

Are more US restrictions on free trade in sight?

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During Germany's Foreign Minister Maas' recent visit to Washington, D.C., President Trump announced that the US government would consider punitive tariffs on automobiles and automotive parts. This statement is just another step towards the US government's efforts to isolate the US economy.

President's Trumps most recent threat follows unilateral US sanctions against Iran and Russia. It seems that the US government tries to argue that imposing sanctions would boost its national economy. For example, the Countering America's Adversaries Through Sanctions Act (CAATSA) reads: "*The United States Government should prioritize the export of United States energy resources in order to create American jobs, help United States allies and partners, and strengthen United States foreign policy*" (sec. 257 (a)(10)). With regard to its withdrawal from the Joint Comprehensive Plan for Action (JCPOA), the US government is skating on thin legal ice (see our previous briefing). According to the International Atomic Energy Agency, which is responsible for monitoring compliance with the JCPOA, Iran has fulfilled its obligations under the nuclear deal. In return, the US had committed to lifting a number of sanctions (paragraphs 21 and 34 JCPOA), which most probably will now be reintroduced following the US' withdrawal.

Moreover, the US government has already decided on imposing punitive tariffs on steel and aluminium imports, which will probably also apply to EU companies as of 1 June. However, these punitive tariffs are not "bulletproof" from a legal viewpoint: the US government is trying to justify these measures, including the announced punitive tariffs on automotive parts and automobiles, with reference to national security concerns. This justification seems untenable with regard to automotive parts and automobiles – if not for all US-instated punitive tariffs. In any case, the strict conditions laid down in Article XXI lit. b GATT are unlikely to be met. In particular, war-like circumstances within the meaning of the third case group – as named in the regulation – are not apparent.

Companies affected by these measures, especially those trading with the US, Iran, and Russia, are in a difficult situation. Reinstating the EU Blocking Statute might seem reasonable from a political point of view. However, it will lead to difficult legal and practical balancing questions that need to be dealt with in the management and legal departments in the short and medium term. For companies affected, the US measures require a review of contracts with business partners in the countries concerned. In particular, such a review should focus on clauses allowing for purchase price increases in the event of (punitive) tariffs and *force majeure* clauses.

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BLOMSTEIN will continue to monitor the developments in the US closely and will provide updates on any significant developments relating to sanctions or trade matters. Please do not hesitate to contact [Roland Stein](#) or [Pascal Friton](#) if you have any questions.