](#) released by USTR on April 8 includes two sections. The first section would apply only to France, Germany, Spain and the UK, and is seemingly focused squarely at Airbus. Notably, this section includes various types of aircrafts and their parts, including:

Product name (Harmonized Tariff Schedule (HTS) statistical reporting number):

- Helicopters not exceeding 998kg (8802.11.0030)
- Helicopters between 998kg and 2,000kg (8802.11.0045)
- Helicopters exceeding 2,000kg (8802.12.0040)
- New aircraft, passenger transports, exceeding 15,000kg (8802.40.0040)
- New aircraft, cargo transport, exceeding 15,000kg (8802.40.0060)
- Undercarriages (8803.20.0030)
- Fuselages and fuselage sections (8803.30.0030)

The second section includes various consumer goods from all 28 member states of the EU. This list includes a wide range of foods, drinks and textiles, notably:

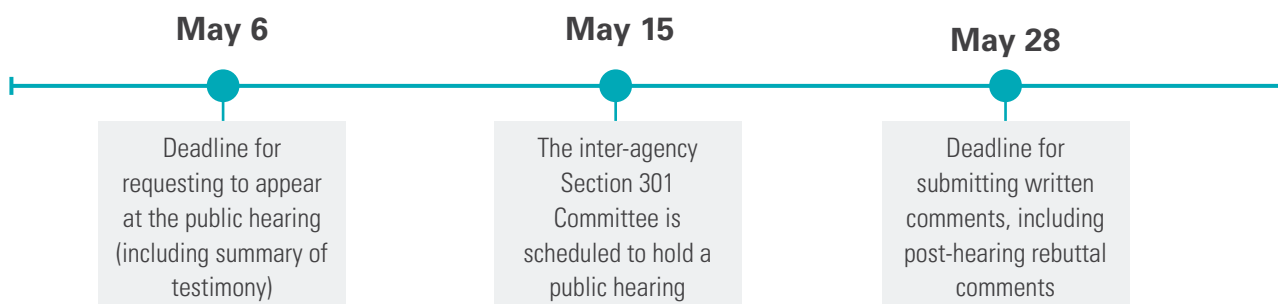
Product name (HTS subheading):

- Swordfish steaks (0303.57.00)
- Salmon fillets (0304.41.00)
- Trout fillets (0304.42.00)
- Crabmeat (0306.14.20)
- Yogurt (0403.10.50)
- Butter (0405.10.10, 0405.10.20)
- Several types of cheese
- Chocolate milk (2202.99.10)
- Various types of wine
- Various essential oils
- Articles of cotton (5609.00.10)
- Articles of vegetable fibers (5609.00.20)
- Carpets made of wool or fine animal hair (5701.10.40, 5701.10.90)

This list could also represent a sizable threat to US-EU trade more broadly – dramatically raising the costs for US consumers of these goods, affecting the European suppliers’ bottom lines – and risking that US products could face similar tariffs when the EU prepares its retaliation list in response to its pending case against the US.

Next Steps

USTR is launching a process to receive comments on the potential impacts of these tariffs, and to amend the list as needed.



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Squire Patton Boggs Tariff Book

There are multiple parties – countries involved, products affected and industries impacted – in today’s trade war and circumstances are changing at a rapid pace. To help companies and consumers timely and efficiently assess how they fare as trade tensions escalate, we created a one-stop, fully searchable, electronic resource called the *Squire Patton Boggs Tariff Book*, in which we compiled and continuously update tariffs imposed on global products by the US, and global tariffs imposed on US products. [Bookmark](#) your copy today and stay in touch with us to receive the latest updates on tariffs and other trade news and developments.

How We Can Help

USTR’s preliminary product list is based on the US’ own impact assessment. The final value is expected to be lower than its estimate, depending on the final WTO decision later this year. This means that the parties impacted by the preliminary list have a real chance at getting their products removed from the list, if they participate in USTR’s process – and we can certainly help them make a strong case, both through the regulatory process and by engaging a complementary legislative strategy. Our Washington DC and Brussels teams stand ready to assist.

The contents of this update are not intended to serve as legal advice related to individual situations or as legal opinions concerning such situations, nor should they be considered a substitute for taking legal advice.