

What might be behind Trump's tariffs on steel imports?



Last Thursday President Trump acted to impose 25 per cent tariffs on steel and 10 per cent tariffs on aluminium. This action followed an investigation under Section 232 of the 1962 US Trade Expansion Act by the US Commerce Department of whether imports were endangering US national security. The European Union's response to this action, and that of other WTO members, should be to defend the rules-based order against what appears to be a challenge from the US President and to seek cooperative solutions to the structural imbalances in international steel markets.

What might be the US aims?

The difficulty the EU has in deciding how to respond to the US action is that neither the ultimate objective(s) of the President's action, nor its basis in trade law is clear.

The possible objectives are:

- To protect the US steel and aluminium industries from import competition as with similar action by President Bush in 2003. This would be on top of the many existing anti-dumping and other measures already in place to protect US steel;
- To pursue domestic political objectives by acting on an election pledge to do something for the steel workers and the communities affected by structural change in the sector;
- To 'claim value', as it is termed in negotiation theory, to pressurize US trading partners to make concessions or renegotiate agreements (NAFTA). There also appears to be an aim to 'do something' – it is not clear what – to reduce the US trade deficit with the EU or Germany in particular; or
- To protect US national security.

Considering these possible objectives, if the aim were simply to protect the steel industry the US could have initiated a safeguard action as envisaged under Article XIX of the GATT 1994. True, it might well have lost the case in the WTO as President Bush did in 2003. But WTO cases take time and during this time the US steel industry could have some temporary relief.

The safeguard would also satisfy the political objective of President Trump to be seen to be doing something for the steel industry. Given the costs of tariffs for US steel consuming industries, a more economically rational policy would have been to provide adjustment assistance for the sustainable development of steel producing areas (retraining, local regional development and financial support) and promote a modernisation of the US steel industry. But such active structural policies in response to changes brought about by trade are seldom if ever considered these days.

The case for action set out in the Section 232 investigation by the Department of Commerce appears to be based on the view that any reduction in the existing production capacity would damage US national security. This is less than compelling when capacity is at around 96 million metric tonnes (mmt), demand a little over 100 mmt and most steel imports affected by the tariffs come from US allies. The national security justification however, serves two purposes. It provides the US with discretion to act on imports and threatens to undermine the WTO. To date WTO members have avoided claiming the right to act in the interests of the national security exception under Article XXI of the GATT, because extensive use of such broad discretionary powers would fundamentally weaken the rules-based system.

This leaves the value-claiming objective. The Trump Administration has already exercised such leverage vis-à-vis Canada and Mexico and President Trump has linked the trade sanctions with German contributions to NATO and the scale of the German trade surplus with the USA. So the idea of acting tough to get a better deal in a number of areas where President Trump feels the US has gotten a bad deal seems to have something of a ring of truth in it.

So how should the EU and others respond?

The initial EU response was to follow the approach used in 2003 on the assumption that the US action could be seen as a safeguard. This would enable the EU to threaten and ultimately impose compensation, in other words increase tariffs on a range of US exports under Article 8 of the WTO Safeguards Agreement. The EU could then also challenge the US action in the WTO with the hope and expectation of winning as in 2003. The targeting of particular US exports, a well-established practice in such cases, would also drive home the domestic costs for the US of protecting steel and aluminium.

In its response to measures based on national security, the EU faces a dilemma. If the US claims the right to take what would be in effect discretionary trade protection under the national security exception in GATT Art XXI, the EU could of course challenge this in the WTO. But if the US were to win it would be open season for any government – including the US – wishing to follow suit, with the inherent risk of a tariff war and a downward spiral in trade. If, on the other hand, the US were to lose, the rhetoric would be 'WTO undermines US national security'. Something that could further undermine US support for a rules-based trading system. This dilemma is the reason all governments have avoided the Article XXI exception in all but rare cases such as UN based economic sanctions. So, by playing the national security card the Trump Administration threatens the stability of the WTO whatever the outcome.

If the US aim is pure value-claiming to gain leverage by threatening trade sanctions, the EU and all those WTO members that wish to defend a rules-based, open trading system should decline any offers to reach a deal. In seeking a WTO-consistent response, the EU might consider other options such as bringing an Article XXIII (so-called non-violation) case against the US. This enables compensation without venturing onto the thin ice of a dispute on the interpretation of Article XXI.

At the same time the EU should be ready to defend the European steel industry if exports destined for the US are redirected towards the EU market in sufficient volumes to threaten injury to the EU industry. This can be done fairly promptly by means of provision safeguard measures under Article XIX of the GATT.

The EU should also continue to promote international cooperation in addressing the structural imbalances in the steel sector. Talks on cooperation on steel are on-going in the Global Steel Forum set up at the G20 Hangzhou summit in 2017 and are facilitated by the OECD. Such an approach has been used before in cases of structural surplus capacity. These involved a combination of commitments to reduce surplus capacity, efforts to control subsidies and measures to promote structural adjustment and provide support for the workers and communities affected by closures.



Notes:

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