

EU responds to new US tariffs: WTO proceedings launched

Briefing 8 June 2018

Despite protest and all efforts to find a diplomatic solution, the US government has introduced punitive duties on steel (25%) and aluminium (10%) imported by European, Canadian and Mexican companies on Friday, 1 June 2018. The same day, the EU responded promptly and submitted a request to the World Trade Organization (*WTO*) for consultations under a dispute settlement procedure. Canada, the largest steel supplier to the US, has also initiated proceedings at the WTO. The Canadian Foreign Minister has announced to closely cooperate with the EU. Mexico has also expressed its intention to take action against the US.

The compatibility of the duties imposed by the US and the WTO rules is now being reviewed in a multi-stage process. If the parties do not reach an agreement within 60 days in the first phase of the consultation procedure, the matter can be brought before an expert WTO panel in the second phase. The parties affected by the US measures are also considering “retaliatory tariffs” (see our previous [briefing](#) for possible countermeasures to punitive tariffs).

The Conflict: National Security Interests or Mere Protectionism?

According to the EU, Canada, Mexico and numerous experts, the punitive tariffs infringe – among others – Article 2 of the General Agreement on Tariffs and Trade (*GATT*). However, the US justifies the special tariffs on steel and aluminium imports on national security grounds. Article 21 *GATT* allows trade restrictions on the basis of national security interests but this is subject to strict conditions. The EU, Canada and Mexico strongly doubt that these conditions are satisfied. They believe the US is using the newly introduced tariffs to protect the domestic industry and that they are thus illegal.

Can the WTO Review the (Alleged) Existence of National Security Interests?

There have been no WTO procedures to date in which a member state has tried to justify the imposition of tariffs based on national security interests. It is thus unclear if the WTO can actually review whether the national security interests of a member state are affected. According to the US, a state's assessment of its national security interests cannot be called into question by WTO bodies. Therefore, the first step in the current proceedings will be to clarify the extent of the individual member state's margin of appreciation in assessing national security interests. In this respect, the WTO panel will break new legal ground. It has to be clarified first whether a review by the WTO is in principle possible, only then will it be ascertained whether the exemption under Article 21 *GATT*

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is applicable. There are many indications that the tariffs are not actually necessary for the protection of national security interests. However, since the scope of the WTO's power of review must first be clarified, the outcome of the proceedings remains uncertain.

Prospects

Although the WTO proceedings – and thereby the intention to return to rule-based free trade – are to be welcomed, they are unlikely to contribute to a speedy resolution of the conflict. As the American President is blocking the occupation of vacant positions in the WTO Appellate Body, it is doubtful whether it will be possible to adhere to the usual duration of one to one and a half years in these proceedings. This can significantly delay the outcome of the procedure. However, even if the tariffs were found to be illegal by the WTO, this would not necessarily result in a timely end to the (unlawful) tariffs. After all, President Trump has described the WTO as a “catastrophe” in the past. Therefore, it is possible that the US government would override a decision made against it, in which case the EU may impose justified countermeasures. In the worst case – although highly unlikely – the US might pull out of the WTO altogether.

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