

The EU should defend the World Trade Organisation



The decision by the Trump administration to protect the US steel industry is by no means new. The Obama White House followed previous administrations in imposing anti-dumping duties to protect US steel against 'unfair' import competition from certain suppliers for certain products. In 2002 the Bush government introduced temporary safeguard measures to protect US steel from all imports of certain steel products from a range of countries.

Such measures at least professed to be within the rules set out in the General Agreement on Tariffs and Trade (GATT). In the case of the safeguards, other WTO members challenged the US action and won, on the grounds that imports were not the main cause of difficulties in the sector.

The current US action does not rely on anti-dumping duties, safeguards or countervailing actions against subsidized products. These require findings of injury and dumping, the threat of serious injury or the presence of subsidies. The Trump Administration is threatening to act, using as a legal basis a provision drawn up during the Cold War in Section 252 of the US Trade Expansion Act of 1962 that allows controls on the grounds of US national security.

The short GATT (Article XXI) (below) provides for an exception from trade rules on the grounds of national security, but this is very narrowly drawn and was intended essentially for trade in arms and to provide the legal basis for UN based trade sanctions.

Problems in the steel sector are not new. The sector has regularly suffered from surplus capacity. In the 1970s or 1980s, these were dealt with by a combination of plant closures, some management of trade, and adjustment assistance for workers and communities affected. But the major steel producers cooperated eventually, within the framework of the OECD.

In more recent years trade remedies have tended to replace structural policies, hence the use of anti-dumping actions or safeguards. It might be argued that more effective restructuring policies would have eased the difficulties faced by steel producers and above all the workers and communities affected by plant closures, but at least governments made every effort to remain within the letter of the GATT rules, so as not to undermine the credibility of the rules-based multilateral order.

What is different about the current US action is an apparent disregard for the letter – and perhaps more importantly, the spirit – of a rules-based trading system, or any belief in international cooperation to address what is a wider structural problem in the steel sector. As was clear when the GATT provision was drafted, if the national security exception is defined too broadly it will allow any form of protection under the sun.

This recent case follows other examples of the US Administration's antagonism towards the World Trade Organisation in which it has effectively frustrated the workings of the dispute settlement mechanism. Taken together with the rejection, or renegotiation, of existing agreements such as the Trans Pacific Partnership and NAFTA, it raises real questions as to whether the US will continue to support the international public good of an open-rules based trading system.

In response, it is important that the European Union defends the international public good of an open, rules-based multilateral system. This means that rhetoric aside the EU should challenge any US action based on the national security exception of the GATT through a WTO dispute settlement procedure. There can be little doubt that the EU would win the case in the WTO. If the US refuses to comply the EU would then be authorised to take retaliatory measures. Other WTO members, both developed and emerging markets, would also retaliate.

But WTO dispute settlement procedures can take a year or two. In the meantime, the EU should make clear policy statements to the effect that it will resist any unilateral undermining of the WTO system. Beyond this it will need to ensure that the European steel (and aluminum) industries are not threatened with serious injury as a result of any US action. This could happen if steel destined for the US market is redirected to the EU. The EU can monitor trade flows and if there appears to be a threat it should be ready to take a provision safeguard action, in line with EU and WTO rules.

GATT Article XXI

Security Exceptions

Nothing in this Agreement shall be construed

- *to require any contracting party to furnish any information the disclosure of which it considers contrary to its essential security interests; or*

(b) to prevent any contracting party from taking any action which it considers necessary for the protection of its essential security interests

- *relating to fissionable materials or the materials from which they are derived;*
- *relating to the traffic in arms, ammunition and implements of war and to such traffic in other goods and materials as is carried on directly or indirectly for the purpose of supplying a military establishment;*
- *taken in time of war or other emergency in international relations; or*

(c) to prevent any contracting party from taking any action in pursuance of its obligations under the United Nations Charter for the maintenance of international peace and security.



Notes:

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