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New Aircraft Tariff Poses Challenges to US Operators

Transportation Legal Update

On October 2, 2019, the World Trade Organization (WTO) issued its decision that the European Union (EU) has provided subsidies to Airbus in violation of WTO rules and authorized the United States to impose tariffs on certain EU products.¹ This WTO ruling stems from a 15-year-old battle over alleged illegal subsidies involving Boeing and Airbus and is the first time that punitive tariffs would apply to airframes imported into the U.S.²

On the same day, the Office of the U.S. Trade Representative (USTR) announced that it would impose a 10 percent tariff on large civil aircraft and 25 percent tariff on certain agricultural and other products, starting October 18, 2019.³

The USTR, on October 9, 2019, issued a Notice of Determination and Action and modified Chapter 99 of the Harmonized Tariff Schedule of the U.S. (HTS) effective as of October 18, 2019 by inserting a new entry for “new aircraft” imported into the U.S. On October 18, 2019, the USTR issued Technical Adjustments to make certain technical changes to the tariff rules.⁴ The following two entries were inserted into the HTS:

Subheading 9903.89.05:

“Articles that product of France, of Germany, of Spain or of the United Kingdom:

New airplanes and other new aircraft, as defined in U.S. note 21(b) to this

subchapter (other than military airplanes or other military aircraft), of an

unladen weight exceeding 30,000 kg (described in statistical

reporting

numbers 8802.40.0040, 8802.40.0060 or 8802.40.0070) [.]”⁵

Subheading 9903.89.07:

“Articles that product of France, of Germany, of Spain or of the United Kingdom:

New airplanes and other new aircraft, of an unladen weight exceeding 15,000

kg (provided for in subheading 8802.40.00), the foregoing not described in

subheading 9903.89.05 [.]”⁶

The term “new airplanes or other new aircraft” is further defined to mean “airplanes or aircraft with no time in service or hours in flight other than for production testing and for each such airplane’s or aircraft’s flight required to enter the airplane or aircraft into the U.S. customs territory or to arrive at a U.S. port of entry [.]”⁷

Note that aircraft engines are not one of the goods that are on the new tariff list. On the HTS list, aircraft engines bear the HTS code of 8407.10.00, which currently still enjoys a duty free status.

According to the Centre for Aviation’s (CAPA) fleet database, Airbus aircraft represent approximately 39 percent of the aircraft on order by U.S. operators.⁸ New Airbus aircraft for U.S. operators are currently delivered by Airbus at one of its production facilities located in Hamburg, Germany, Toulouse, France or Mobile, Alabama.

Importantly, Airbus aircraft assembled in Mobile, Alabama are not subject to the tariffs as semi-finished fuselages and wings imported into the U.S. are exempted from the tariff list.⁹ This means that for the time being, U.S. operators can avoid the 10 percent tariff if the new aircraft is assembled and delivered in Mobile, Alabama.

Opened in September 2015, the Airbus Mobile, Alabama final assembly facility currently has the capacity to assemble and deliver single-aisle A220 and A320 Family aircraft.¹⁰ In December 2018, Airbus Mobile delivered its 100th A320 Family aircraft to Frontier Airlines.¹¹

With this tariff exemption, U.S. operators are motivated to have their new narrow-body Airbus aircraft delivered in Mobile. However, it is generally up to Airbus to identify the specific delivery location of a new aircraft and the Mobile production facility likely will not have the capacity to accommodate all the requests to move delivery from Europe to the U.S.

CAPA's fleet database shows that Delta has 45 Airbus wide-bodies on order and neither Delta nor Airbus has announced what it would do with regard to the tariff.¹² All of these aircraft are currently exposed to the tariff if they are delivered while the tariff remains in effect.

It is important to note that the WTO has also held that the U.S. violated the WTO rules, which means that the WTO is expected to authorize the EU to impose tariffs in a parallel decision, which is due in 2020.¹³ This means that Boeing aircraft will most likely be subject to a similar tariff in Europe in the coming months. Besides actively exploring practical and legal solutions, Aircraft operators are advocating vehemently against the use of retaliatory tariffs as such tariffs will ultimately hurt the traveling public.¹⁴

¹European Communities and Certain Member States – Measures Affecting Trade in Large Civil Aircraft (DS316), World Trade Organization, WT/DS316/ARB, October 2, 2019

² [Andrew Charlton, U.S. Tariffs on Aircraft: Airbus Plays the Long Game](#), October 15, 2019

³ [U.S. Wins \\$7.5 Billion Award in Airbus Subsidies Case, the Office of the United States Trade Representatives](#), October 2, 2019

⁴ [84 FR 55998](#), October 18, 2019

⁵ [84 FR 54247](#), October 9, 2019

⁶ [84 FR 55998](#), October 18, 2019

⁷ *Id.*

8 [US Aircraft Tariffs: Airlines Seek Mobile \(AL\) as Short Term Solution](#),
November 4, 2019

9 [84 FR 55998; Andrea Shalal, Tim Hepher, Airbus Plan in Alabama Spared
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10 [North America, Airbus](#)

11 [Airbus Delivers 100th A320 Family Aircraft Assembled in the U.S.,
December 11, 2018](#)

12 [US Aircraft Tariffs: Airlines Seek Mobile \(AL\) as Short Term Solution](#),
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13 Jonas Ekblom, Timeline: Highlights of the 15-year Airbus, Boeing Trade
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