

# Legal Commentary

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## Navigating China's Extra Tariffs on Aviation Deals

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On 2 April 2025, the U.S. government announced the tariff hikes of up to 34% on Chinese exports. In response, the Chinese government successively unveiled a series of countermeasures on 4 April 2025, including tariffs, export controls and the Unreliable Entity List.

Among these measures, the *Announcement on Imposing Additional Tariffs on Imported Goods Originating from the United States* (Announcement No.4 of 2025 by the Customs Tariff Commission of the State Council, the "**Announcement No.4**"), released on the same day, stipulates that starting from 12:01 on 10 April 2025, all imported goods originating from the United States will be subject to an additional 34% tariff on top of the current applicable tariff rates.

This article will provide a preliminary analysis of the potential impact of the aforementioned tariff countermeasures on the trade and leasing transactions of aircraft, engines and aviation spare parts originating from the United States in the Chinese market, as well as suggestions for response measures.

Given that the relevant policies have just been released and that both China and the United States may still engage in consultations on tariff issues in the future, we will continue to closely monitor the developments and update the analysis in a timely manner.

### Overview of China's imports of U.S.-origin aircraft, engines and aviation materials

China's imports of U.S.-origin aircraft, engines and aviation materials primarily consist of large commercial aircraft, business jets, aero-engines and related materials.

Boeing is a key supplier of commercial aircraft to China's civil aviation market, with its 737, 777, and 787 models having been the choices for most of the Chinese airlines. Gulfstream business jets also play a significant role in the high-end business aviation sector.

In terms of engines, U.S. companies such as GE Aerospace, Pratt & Whitney and Honeywell maintain substantial market shares in China.

Additionally, China imports critical aviation materials from the U.S. annually, including high-temperature alloy blades, avionics equipment and composite structural components for aircraft maintenance and repairs.

According to the statistical data released by the General Administration of Customs of the PRC<sup>1</sup>, from January to December 2024, the total import value of helicopters, aircraft and parts in China was approximately USD 12.167 billion, of which the amount imported from the United States was about USD 6.208 billion, accounting for more than 50%.

### Timeline for application of China’s tariff countermeasures

Announcement No.4 stipulates that for goods which were dispatched from the place of shipment before 12:01 on 10 April 2025, and imported between 12:01 on 10 April 2025 and 24:00 on 13 May 2025, the additional tariffs shall not be levied.

Therefore, the aircraft, engines and aviation spare parts originating from the United States shall be subject to the additional tariffs under Announcement No.4 if they meet either of the following conditions:

1. they were not dispatched from the United States before 12:01 on 10 April 2025; or
2. they were dispatched before 12:01 on 10 April 2025, but not imported into China before 24:00 on 13 May 2025.

### Current tariff rates for aircraft, engines and aviation materials imported to China

The applicable tariff categories and tariff rates for the aviation-related imports shall be determined in accordance with the *Customs Import and Export Tariff of the PRC*. The actual rates may vary depending on factors such as HS code classification, rules of origin, provisional or preferential tariff rates and retaliatory tariff policies.

Under the current *Customs Import and Export Tariff of the PRC (2025 Edition)*, the most-favoured-nation (MFN) tariff rates for certain aircraft, engines, and aviation materials<sup>2</sup>are as follows:

#### I. Current MFN tariff rates for aircraft (Including helicopters)

HS code	Product description	Current MFN tariff rate (%)
88021100	Helicopters with an empty weight≤2 tons	2
88021210	Helicopters with an empty weight > 2 tons but≤7 tons	2
88021220	Helicopters with an empty weight > 7 tons	2
88022000	Small aircraft and other aircraft (aircraft and other aircraft with an	5

<sup>1</sup> On the General Administration of Customs Statistics Data Online Inquiry Platform (<http://stats.customs.gov.cn/>), we have respectively inquired about the total import amount of China from January to December 2024 and the amount imported from the United States for the two categories of goods with codes 8802 (other aircraft (e.g., helicopters, airplanes), excluding unmanned aerial vehicles of heading 88.06; spacecraft (including satellites) and their launching vehicles, suborbital launch vehicles) and 8807 (parts of goods listed in headings 88.01, 88.02, or 88.06).

<sup>2</sup> The Most-Favored-Nation (MFN) tariff rate refers to the preferential duty rate applied by China to imported goods originating from World Trade Organization (WTO) member states or countries/regions that have mutually established reciprocal MFN treatment clauses with China, in accordance with its accession to international trade agreements such as the WTO agreements. This rate applies to WTO member states as well as non-WTO countries/regions that have bilateral MFN agreements with China.

HS code	Product description	Current MFN tariff rate (%)
	empty weight≤2 tons)	
88023000	Medium aircraft and other aircraft (aircraft and other aircraft with an empty weight>2 tons but≤15 tons)	4
88024010	Large aircraft and other aircraft (aircraft and other aircraft with an empty weight>15 tons but≤45 tons)	5
88024020	Extra-large aircraft and other aircraft (aircraft and other aircraft with an empty weight > 45 tons)	1

## II. Current MFN tariff rates for turbofan engines and components

HS code	Product description	Current MFN tariff rate (%)
84111110	Turbofan engines with a thrust ≤ 25 kN	1
84111190	Other turbojet engines with a thrust ≤ 25 kN	1
84111210	Turbofan engines with a thrust > 25 kN	1
84111290	Other turbojet engines with a thrust > 25 kN	1
84112100	Turboprop engines with a power ≤ 1100 kW	2
84112210	Turboprop engines with a power of 1100 – 2238 kW	2
84112220	Turboprop engines with a power of 2238 – 3730 kW	2
84112230	Turboprop engines with a power > 3730 kW	2
84118200	Other gas turbines with a power > 5000 kW	3
84119100	Parts for turbojet or turboprop engines	1

## III. Current MFN tariff rates for aviation materials

HS code	Product description	Current MFN tariff rate (%)
88071000	Propellers, rotors and parts thereof for aircraft	1
88072000	Landing gear and parts thereof for aircraft	1
88079000	Other unlisted parts for aircraft and spacecraft	0

## Analysis of import tariff exemption and reduction policies and applicability to the contemplated tariff increases

### I. Current exemption and reduction policies

China currently implements value-added tax exemption policy for the import of aircraft with an empty weight of over 25 tons at the import stage. There are no other tariff exemption or reduction policies.

Regarding aviation spare parts for maintenance, on 31 March 2021, the Ministry of Finance and the

General Administration of Customs jointly issued the *Notice on the Import Tax Policy for Aviation Spare Parts for Civil Aviation Maintenance (2021 – 2030)* (Cai Guan Shui [2021] No.15). This policy exempts import tariffs on aviation spare parts for maintenance that cannot be produced domestically or cannot meet the demand, imported by civil aircraft machine design and manufacturing enterprises, domestic airlines, maintenance units and aviation spare parts distributors.

The “aviation spare parts for maintenance” eligible for this tariff exemption policy refer to parts specifically used for the maintenance of civil aircraft and their components, including power plants (engines, auxiliary power units), landing gear, and consumable materials such as standard parts and raw materials. The scope is limited to airborne equipment and its components and raw materials for aircraft, excluding equipment and its components used by ground support systems.

The four ministries (the Ministry of Finance, the Ministry of Industry and Information Technology, the General Administration of Customs and the Civil Aviation Administration of China (CAAC)) have jointly issued supporting management measures and implementation rules for the above-mentioned exemption policy. According to the management measures, CAAC shall regularly update the list of eligible entities and exempted products and submit the latest data to the General Administration of Customs by 10 June and 10 December each year.

## **II. Applicability of the exemption and reduction policies to the contemplated additional tariff**

Announcement No.4 clearly states that “the current bonded and tax exemption policies remain unchanged, and the additional tariffs imposed this time will not be exempted”.

In accordance with the above principle, aircraft, engines and aviation spare parts originating from the United States and falling within the scope of Announcement No.4 will face a 34% tariff increase when imported into China, and this increased tariff portion will not be eligible for the tariff exemption and reduction policies mentioned above.

## **Analysis of impact on aviation-related trade and leasing transactions**

### **I. When will trade and lease transactions be affected by tariff increases?**

Pursuant to the Announcement No.4, we understand that the imposition of additional tariffs shall not apply to the following two categories of trade and lease transactions involving aircraft, engine and aviation materials originating from the United States and imported into China:

1. aircraft, engines and aviation materials already imported (either through purchase or leasing) into China before 12:01 on 10 April 2025; and
2. aircraft, engines and aviation materials shipped from the origin before 12:01 on 10 April 2025 and imported into China by 24:00 on 13 May 2025.

The applicability of the additional tariffs is determined based on the actual time of importation of the goods, not the signing time of the transaction contract. Therefore, even if purchase, lease or other trade contracts were signed, the relevant transactions may still be affected by the current round of additional tariffs.

## II. What are the criteria for defining “Originating from the U.S.”?

It is important to note that “originating from the U.S.” does not equate to “exported from the U.S.” or “sold by a U.S. company,” but rather a legal determination which is centered on the place of substantial manufacturing.

Under the *Customs Import and Export Tariff Regulations of the People’s Republic of China and the Administrative Measures on Rules of Origin for Import and Export Goods*, it is noted that:

- “Tariffs on imported goods shall be determined based on their country/region of origin”.
- “Goods wholly obtained or produced within a single country (region) shall be deemed to originate there”.
- “For goods involving production in two or multiple countries or regions, the last substantive processing or manufacturing country or region shall be deemed to be the origin”.

On such basis, whether an imported product is determined to be “originating from the U.S.” the customs authorities will primarily review whether the product has undergone the last substantial processing or manufacturing in the U.S. The following scenarios will not alter the determination of the origin as the United States:

- the seller/exporter is not a U.S. entity.
- goods are transshipped via a third country.
- contracts are signed or payments are made outside the U.S.

Therefore, so long as a product is determined to be “originating from the U.S.” regardless of whether the exporter is in the United States, whether it is transshipped through a third country, or whether it is sold by a non-U.S. company, it will be subject to the contemplated additional tariffs.

## III. What types of trade and leasing transactions will be potentially affected by tariff increases?

Based on the foregoing, transactions directly subject to tariff increase include but not limited to:

1. direct overseas purchases of U.S.-origin aircraft, engines and aviation materials by Chinese airlines or other entities.
2. overseas lessors or entities purchasing and exporting U.S.-origin aircraft, engines and aviation materials to Chinese lessees through trade or lease arrangements.
3. Chinese lessors purchasing and importing U.S.-origin aircraft, engine and aviation materials through bonded zone project companies for onward leasing to Chinese lessees.

## IV. What types of trade and leasing transactions may not be subject to tariff increases?

Given that Announcement No.4 explicitly states that the current bonded policy remains unchanged, we anticipate that the following types of transactions involving aircraft, engines and aviation materials originating from the United States may not be subject to the contemplated additional tariff:

1. Existing cross-border aircraft/engine leasing transactions involving U.S.-origin aircraft or engines that were imported prior to 10 April 2025, with the lessee opting to pay all import duties in a lump sum, as well as bonded aircraft/engine leasing transactions.

For lessees who have opted to pay import duties in installments over the lease term, we tend to believe that the newly increased tariff rates should not apply. China's newly announced tariff countermeasures are aimed to curb new imports from the United States. Applying these tariffs to existing leases would not achieve the intended policy objective. Instead, it would risk imposing an undue burden on Chinese airlines by significantly increasing their operational costs.

2. Maintenance services for aircraft or engines conducted within the PRC bonded zones without importation into China.
3. For aircraft and engines that were imported through trade or leasing prior to 10 April 2025 and are subsequently delivered overseas for maintenance, the current regulations provide that, where machinery, vehicles or other goods are declared to customs upon exit for maintenance or repair and are re-imported within the prescribed time limit, the dutiable value is determined based on the cost of overseas repair services and parts.

Accordingly, the original dutiable value and applicable tax rate of the aircraft or engine itself will not be adjusted solely due to the overseas maintenance. However, in respect of the repair services and parts used during the overseas maintenance, if any such parts or materials originate from the United States, the additional tariffs may still apply to that portion.

4. Extensions of the leasing of the existing aircraft, engines and aviation materials, provided the extensions have been declared to the customs authority with the lessee opting to pay all import duties in a lump sum prior to 10 April 2025.

For lease extension transactions that were declared to the customs authority prior to 10 April 2025, where the lessee has opted to pay import duties in installments, we understand that whether additional tariffs will apply depends on the policy referenced in paragraph (1) above – specifically, whether the remaining lease term of existing lease transactions will be subject to the additional tariffs.

As for lease extension transactions declared to customs after 10 April 2025, we understand that the applicability of the additional tariffs is still subject to further clarification and confirmation from the customs authorities.

5. Purchase and sale transactions involving aircraft, engines, and aviation materials that are on lease to PRC lessees and were imported into China prior to 10 April 2025, provided no export from and re-import to China is involved.

In practice, such transactions may include portfolio asset transfers between offshore buyers and sellers, between offshore sellers and buyers located within China's tax bonded areas, or between lessors within the same tax bonded area. These three types of transactions involve different sets of customs procedures in China. The latter two, in particular, require additional steps such

as re-entry into the tax bonded area and filing import/export declarations. However, there is no substantive difference among the three in the underlying transaction nature and their impact on the lessee in terms of possession and use of the aircraft. Therefore, we are of the view that the applicability of the newly imposed tariffs should not vary based solely on differences in customs procedures, and the same tariff treatment should apply across all three transaction types.

6. Restructuring of existing leases involving aircraft, engines and aviation materials that are on lease to PRC lessees and were imported into China prior to 10 April 2025, provided no export from and re-import to China is involved.
7. Offshore lease transactions where domestic leasing companies purchase directly from overseas through bonded zone project companies and lease to lessees outside of China, without involving export from and re-import to China.

**V. How to handle affected transactions: tax allocation, force majeure and change of circumstances?**

In the context of China’s current imposition of additional tariffs on U.S.-origin aircraft, engines and aviation materials, this policy will have a direct impact on the aviation trade and leasing transaction agreements.

Tax allocation provisions in the existing sales and leasing agreements will become a focal point. If the agreements include “net delivery” or “net rent” arrangements, the additional tariffs will generally fall on buyers or lessees<sup>3</sup>. However, if contracts lack explicit allocation mechanisms for new tax burdens, disputes over performance obligations may arise, potentially triggering re-negotiations. For transactions pending delivery or importation, parties should urgently review contractual terms to clarify liability for additional taxes and address the situation through supplemental agreements where necessary.

Certain agreements include transaction restructuring mechanisms permitting adjustments to transaction structures due to legal or tax environment changes. Moreover, although some contracts contain force majeure clauses, these clauses typically do not explicitly cover changes in tax policies. Whether the imposition of additional tariffs can directly constitute force majeure needs to be carefully analyzed based on the contract and the circumstances at the time of contract formation, to discuss whether there is room for exemption from liability.

Under PRC law, affected parties may attempt to invoke Article 533 of the *PRC Civil Code* regarding the doctrine of change of circumstances arguing that the sudden increase in tariffs has led to manifest unfairness in performance and requesting the court or arbitration institution to amend the contract terms or terminate the contract. However, assessment by the courts of the applicability of doctrine of change of circumstances will involve considering factors such as foreseeability of tariff changes, transaction stage as well as commercial rationality and there is still considerable uncertainty in its

<sup>3</sup> For instance: In the majority of sales and purchase contracts with mainstream aircraft and engine manufacturers, it is stipulated that, except for the seller's income tax, the buyer assumes all taxes arising from or related to the performance of the contract, as well as the purchase, delivery, and transfer of the aircraft/engines. In leasing contracts, import customs duties are typically borne by the lessee.

application.

## Next steps

### I. Review existing contracts to assess taxes and fees allocation

For existing transaction projects that have been signed but not yet delivered, whether they are purchase contracts (such as aircraft or engine procurement agreements, aviation materials supply contracts) or financing or operating lease contracts, it is essential to promptly review the price adjustment mechanisms in the existing contracts. This includes clauses related to tax changes, force majeure and change of circumstances, to clarify the allocation of the burden for new tariffs and other tax costs, as well as the adjustment pathways. If the contract does not make explicit provisions for these matters, it is recommended that the relevant parties negotiate supplementary agreements with their transaction counterparts as early as possible to reasonably allocate the new tax burden, thereby reducing the uncertainty and performance risks brought about by the China-U.S. trade friction.

### II. Learn and utilize the exclusion rules for additional tariffs

The Tariff Commission of the State Council issued the *Announcement on the Pilot Program of Excluding Certain Eligible Products from Tariff Hikes against the United States* in 2019, establishing an exclusion mechanism for goods subject to additional tariffs from the United States. Under this mechanism, eligible goods may apply for exemption from the additional tariffs, which specifically includes measures such as “temporary non-application of additional tariffs” or “for those that meet the conditions for refund, the already imposed tariffs will be refunded”.

We understand that whether the current round of additional tariffs can apply the same or similar exclusion mechanism is still pending further policies or announcements from the relevant authorities. Entities involved in the purchase and lease transactions of aircraft, engines and aviation materials, including airlines, leasing companies, maintenance enterprises and other service providers, should all pay attention to the release of subsequent policies. They should also focus on the scope of application and application procedures of the relevant exclusion mechanisms. By combining the actual impact of the contemplated additional tariffs on their operations, cost structures and performance arrangements, they should comprehensively assess whether they meet the application conditions. If there is any possibility of obtaining any exclusion, it is recommended to prepare and submit application materials as early as possible to reasonably reduce potential tax burdens and mitigate the business risks brought about by uncertainty.

### III. Conduct customs planning based on the compliance with rules of origin

In practice, when it comes to the importation in the trade and lease transactions of aviation products such as aircraft, engines and aviation materials, the application of the rules of origin should be given particular attention.

Aviation trade and leasing entities, including airlines, leasing companies and maintenance enterprises in China, should confirm whether the imported aviation products (such as aviation materials and spare parts) originating from the United States meet the Chinese customs' criteria for determining “originating

from the United States”. When using transshipment trade arrangements (for example, via third countries such as Singapore or EU member states), it is crucial to ensure that the certificates of origin issued by the transshipment countries are genuine, complete and acceptable to Chinese customs.

If a product is determined to originate from the United States, it may be subject to the contemplated additional tariffs, even if the exporter is not located in the United States. Therefore, all parties to the transaction should consider the compliance risks associated with the compliance with rules of origin simultaneously in contract design, document preparation and logistics arrangements.

#### **IV. Monitor policy changes and respond promptly**

Since the U.S. initiated the Section 301 investigation and imposed additional tariffs in 2018, China had announced plans to impose reciprocal tariffs on U.S.-origin aircraft, some of which were not implemented for certain reasons. After the additional tariffs were imposed again in 2019, although there were responsive measures, China subsequently suspended the originally planned tariffs as the trade consultations progressed. In 2020, the two sides reached the Phase One Economic and Trade Agreement, under which the U.S. committed to gradually remove the additional tariffs, while China agreed to purchase \$200 billion worth of U.S. products, including aircraft, over the next two years.

Although the context of the current round of additional tariffs is different, there is still a possibility that the China-U.S. trade dispute can be resolved through negotiations and a new agreement can be reached. Therefore, the future direction of tariff policies still needs to be closely monitored.

## ***Important Announcement***

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