Office of the United States Trade Representative

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EU Has No Legal Basis to Impose Aircraft Tariffs

WTO Award Relates Only to Now-Repealed Tax Break, Rejects EU Request on Other Measures

Washington, D.C. – The World Trade Organization ("WTO") issued an arbitration decision today that leaves the European Union ("EU") with no lawful basis to impose tariffs on imports from the United States. The EU sought the right to impose countermeasures relating to NASA and Department of Defense research and development ("R&D") subsidies, but the WTO arbitrator rejected that request. The EU also sought the right to impose countermeasures relating to the Washington State Business & Occupation tax rate reduction. The WTO arbitrator explicitly did not take into consideration Washington State's repeal of that tax provision on April 1 of this year, limiting its review to the impact during the 2012-15 period, to which it assigned a value of approximately $4 billion per year.

"While we disagree with certain aspects of its valuation, the more important point is that the arbitrator did not authorize any retaliation for subsidies other than the Washington State tax break," said United States Trade Representative Robert E. Lighthizer. **"Because Washington State repealed that tax break earlier this year, the EU has no valid basis to retaliate against any U.S. products. Any imposition of tariffs based on a measure that has been eliminated is plainly contrary to WTO principles and will force a U.S. response."**

Ambassador Lighthizer continued, **"The United States is determined to find a resolution to this dispute that addresses the massive subsidies European governments have provided to Airbus and the harm to U.S. aerospace workers and businesses. We are waiting for a response from the EU to a recent U.S. proposal and will intensify our ongoing negotiations with the EU to restore fair competition and a level playing field to this sector."**

Washington State enacted Engrossed Senate Bill 6690, which – effective April 1, 2020 – raised the aerospace B&O tax rates to the generally applicable level, thereby removing the sole illegal measure and bringing the United States into full compliance with WTO rules. Under WTO rules, a WTO Member can apply authorized countermeasures only until the illegal measure, or the harm from that measure, is eliminated, which has already occurred in this dispute.

In the arbitration, the EU sought countermeasures of over $10 billion per year. However, the arbitrator determined that the EU incorrectly identified R&D measures that could not serve as a basis for countermeasures. The arbitrator rejected EU requests based on aeronautics R&D measures that were not found to breach WTO rules in a prior compliance proceeding.

The United States continues to impose tariffs on EU goods because of the EU's failure to withdraw billions of euros of illegal launch aid subsidies for the Airbus A380 and A350 programs. However, to maximize the chances of success in ongoing negotiations to end this dispute, the United States has exercised restraint by declining to impose on the EU the full amount of authorized countermeasures.

Background

After many years of seeking unsuccessfully to convince the EU and four of its member States (France, Germany, Spain, and the United Kingdom) to cease their subsidization of Airbus, in 2004 the United States brought a WTO challenge to EU subsidies. The EU responded by challenging what it claimed were subsidies to Boeing by the United States.

Two separate WTO panels addressed the claims brought by the United States and the EU, respectively. The two processes resulted in two very different sets of WTO findings and subsequent actions.

The U.S. Claims Against the EU

Nearly ten years ago, the WTO found that the EU provided Airbus $17 billion in subsidized financing and that European "launch aid" subsidies for every Airbus aircraft to that point breached WTO rules, causing Boeing to lose sales of more than 300 aircraft and to lose market share throughout the world.

The EU left its subsidies mainly unchanged and then granted Airbus billions of euros in new subsidized "launch aid" financing for a new aircraft, the A350. The United States was forced to challenge both the EU's failure to eliminate subsidies already found to be WTO-inconsistent, including subsidies for the A380, and the new subsidies for the A350. In May 2018, the WTO found that the A350 subsidies breached WTO rules and caused serious prejudice to U.S. interests. The report also found that subsidies to the A380 continue to cause significant lost sales of Boeing aircraft, as well as impedance of exports of Boeing aircraft to numerous countries.

In October 2019, a WTO arbitrator authorized the United States to impose tariffs on $7.5 billion worth of EU goods per year to counter the ongoing harm to the United States from the EU subsidies. A separate WTO panel found in December 2019 that the EU had failed to remedy either the A380 subsidies or the A350 subsidies.

The EU Claims Against the United States

The EU's original 2004 dispute alleged that the United States provided unlawful subsidies to Boeing. The WTO found that the United States provided Boeing with relatively small subsidies in research and development funding and tax benefits, with far more limited market effects than the EU's subsidies to Airbus.

In response to the WTO's findings, the United States modified research and development funding to Boeing and revoked much of the tax benefits. The EU challenged whether the United States had taken sufficient action to comply with the findings against it. In April 2019, the WTO adopted compliance reports finding that the Washington State tax rate reduction continued to cause adverse effects to the EU as of the end of the 2012 compliance period. The EU did not prevail on any of its remaining challenges to 29 state and federal programs alleged to harm Airbus.

In April 2020, Washington State fully repealed the B&O tax rate reduction, the only provision found in the WTO compliance proceeding to be an inconsistent subsidy that harmed the EU.

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