

# U.S. Tariffs on Steel and Aluminum

*What Measures Should the EU Adopt?*

23 May 2018

## Core Recommendations

**Establish a Clear Position:** The EU should clearly emphasize to U.S. President Donald Trump that he should promptly abandon the import restrictions on steel and aluminum altogether. The EU must show that it is willing and able to react decisively to protectionist measures.

**Act in Accordance with the WTO and in Support of the Multilateral Trading System:** The EU should react level-headed and assure that every decision regarding countermeasures is compatible with WTO rules. The multilateral framework should be strengthened, improved and expanded, rather than weakened.

**WTO Dispute Settlement:** The EU and other affected nations do not threaten the national security of the United States. The EU request for consultations with the United States at the WTO is a step into the right direction. If no solution is found through consultations, the EU should request the establishment of a dispute settlement panel at the WTO.

**Examine Possible Safeguard Measures:** The European Commission is examining whether the U.S. tariffs will cause steel to be diverted from third countries to the EU, threatening or creating serious damage. It should also do so regarding aluminum. Possible EU countermeasures must align with the rules of the WTO and also take the interests of processing industries into account.

**Carefully Weigh Compensatory Tariffs:** Countermeasures could fuel protectionist tendencies and launch a tit-for-tat spiral. They must thus be very carefully examined before action is taken.

**Global Forum on Steel Excess Capacity:** The Forum should be strengthened in order to effectively counter the global structural problems in steel production. The creation of a similar forum for aluminum should be considered.

**Clear Positioning of the German Government against Protectionism and for Open Markets:** This includes promoting the ratification of CETA and the conclusion of further free trade agreements.

**Sending a Clear Signal against Protectionism and for Open Markets:** The dialogue with the United States on trade-related issues should be strengthened, also beyond the current conflict.

**Removal of Transatlantic Trade Barriers:** Removing tariff and non-tariff barriers to transatlantic trade would secure jobs and generate wealth. However, market access must be mutual. Focusing only on tariffs does not create a full picture. A tariff-only agreement would thus be insufficient. It would, however, be desirable that the EU and the United States explore the possibility to re-start bilateral negotiations.

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## Background

During his election campaign, U.S. President Donald Trump announced his intention to protect domestic industries, such as the steel industry, from allegedly unfair foreign competition and to correct trade relations that were disadvantageous for the United States. On 8 March 2018, Trump finally proclaimed the introduction of tariffs on steel (25%) and aluminum (10%).<sup>1</sup> According to the proclamations, Canada and Mexico were initially excluded from the tariffs owing to their close economic ties and interdependence in security matters with the United States.

The background to this decision were investigations by the U.S. Department of Commerce (DOC), which concluded that imports of steel and aluminum constituted a threat to the national security of the United States (“The reports concluded that the quantities and circumstances of steel and aluminum imports ‘threaten to impair national security’, as defined by Section 232 [of the Trade Expansion Act of 1962]”).<sup>2</sup> The report by the DOC on steel was submitted to the White House on 11 January 2018,<sup>3</sup> the report on aluminum on 19 January 2018.<sup>4</sup> They were published by the DOC on 16 February 2018.<sup>5</sup>

On 22 March 2018, Trump proclaimed a temporary exemption for the EU from the tariffs until 1 May 2018.<sup>6</sup> Apart from the EU, Canada and Mexico were also exempted along with Argentina, Brazil, Australia, and South Korea. On 23 March, the tariffs came into force for all other countries.<sup>7</sup> Shortly afterwards, South Korea obtained a permanent exemption from the tariffs within the framework of the renegotiations of KORUS, its free trade agreement with the United States.

Few hours before the expiration of the “grace period”, Trump extended the exemption for the EU, Canada, and Mexico until June 2018 to allow for further talks. According to the White House communication, the United States has reached agreements in principle with Argentina, Australia, and Brazil, meaning that these countries will be exempted permanently. The details “will be finalized shortly”, the statement added.<sup>8</sup> According to media reports, Argentina agreed to a quota of 135 percent for steel and 100 percent for aluminum of the average exports to the United States over the years 2015-2017.<sup>9</sup> Brazil agreed to a quota of 70 percent of its average exports over the years 2015-2017 for finished steel and 100 percent for semi-finished steel. Regarding aluminum, Brazil will face the 10-

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<sup>1</sup> The White House, *Presidential Proclamation on Adjusting Imports of Steel into the United States*, 8 March 2018, <<https://www.whitehouse.gov/presidential-actions/presidential-proclamation-adjusting-imports-steel-united-states/>>; The White House, *Presidential Proclamation on Adjusting Imports of Aluminum into the United States*, 8 March 2018, <<https://www.whitehouse.gov/presidential-actions/presidential-proclamation-adjusting-imports-aluminum-united-states/>> (accessed 12 March 2018).

<sup>2</sup> The White House, *What You Need To Know: Section 232 Investigations and Tariffs*, 3 March 2018, <<https://www.whitehouse.gov/briefings-statements/need-know-section-232-investigations-tariffs/>> (accessed 12 March 2018).

<sup>3</sup> The White House, *Presidential Proclamation Adjusting Imports of Steel into the United States*, 22 March 2018, <<https://www.whitehouse.gov/presidential-actions/presidential-proclamation-adjusting-imports-steel-united-states-2/>> (accessed 11 May 2018).

<sup>4</sup> The White House, *Presidential Proclamation on Adjusting Imports of Aluminum into the United States*, 8 March 2018, <<https://www.whitehouse.gov/presidential-actions/presidential-proclamation-adjusting-imports-aluminum-united-states/>> (accessed 11 May 2018).

<sup>5</sup> U.S. Department of Commerce, *Secretary Ross Releases Steel and Aluminum 232 Reports in Coordination with White House*, 16 February 2018, <<https://www.commerce.gov/news/press-releases/2018/02/secretary-ross-releases-steel-and-aluminum-232-reports-coordination>> (accessed 11 May 2018).

<sup>6</sup> The White House, *Presidential Proclamation Adjusting Imports of Steel into the United States*, 22 March 2018, <<https://www.whitehouse.gov/presidential-actions/presidential-proclamation-adjusting-imports-steel-united-states-2/>> (accessed 11 May 2018).

<sup>7</sup> U.S. Customs and Border Protection, *Section 232 Tariffs on Aluminum and Steel*, 3 May 2018, <<https://www.cbp.gov/trade/programs-administration/entry-summary/232-tariffs-aluminum-and-steel>> (accessed 11 May 2018).

<sup>8</sup> The White House, *President Donald J. Trump Approves Section 232 Tariff Modifications*, 30 April 2018, <<https://www.whitehouse.gov/briefings-statements/president-donald-j-trump-approves-section-232-tariff-modifications/>> (accessed 11 May 2018).

<sup>9</sup> Isabelle Hoagland, “Argentina Agrees to Cap Steel at 135 Percent of Three-Year Average”, in: *Inside U.S. Trade*, 18 May 2018.

percent tariffs.<sup>10</sup>

The tariffs on steel and aluminum – like the increased use of trade policy protective instruments by the United States – are the expression of a paradigm shift in U.S. trade policy, which is also reflected in the new U.S. Trade Policy Agenda 2018. This Agenda was published on 28 February 2018.<sup>11</sup> As the 2017 Trade Policy Agenda, the 2018 Agenda gives top priority to the national interests of the United States. The Administration stresses the close link between trade and national security as well as the intention of the United States to respond aggressively to China’s commercial policy. In addition, severe criticism is levelled at the WTO. The presidency of Donald Trump has ushered in a new era of U.S. trade policy.

## The Legal Basis for Section 232 Measures

The official proclamation of the tariffs on steel and aluminum was preceded by an investigation under Section 232 of the Trade Expansion Act of 1962. Such investigations ascertain the effects of imports on national security. If the DOC concludes that national security is endangered, the President is empowered to restrict imports of the relevant product. The DOC is permitted a maximum period of 270 days for the investigation. The Bureau of Industry and Security (BIS), a body subordinate to the DOC, submits a corresponding report on the matter. The President decides within 90 days whether he concurs with the assessment of the U.S. Secretary of Commerce and whether measures to restrict imports should be adopted. Within a further 30 days he must then justify his decision to the Congress.

The following points are considered in national security investigations by the DOC:

- “domestic production needed for projected national defense requirements;
- domestic industry’s capacity to meet those requirements;
- related human and material resources;
- the importation of goods in terms of their quantities and use;
- the close relation of national economic welfare to U.S. national security;
- loss of skills or investment, substantial unemployment and decrease in government revenue; and
- the impact of foreign competition on specific domestic industries and the impact of displacement of any domestic products by excessive imports.”<sup>12</sup>

Since 1980, the DOC has carried out a total of sixteen Section 232 investigations, including into oil (1982; 1989; 1994; 1999); bolts, large screws, and nuts (1983), as well as metal-cutting and metal-forming machine tools (1983). Since the World Trade Organization (WTO) was founded in 1995 – apart from the present investigations into steel and aluminum – there have been only two investigations

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<sup>10</sup> Isabelle Hoagland, “Sources: Brazil to Face Aluminum Tariff, Agrees to Steel Quotas”, in: *Inside U.S. Trade*, 3 May 2018.

<sup>11</sup> United States Trade Representative, *2018 Trade Policy Agenda and 2017 Annual Report*, February 2018, <<https://ustr.gov/about-us/policy-offices/press-office/reports-and-publications/2018/2018-trade-policy-agenda-and-2017>> (accessed 12 March 2018).

<sup>12</sup> U.S. Department of Commerce, *Fact Sheet: Section 232 Investigations: The Effect of Imports on the National Security*, 20 April 2017, <<https://www.commerce.gov/news/fact-sheets/2017/04/fact-sheet-section-232-investigations-effect-imports-national-security>> (accessed 12 March 2018).

under Section 232. In most cases (with the exception of oil imports), the DOC came to the conclusion that the imports constituted no danger to national security.<sup>13</sup>

This is not the first time that the United States and the EU have been at odds over steel imports. In 2002 U.S. President George W. Bush levied tariffs on steel. However, in that case the U.S. administration did not base its decision on national security concerns but on Section 201 of the Trade Act of 1974. This section defines the safeguard procedure in U.S. trade law. President Bush decided to impose safeguard tariffs of up to 30 percent on various products in order to grant the American steel industry effective protection against rising steel imports.<sup>14</sup> The tariffs were scheduled to apply for three years and be gradually removed. The EU and other countries immediately lodged a complaint at the WTO and threatened to introduce tariffs on U.S. products. In 2003, both the WTO dispute settlement panel and the Appellate Body ruled that the imposition of the U.S. safeguard tariffs was not compatible with WTO rules (even if the Appellate Body did not uphold all of the panel's findings) and that retaliatory measures by the EU member states amounting to two billion U.S. dollars would be permissible if the United States did not cancel the tariffs. The reason stated in the ruling was that the precondition for imposing the tariffs was not given: "the United States failed to provide a reasoned and adequate explanation demonstrating that 'unforeseen developments' had resulted in increased imports causing serious injury to the relevant domestic producers." Moreover, "the United States failed to provide a reasoned and adequate explanation of how the facts supported its determination with respect to 'increased imports'".<sup>15</sup> The relevant imports had actually fallen in 2001. Shortly after the WTO ruling, Bush abolished the tariffs.

In principle, both safeguard measures and measures to protect national security are permitted under WTO rules. GATT Article XIX and the WTO Agreement on Safeguards allow WTO members to restrict imports temporarily on the condition that they are "being imported into the territory of that contracting party in such increased quantities and under such conditions as to cause or threaten serious injury to domestic producers."<sup>16</sup> Section 201 of the 1974 Trade Act transposes GATT Article XIX into U.S. trade law. In turn, Article XXI of GATT permits WTO members to adopt measures that they consider necessary for protecting their "essential security interests".<sup>17</sup> In contrast to safeguard measures, where the WTO Agreement on Safeguards defines the rules of implementation, there is no additional WTO agreement on GATT Article XXI. Section 232 of the 1962 Trade Expansion Act sets out the U.S. rules for the protection of national security by means of import restrictions. If these measures are adopted in a manner not compatible with WTO rules, other countries can file a complaint with the WTO.

Section 232 does not contain a general definition of "national security". The DOC defines "national security" in terms of "national defense" and "critical infrastructural needs".<sup>18</sup> "The U.S. Department of Defense (DOD) has a large and ongoing need for a range of steel products that are used in fabricating weapons and related systems for the nation's defense," as the DOC's investigation report states.<sup>19</sup> According to the report, this demand amounts to around three percent of U.S. steel

<sup>13</sup> Bureau of Industry and Security, *Section 232 Investigations: The Effect of Imports on the National Security*, 2016, <<https://www.bis.doc.gov/232>> (accessed 14 March 2018).

<sup>14</sup> The White House, *President Announces Temporary Safeguards for Steel Industry*, 5 March 2002, <<https://georgewbush-whitehouse.archives.gov/news/releases/2002/03/20020305-6.html>> (accessed 12 March 2018).

<sup>15</sup> WTO, *United States – Definitive Safeguard Measures on Imports of Certain Steel Products*, *Report of the Appellate Body*, Appellate Body Report, 10 November 2003, p. 168, via <[https://docs.wto.org/dol2fe/Pages/FE\\_Search/FE\\_S\\_S006.aspx?Query=\(@Symbol=%20wt/ds252/ab/r\\*%20not%20rw\\*\)&Language=ENGLISH&Context=FomerScriptedSearch&languageUIChanged=true#](https://docs.wto.org/dol2fe/Pages/FE_Search/FE_S_S006.aspx?Query=(@Symbol=%20wt/ds252/ab/r*%20not%20rw*)&Language=ENGLISH&Context=FomerScriptedSearch&languageUIChanged=true#)> (accessed 14 May 2018).

<sup>16</sup> *General Agreement on Tariffs and Trade*, Article XIX, <[https://www.wto.org/english/docs\\_e/legal\\_e/gatt47.pdf](https://www.wto.org/english/docs_e/legal_e/gatt47.pdf)> (accessed 11 May 2018).

<sup>17</sup> *General Agreement on Tariffs and Trade*, Article XXI, <[https://www.wto.org/english/docs\\_e/legal\\_e/gatt47.pdf](https://www.wto.org/english/docs_e/legal_e/gatt47.pdf)> (accessed 11 May 2018).

<sup>18</sup> U.S. Department of Commerce, *The Effect of Imports of Steel on the National Security*, 11 January 2018, p. 23, <[https://www.commerce.gov/sites/commerce.gov/files/the\\_effect\\_of\\_imports\\_of\\_steel\\_on\\_the\\_national\\_security\\_-\\_with\\_redactions\\_-\\_20180111.pdf](https://www.commerce.gov/sites/commerce.gov/files/the_effect_of_imports_of_steel_on_the_national_security_-_with_redactions_-_20180111.pdf)> (accessed 12 March 2018).

<sup>19</sup> U.S. Department of Commerce, *The Effect of Imports of Steel on the National Security*, 11 January 2018, p. 23, <[https://www.commerce.gov/sites/commerce.gov/files/the\\_effect\\_of\\_imports\\_of\\_steel\\_on\\_the\\_national\\_security\\_-\\_with\\_redactions\\_-\\_20180111.pdf](https://www.commerce.gov/sites/commerce.gov/files/the_effect_of_imports_of_steel_on_the_national_security_-_with_redactions_-_20180111.pdf)> (accessed 12 March 2018).

production. The report further states that steel is also necessary in order to meet the demand of critical industries. These are industries which are “critical to the minimum operations of the economy and government”.<sup>20</sup> In 2013, 16 critical infrastructure sectors were identified along with their accompanying sector-specific government departments (including the chemical sector and the Department for Homeland Security as well as the defense sector and the Department of Defense).

The reasons given by the DOC for a threat to national security include

- the declining employment trend in the U.S. steel (and aluminum) industry;
- U.S. steel mill closures;
- the rising number of anti-dumping and countervailing duties.

In such cases, it might not be possible to appropriately meet an increase in demand subsequent to national emergencies or national security needs.<sup>21</sup> In both reports, the DOC recommends three different measures respectively to the U.S. President.

According to the report on steel imports, this could be (1) a “global quota” of 63 percent of the respective import volume of 2017 to be applied to imports from all countries, (2) a “global tariff” of 24 percent on all steel imports from all countries; or (3) a tariff of 53 percent on steel imports from twelve countries (Brazil, China, Costa Rica, Egypt, India, Malaysia, South Korea, Russia, South Africa, Thailand, Turkey, and Vietnam) allied to a quota for all other countries of 100 percent of the import volume of the year 2017. According to the report, all three options would achieve the goal of enabling “an 80 percent capacity utilization rate at 2017 demand levels (including exports).”<sup>22</sup>

With regard to aluminum imports, the DOC proposed (1) a quota for all imports from all countries of 86.7 percent of their imports to the United States in 2017, (2) a global tariff of 7.7 percent on all aluminum imports from all countries; or (2) a tariff of 23.6 percent on all products from China, Hong Kong, Russia, Venezuela, and Vietnam allied to a quota for all other countries of 100 percent of the import volume of the year 2017. Taken as a whole the tariffs and quotas would apply in addition to all other existing restrictions on trade, such as anti-dumping tariffs. These three options are all meant “to restrict aluminum imports sufficiently to allow U.S. aluminum producers to utilize an average of 80 percent of their capacity.”<sup>23</sup>

The recommendations of the reports were not binding.

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<sup>20</sup> U.S. Department of Commerce, *The Effect of Imports of Steel on the National Security*, 11 January 2018, p. 13, <[https://www.commerce.gov/sites/commerce.gov/files/the\\_effect\\_of\\_imports\\_of\\_steel\\_on\\_the\\_national\\_security\\_-\\_with\\_redactions\\_-\\_20180111.pdf](https://www.commerce.gov/sites/commerce.gov/files/the_effect_of_imports_of_steel_on_the_national_security_-_with_redactions_-_20180111.pdf)> (accessed 12 March 2018); U.S. Department of Commerce, *The Effect of Imports of Iron Ore and Semi-Finished Steel on the National Security*, October 2001, <<https://www.bis.doc.gov/index.php/documents/section-232-investigations/81-iron-ore-and-semi-finished-steel-2001/file>> (accessed 14 May 2018).

<sup>21</sup> The steel report states: “Due to this decline in facilities, domestic steel producers have a shrinking ability to meet national security production requirements in a national emergency.” U.S. Department of Commerce, *The Effect of Imports of Steel on the National Security*, 11 January 2018, p. 49, <[https://www.commerce.gov/sites/commerce.gov/files/the\\_effect\\_of\\_imports\\_of\\_steel\\_on\\_the\\_national\\_security\\_-\\_with\\_redactions\\_-\\_20180111.pdf](https://www.commerce.gov/sites/commerce.gov/files/the_effect_of_imports_of_steel_on_the_national_security_-_with_redactions_-_20180111.pdf)> (accessed 12 March 2018).

<sup>22</sup> U.S. Department of Commerce, *The Effect of Imports of Steel on the National Security*, 11 January 2018, p. 59 f., <[https://www.commerce.gov/sites/commerce.gov/files/the\\_effect\\_of\\_imports\\_of\\_steel\\_on\\_the\\_national\\_security\\_-\\_with\\_redactions\\_-\\_20180111.pdf](https://www.commerce.gov/sites/commerce.gov/files/the_effect_of_imports_of_steel_on_the_national_security_-_with_redactions_-_20180111.pdf)> (accessed 14 May 2018)

<sup>23</sup> U.S. Department of Commerce, *The Effect of Imports of Aluminum on the National Security*, p. 108 f., <[https://www.commerce.gov/sites/commerce.gov/files/the\\_effect\\_of\\_imports\\_of\\_aluminum\\_on\\_the\\_national\\_security\\_-\\_with\\_redactions\\_-\\_20180117.pdf](https://www.commerce.gov/sites/commerce.gov/files/the_effect_of_imports_of_aluminum_on_the_national_security_-_with_redactions_-_20180117.pdf)> (accessed 14 May 2018).

## Securing Exemptions

The United States currently does not impose regular tariffs on steel. Tariffs on aluminum and aluminum products – not including the additional tariffs now announced – range between 0 and 6.5 percent. For example, a tariff rate of 2.6 percent currently applies to unwrought aluminum, not alloyed, as well as to regular aluminum alloys. In free trade agreements of the United States, tariffs on aluminum are either abolished or a lower rate applies.<sup>24</sup>

Parties in the United States affected by the 232 tariffs can turn to the DOC in order to apply for product-specific exceptions if the respective products cannot be produced in the United States or if there are arguments based on national security. On 19 March, the application guidelines were published in the Federal Register. These include the following requirements:<sup>25</sup>

- “Only individuals or organizations using steel in business activities (e.g., construction, manufacturing, or supplying steel product to users) in the United States may submit exclusion requests.
- All exclusion requests, objections to submitted exclusion requests, and comments on the interim final rule will be made available for public inspection and copying.
- The file name of the submission must include the submitter's name, date of submission, and the 10-digit Harmonized Tariff Schedule of the United States (HTSUS) statistical reporting number.
- Approved exclusions will be made on a product basis and will be limited to the individual or organization that submitted the specific exclusion request, unless Commerce approves a broader application of the product based exclusion request to apply to additional importers.
- The review period normally will not exceed 90 days, including adjudication of objections submitted on exclusion requests.
- All exclusion requests must be in electronic form, but may be submitted at any time.”

Countries for which there is as yet no exception can seek to obtain one at the Office of the U.S. Trade Representative (USTR).<sup>26</sup> The goal of negotiations is, according to the proclamation of 22 March, to strengthen security partnerships and to reduce excess steel capacities.

After a meeting with USTR Lighthizer on 10 March 2018, EU Trade Commissioner Cecilia Malmström reported that the EU (or other U.S. allies) would have to comply with certain guidelines in order to be exempted from the tariffs. According to media reports, Lighthizer named the following criteria for individual countries to be exempted from the tariffs:

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<sup>24</sup> U.S. International Trade Commission, *Harmonized Tariff Schedule of the United States (2018) Revision 1.2 (Effective Date 03/01/2018)*, Chapter 72 (steel) and/or Chapter 76 (aluminum), <<https://hts.usitc.gov/current>> (accessed 12 March 2018).

<sup>25</sup> Federal Register, *Requirements for Submissions Requesting Exclusions From the Remedies Instituted in Presidential Proclamations Adjusting Imports of Steel Into the United States and Adjusting Imports of Aluminum Into the United States; and the Filing of Objections to Submitted Exclusion Requests for Steel and Aluminum*, 19 March 2018, <<https://www.federalregister.gov/documents/2018/03/19/2018-05761/requirements-for-submissions-requesting-exclusions-from-the-remedies-instituted-in-presidential>> (accessed 23 March 2018).

<sup>26</sup> The White House, *Adjusting Imports of Steel to the United States. By the President of the United States of America. A Proclamation*, 22 March 2018, <<https://g8fip1kplyr33r3krz5b97d1-wpengine.netdna-ssl.com/wp-content/uploads/2018/03/US-proclamation.pdf>> (accessed 27 March 2018). The proclamation refers only to steel. So far there is no specific proclamation for aluminum. However, the provisional exemptions for steel and aluminum import apply, as is made clear in the press release of the White House: The White House, *President Trump Approves Section 232 Tariff Modifications*, 22 March 2018, <<https://www.whitehouse.gov/briefings-statements/president-trump-approves-section-232-tariff-modifications/>> (accessed 26 March 2018).

- “the historical trade volume with the U.S. on steel and aluminum, which would also be used for granting a yearly quota that would be exempted from the Trump tariffs,
- to what extent the partner contributes to fighting overcapacity by stopping dumped steel from entering its market through trade defense measures,
- whether the partner participates in the global forum on steel excess capacity,
- whether the partner supports anti-dumping and anti-subsidy disputes lodged by the U.S. in the World Trade Organization,
- and finally, whether the ally is an security partner of the U.S.”<sup>27</sup>

## Impact on German and European Industries

### Steel

Since the year 2000, nominal global steel capacities have doubled from 1.05 billion tons in the year 2000 to 2.39 billion tons in 2016.<sup>28</sup> In 2014, global crude steel production reached an all-time high of 1.67 billion tons. This development has resulted in substantial excess capacities in the steel industry, more than half of which are located in China. The OECD estimates that steel capacities will continue to rise.

The People’s Republic of China stands at the center of this development, accounting for over half of worldwide steel production (808.4 million tons in 2016).<sup>29</sup> In consequence, the world markets are being flooded by steel, which is also reflected by the fact that the number of anti-dumping procedures worldwide has risen by 160 percent since 2010.<sup>30</sup>

The United States is the world’s biggest market for steel and the second-biggest importer of steel after the EU. After the People’s Republic of China, the EU-28 is the second largest steel producer in the world: in 2016 the EU produced 9.9 percent and China 49.6 percent of the total volume of production of 1,630 million tons.<sup>31</sup> Within the EU, Germany produces the most steel. The major steel markets for Germany are France, Poland, and the Netherlands. Outside the EU, the United States is the top export destination for German steel.<sup>32</sup> The share of exports destined for the United States is around four percent. The countries that would be hardest hit by the proclaimed U.S. tariffs would be the NAFTA partners Canada and Mexico. With a share of 16 percent of U.S. imports, Canada is the biggest supplier of steel to the United States.<sup>33</sup> Other nations particularly affected are South Korea, Brazil, and

<sup>27</sup> Jakob Hanke, Hans von der Burchard, “Politico pro Morning Trade: Steel Tariffs Exemptions – Beef Concessions – Mexico”, in: *Politico*, 13 March 2018, <[https://www.politico.eu/pro/politico-pro-morning-trade-steel-tariffs-exemptions-beef-concessions-mexico/?utm\\_source=POLITICO.EU&utm\\_campaign=84a5441b3f-EMAIL\\_CAMPAIGN\\_2018\\_03\\_12&utm\\_medium=email&utm\\_term=0\\_10959edeb5-84a5441b3f-189626081](https://www.politico.eu/pro/politico-pro-morning-trade-steel-tariffs-exemptions-beef-concessions-mexico/?utm_source=POLITICO.EU&utm_campaign=84a5441b3f-EMAIL_CAMPAIGN_2018_03_12&utm_medium=email&utm_term=0_10959edeb5-84a5441b3f-189626081)> (accessed 13 March 2018).

<sup>28</sup> OECD, *Capacity Developments in the World Steel Industry*, 7 August 2017,

<[http://www.oecd.org/industry/ind/CapacityDevelopmentsWorldSteelIndustry\\_FINAL.pdf](http://www.oecd.org/industry/ind/CapacityDevelopmentsWorldSteelIndustry_FINAL.pdf)> (accessed 12 March 2018).

<sup>29</sup> World Steel Association, *World Steel in Figures 2017*, 2017, <<https://www.worldsteel.org/en/dam/jcr:0474d208-9108-4927-ace8-4ac5445c5df8/World+Steel+in+Figures+2017.pdf>> (accessed 12 March 2018).

<sup>30</sup> Wirtschaftsvereinigung Stahl, *Berliner Gipfel zu Stahl-Überkapazitäten: WV Stahl begrüßt Einigung*, 30 November 2017, <<http://www.stahl-online.de/index.php/medieninformation/berliner-gipfel-zu-stahl-ueberkapazitaeten-wv-stahl-begruesst-einigung/>> (accessed 12 March 2018).

<sup>31</sup> World Steel Association, *World Steel in Figures 2017*, 2017, <<https://www.worldsteel.org/en/dam/jcr:0474d208-9108-4927-ace8-4ac5445c5df8/World+Steel+in+Figures+2017.pdf>> (accessed 12 March 2018).

<sup>32</sup> International Trade Administration, *Global Steel Trade Monitor. Steel Exports Report: Germany*, March 2017, <<https://www.trade.gov/steel/countries/pdfs/2016/annual/exports-germany.pdf>> (accessed 12 March 2018).

<sup>33</sup> International Trade Administration, *Global Steel Trade Monitor. Steel Exports Report: Canada*, May 2017, <<https://www.trade.gov/steel/countries/pdfs/exports-Canada.pdf>> (accessed 3 March 2018).

Germany (second, fourth, and fifth-largest suppliers of steel to the United States). China exports merely around 1.1 percent (a total of 0.8 million tons) of all its steel exports to the United States.<sup>34</sup> The reason why China does not play a bigger role as steel supplier in the United States are the heavy antidumping duties already levied on its exports. The top export markets for China are South Korea (15% of Chinese steel exports), Vietnam (10%), and the Philippines (6%).

The EU and Germany would be impacted in two ways if the United States were not to prolong the current exemptions: on the one hand, the present total of five million tons of EU steel and pipe exports to the United States would likely remain on the European market.<sup>35</sup> On the other hand, diversions of trade into the European market would be expected. Moreover, exports from Germany to other countries would be equally affected should the latter decide to close off their markets as a reaction to the U.S. measures. Overall, rising prices and job losses are to be expected.

The WTO cannot adequately address the distortions on the world steel markets as its rules to address subsidies are insufficient. The WTO rulebook says little on competition and state-owned enterprises. In order to tackle the distortions and to reduce overcapacities, the Global Forum on Steel Excess Capacity was set up in September 2016, formally founded in December 2016 in Berlin. In its first few months, its work focused on developing a mechanism for information gathering and sharing on steel production of its members.<sup>36</sup> In November 2017, under the German G20 presidency, the G20 trade ministers met in Berlin, agreeing in principle on a reduction in excess steel capacities and more transparency. According to the Global Forum on Steel Excess Capacity Report of November 2017, the members are to “swiftly and fully apply the agreed principles and recommendations” in 2018.<sup>37</sup> The Global Forum is scheduled to meet at least three times a year and undertake a critical scrutiny of “market-distorting subsidies and other support measures by government or government-related entities that contribute to excess capacity”, including those that are not subject to WTO agreements.

## Aluminum

Trade in aluminum of the EU member states predominantly takes place among the member states themselves and not with external trading partners. Nonetheless, the United States is by no means a negligible market for the German and European industry. In 2017, Germany exported a total of 4,204,424 tons of aluminum. 97,247 tons went to the United States (2.3 percent). In 2017, the German share in EU exports of aluminum to the United States was around 28.4 percent.<sup>38</sup>

In 2013, the United States was still producing around 2 million tons of primary aluminum. In 2017, this figure had fallen to around 785,000 tons. Since 2013, imports of semi-finished aluminum products have risen by 34 percent. U.S. trade experts blame the excess capacities and market distortions caused, above all, by the Chinese aluminum industry for this development.

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<sup>34</sup> International Trade Administration, *Global Steel Trade Monitor. Steel Exports Report: China*, March 2018, <<https://www.trade.gov/steel/countries/pdfs/exports-china.pdf>> (accessed 12 March 2018).

<sup>35</sup> Eurofer, “US Chooses Global Trade Confrontation” Warns EUROFER as President Trump Adopts Section 232 National Security Trade Measures on Steel, Press Release, 1 March 2018, <<http://www.eurofer.org/News%26Events/Press%20releases/US%20global%20trade%20confrontation.fhtml>> (accessed 15 May 2018).

<sup>36</sup> BMWi, *Global Forum on Steel Excess Capacity Report*, 30 November 2017, <[http://www.bmw.de/Redaktion/EN/Downloads/global-forum-on-steel-excess-capacity-report.pdf?\\_\\_blob=publicationFile](http://www.bmw.de/Redaktion/EN/Downloads/global-forum-on-steel-excess-capacity-report.pdf?__blob=publicationFile)> (accessed 27 March 2018).

<sup>37</sup> BMWi, *Global Forum on Steel Excess Capacity Report*, 30 November 2017, p. 18, <[http://www.bmw.de/Redaktion/EN/Downloads/global-forum-on-steel-excess-capacity-report.pdf?\\_\\_blob=publicationFile](http://www.bmw.de/Redaktion/EN/Downloads/global-forum-on-steel-excess-capacity-report.pdf?__blob=publicationFile)> (accessed 27 March 2018).

<sup>38</sup> Markus Taube, *Protectionist Import Duties under the Trump Presidency. Direct and Indirect Impact on the German Aluminium Industry*, expert assessment prepared for WirtschaftsVereinigung Metalle e.V., 19 March 2018.

For the German nonferrous metals industry the tariffs on aluminum would have varying effects. While the United States would still remain an export market, the European aluminum market would come under pressure as exports from third countries would be diverted to the German and/or the European market. A study<sup>39</sup> commissioned by the industry's federation (WirtschaftsVereinigung Metalle e.V.) forecasts that in 2018 and 2019 Chinese exports to the United States will slump by 20 percent and 25 percent respectively, that is by 95,000 tons and 110,000 tons. About a third of these quantities could be directed to Europe with a consequent impact on the German market. The study comes to the conclusion that a fall in the price of aluminum is to be expected, which will have an impact on the profitability of German aluminum enterprises.

In contrast to steel, there is no global forum addressing excess aluminum capacities.

## Possible Countermeasures

Should the negotiations on a permanent exemption end in failure, the EU Commission is considering taking countermeasures. So far the EU Commission has emphasized that all countermeasures would have to be taken in accordance with the rules of the WTO.

The following three options are being discussed in principle (apart from diplomatic means):

- WTO dispute settlement proceedings;
- safeguard measures;
- “rebalancing measures” in the form of compensatory tariffs.

### 1. WTO Dispute Settlement

The EU and other trading partners of the United States could lodge a complaint at the WTO to clarify whether the tariffs levied by the United States are in accordance with Article XXI of GATT. Article XXI of GATT permits WTO members to take measures that they consider necessary to protect their “essential security interests” and consequently – depending on the circumstances – provide a justification for the 232 measure. According to Article XXI (“Security Exceptions”) of the GATT, the provisions of the Agreement should not be so interpreted as

- a) “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 [...]; 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.”<sup>40</sup>

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<sup>39</sup> Markus Taube, *Protectionist Import Duties under the Trump Presidency. Direct and Indirect Impact on the German Aluminium Industry*, expert assessment prepared for WirtschaftsVereinigung Metalle e.V., 19 March 2018.

<sup>40</sup> WTO, *GATT Article XXI Security Exceptions*, <[https://www.wto.org/english/res\\_e/booksp\\_e/gatt\\_ai\\_e/art21\\_e.pdf](https://www.wto.org/english/res_e/booksp_e/gatt_ai_e/art21_e.pdf)> (accessed 3 March 2018); Ignacio Carreno, Tobias Dolle, Lourdes Medina Perez and Paolo Vergano, “First Step of a Global Trade War? President Trump Signs Proclamations to Introduce Import Tariffs on Steel and Aluminum”, in: *Trade Perspectives* issue number 5, 9 March 9 2018, <<http://www.fratinivergano.eu/en/trade-perspectives/>> (accessed March 12, 2018).

The second option is to file a complaint under Article XIX and the Agreement on Safeguards, arguing that there is no national security threat and that U.S. steel and aluminum tariffs are nothing else than safeguard measures. This is what the EU did by requesting consultation with the United States on 16 April 2018. A few days later, on 19 April, the EU requested to join the consultations between China and the United States. China had previously also requested consultations under the WTO Agreement on Safeguards and GATT Article XIX. India, the Russian Federation, Thailand, and Hong Kong also requested to join the consultations.<sup>41</sup> If these do not lead to a settlement of the conflict, the EU, and other potential complainants, can ask for the establishment of a dispute settlement panel.

A WTO dispute settlement procedure is no fast-track procedure. It can drag on for years. Back in 2002/2003 in the case of the steel conflict between the United States and the European Union the WTO was relatively swift to establish that the safeguards were not in accordance with Article XIX and the WTO Agreement on Safeguards. In the case of a procedure dealing with the tariffs now levied this is unlikely. Firstly, there is as yet no legal precedence for the interpretation of Article XXI and consequently no legal certainty.<sup>42</sup> Secondly, this is a highly politicized case. And thirdly the WTO's Dispute Settlement Body is already overloaded. One of the reasons for the work overload is that the Trump Administration is blocking the filling of vacant posts in the Appellate Body.

Should the United States lose the case, but nevertheless continue to impose the tariffs, the EU can ask the Dispute Settlement Body (DSB) for permission to suspend concessions vis-à-vis the United States. This should happen in that area in which the violation was found. That means that WTO-inconsistent tariffs can be countered with other tariffs (on any other good; the good would not have to be steel or a similar product). The value of these tariffs is determined by the dispute settlement panel. According to Article 22.4 of the Dispute Settlement Understanding, "[t]he level of the suspension of concessions or other obligations authorized by the DSB shall be equivalent to the level of the nullification or impairment."<sup>43</sup> The EU could then decide on which products it would levy tariffs.<sup>44</sup>

### **Recommendation of German Industry:**

Should no long-term solution be achieved through consultations at the WTO, the EU should request the establishment of a dispute settlement panel.

## **2. Safeguard Measures**

As a reaction to the U.S. measures the EU could adopt safeguard measures. The legal WTO basis for levying protective measures is given by GATT Article XIX along with the WTO Agreement on Safeguards. Article XIX GATT, 1. (a) states the following:

"If, as a result of unforeseen developments and of the effect of the obligations incurred by a contracting party under this Agreement, including tariff concessions, any product is being imported into the territory

<sup>41</sup> WTO, *DS544: United States — Certain Measures on Steel and Aluminium Products*, <[https://www.wto.org/english/tratop\\_e/dispu\\_e/cases\\_e/ds544\\_e.htm](https://www.wto.org/english/tratop_e/dispu_e/cases_e/ds544_e.htm)> (accessed 14 May 2018),

<sup>42</sup> The investigation into the lawfulness of the U.S. protective tariffs under the then U.S. President Bush was not undertaken under Article XXI of GATT but under Article XIX of GATT which sets out the rules for the application of safeguard measures.

<sup>43</sup> WTO, *Dispute Settlement Understanding* (Annex 2 of the WTO Agreement), Article 22.4, <[https://www.wto.org/english/tratop\\_e/dispu\\_e/dsu\\_e.htm](https://www.wto.org/english/tratop_e/dispu_e/dsu_e.htm)> (accessed 15 May 2018).

<sup>44</sup> WTO, *The Process — Stages in a Typical WTO Dispute Settlement Case*, <[https://www.wto.org/english/tratop\\_e/dispu\\_e/dispu\\_settlement\\_cbt\\_e/c6s10p1\\_e.htm](https://www.wto.org/english/tratop_e/dispu_e/dispu_settlement_cbt_e/c6s10p1_e.htm)> (accessed 15 May 2018).

of that contracting party in such increased quantities and under such conditions as to cause or threaten serious injury to domestic producers in that territory of like or directly competitive products, the contracting party shall be free, in respect of such product, and to the extent and for such time as may be necessary to prevent or remedy such injury, to suspend the obligation in whole or in part or to withdraw or modify the concession.”<sup>45</sup>

Article 6 of the WTO Agreement on Safeguards, which focuses on provisional measures in the case of the threat of a material injury, stipulates:

“In critical circumstances where delay would cause damage which it would be difficult to repair, a Member may take a provisional safeguard measure pursuant to a preliminary determination that there is clear evidence that increased imports have caused or are threatening to cause serious injury. The duration of the provisional measure shall not exceed 200 days, during which period the pertinent requirements of Articles 2 through 7 and 12 shall be met. Such measures should take the form of tariff increases to be promptly refunded if the subsequent investigation referred to in paragraph 2 of Article 4 does not determine that increased imports have caused or threatened to cause serious injury to a domestic industry. The duration of any such provisional measure shall be counted as a part of the initial period and any extension referred to in paragraphs 1, 2 and 3 of Article 7.”<sup>46</sup>

The precondition for the application of safeguard measures in accordance with these two legal foundations (Article XIX GATT and WTO Agreement on Safeguards) is therefore for the EU to prove a significant rise in steel and aluminum imports. There must also be the threat of serious injury to industry. Provisional measures could already take effect a few weeks after the safeguard investigation has been initiated and could be in force for up to 200 days. The EU could impose an import tariff on steel and/or aluminum for the period in which the injury occurs or threatens to occur. It would also be possible for the EU to delay the imposition of tariffs until a certain level of imports has been exceeded (“tariff quota”).

Safeguards affect all imports of steel and aluminum, not only from the United States. Therefore other WTO members could, for their part, suspend tariff concessions in accordance with Article 8 of the WTO Agreement on Safeguards, if the WTO member initially levying the tariffs – in this case the EU – and its trading partners do not agree on “adequate means of trade compensation for the adverse effects of the measure on their trade.”<sup>47</sup> However, the WTO agreement also stipulates that the right of suspension under Article 8, paragraph 3 cannot be exercised until after three years if the measure was taken “as a result of an absolute increase in imports.”<sup>48</sup> In addition, the extent of the suspension of concessions could be limited or possibly be revoked completely if the EU measure is imposed as a contingent (“tariff quota”) – based on historic, country-specific import quantities – instead of a global tariff rate. That means that tariffs would only be imposed after certain import quantities are exceeded.

The downside of safeguard measures – irrespective of their precise design – is that they can negatively impact on downstream industries. It is therefore imperative to take account of the so-called Union interest in the EU.

On 26 March 2018, the European Commission initiated a safeguard investigation on steel. The Commission had already been monitoring steel imports since 2016. On 26 April 2018, a “prior

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<sup>45</sup> *General Agreement on Tariffs and Trade*, Article XIX, <[https://www.wto.org/english/docs\\_e/legal\\_e/gatt47.pdf](https://www.wto.org/english/docs_e/legal_e/gatt47.pdf)> (accessed 11 May 2018).

<sup>46</sup> *Agreement on Safeguards*, <[https://www.wto.org/english/docs\\_e/legal\\_e/25-safeg.pdf](https://www.wto.org/english/docs_e/legal_e/25-safeg.pdf)> (accessed 11 May 2018).

<sup>47</sup> WTO, *Agreement on Safeguards*, Article 8, <[https://www.wto.org/english/docs\\_e/legal\\_e/25-safeg\\_e.htm](https://www.wto.org/english/docs_e/legal_e/25-safeg_e.htm)> (accessed 15 May 2018).

<sup>48</sup> WTO, *Agreement on Safeguards*, Article 8, <[https://www.wto.org/english/docs\\_e/legal\\_e/25-safeg\\_e.htm](https://www.wto.org/english/docs_e/legal_e/25-safeg_e.htm)> (accessed 15 May 2018).

surveillance” was announced regarding certain aluminum products. This does not yet constitute a safeguard investigation for aluminum but allows the EU to monitor aluminum imports more closely.<sup>49</sup>

#### **Recommendation of German Industry:**

The EU rightly initiated a safeguard investigation for steel. It should do the same for aluminum. Possible EU measures must be in accordance with the WTO and take account of the Union interest, meaning that the interests of processing industries are also to be considered. Should safeguard measures be imposed, this should be done exclusively in the form of a quota system. Thus, traditional trade flows, as measured by the average of recent years, will remain unimpaired and tariffs will only be imposed if these import quantities are exceeded (“tariff quota”).

### **3. “Rebalancing” – Compensatory Tariffs on U.S. Imports**

The EU could deny the U.S. national security justification and interpret the tariffs as safeguards under GATT Article XIX and the WTO Agreement on Safeguards. Article XIX GATT along with the WTO Agreement on Safeguards allows a state affected by safeguard measures to take steps to protect itself if consultations did not result in an amicable outcome. These measures can be applied on products other than those affected by the safeguard and serve as compensation for the negative effects of the safeguards. The EU would have to notify the WTO of compensatory tariffs. Article 8 of the WTO Agreement on Safeguards states:

“2. If no agreement is reached within 30 days in the consultations under paragraph 3 of Article 12, then the affected exporting Members shall be free, not later than 90 days after the measure is applied, to suspend, upon the expiration of 30 days from the day on which written notice of such suspension is received by the Council for Trade in Goods, the application of substantially equivalent concessions or other obligations under GATT 1994, to the trade of the Member applying the safeguard measure, the suspension of which the Council for Trade in Goods does not disapprove.”<sup>50</sup>

After consultations with member states, the EU has put together a product list (among them orange juice, potatoes, Bourbon Whiskey, blue jeans, peanut butter) of products on which it would suspend trade concessions, thus levying additional duties on imports from the United States. The EU’s decision to impose these compensatory tariffs constitutes an implementing act. The Commission’s proposal thus has to be adopted by a qualified majority of the Member States. On 16 May 2018, at their informal meeting in Sofia, the EU leaders unanimously adopted the Commission’s Implementing Regulation on the notification of rebalancing measures at the WTO. It includes a list of “[p]roducts that may be subject to additional duties from 20 June 2018,” on which additional duties of 25 percent would be levied, as well as a list of “[p]roducts that may be subject to further additional duties from 23 March 2021 or upon determination of WTO inconsistency of the US safeguard measures,” on which additional duties between 10 and 50 percent would be levied.<sup>51</sup> The EU Commission notified the list to the WTO on 18 May 2018, stating in its communication that the tariffs could come into effect “in case the EU would at a later stage not be exempted from the [steel and aluminum] duties [...].The EU may also decide to

<sup>49</sup> EUR-Lex, *Commission Implementing Regulation (EU) 2018/640 of 25 April 2018 Introducing Prior Union Surveillance of Imports of Certain Aluminium Products Originating in Certain Third Countries*, 25 April 2018, <[https://eur-lex.europa.eu/legal-content/EN/ALL/?uri=uriserv:OJ.L\\_.2018.106.01.0007.01.ENG](https://eur-lex.europa.eu/legal-content/EN/ALL/?uri=uriserv:OJ.L_.2018.106.01.0007.01.ENG)> (accessed 15 May 2018).

<sup>50</sup> *Agreement on Safeguards*, <[https://www.wto.org/english/docs\\_e/legal\\_e/25-safeg.pdf](https://www.wto.org/english/docs_e/legal_e/25-safeg.pdf)> (accessed 11 May 2018).

<sup>51</sup> Official Journal of the European Union, *Commission Implementing Regulation (EU) 2018/724 of 16 May 2018 on Certain Commercial Policy Measures Concerning Certain Products Originating in the United States of America*, 17 May 2018, <<http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32018R0724&from=EN>> (accessed 18 May 2018).

revise or change its list should that be necessary or appropriate.”<sup>52</sup> After this notification, the EU must wait for at least 30 days until it could impose the tariffs. The EU could, however, also decide to wait longer to see, for example, which company-specific exemptions are granted by the DOC.

Rebalancing is a swift way within the framework of the WTO to react to U.S. steel and aluminum tariffs. A precondition is that the U.S. tariffs directly affect EU exports and are above the level which the United States has bound at the WTO. However, they are not without risk. The United States could file a complaint against the EU arguing that the EU measures are not WTO compatible as the U.S. tariffs are – according to the United States – justified with security interests. Article XXI, however, does not offer the possibility of rebalancing measures as Article XIX does. Furthermore, President Trump already threatened retaliatory measures, should the EU choose to rebalance. Among the products he threatened to retaliate on are cars.

#### **Recommendation of German Industry:**

Countermeasures such as compensatory tariffs could contribute to triggering and to fueling protectionist tendencies. They should therefore be weighed very carefully.

### **Recommendations of German Industry in Detail**

- **Establish a clear position:** the EU should forcefully urge U.S. President Donald Trump to abandon the import restrictions in their entirety, underlining the risks which the tariffs are not only posing to the world economy but also to the U.S. economy. The EU must show that it is willing and able to react decisively to protectionist measures by the United States to secure European economic interests. It must not allow itself to be blackmailed by the United States.
- **Act in accordance with the WTO and in support of the multilateral trading system:** The WTO is indispensable as the guardian of world trade. Should there be no long-term solution of the issue and should the EU decide to adopt countermeasures, these must not undermine the WTO. The EU should react level-headed and assure that every decision regarding countermeasures is compatible with WTO rules. The EU must not engage in a tit for tat. The multilateral framework has served the global economy well. It should be strengthened, improved, and expanded, rather than weakened.
- **Follow through with WTO dispute settlement:** The EU and Germany, as well as other affected nations, do not threaten the national security of the United States. The BDI supports the EU in its intention to react to the U.S. tariffs. German industry is fundamentally in agreement with the initiation of WTO dispute settlement proceedings. If no solution is found through consultations, the EU should request the establishment of a dispute settlement panel at the WTO. The EU should closely coordinate its course of action with other trading partners which are also affected.
- **Initiation of safeguard investigation is a step in the right direction:** On 26 March 2018, the European Commission initiated a safeguard investigation in order to examine whether the U.S.

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<sup>52</sup> European Commission, *EU Publishes List of US Products for Potential Re-balancing Duties*, 18 May 2018, <<http://trade.ec.europa.eu/doclib/press/index.cfm?id=1842>> (accessed 22 May 2018).

tariffs cause steel exports from third countries to be diverted to the EU and whether, as a result, a serious injury arises or threatens to arise. If safeguard measures are imposed, this should be done solely in the form of a quota scheme. In this way traditional flows of supply into the EU, measured by the average of recent years, would remain unaffected and tariffs would only be imposed if these import quantities were to be exceeded (“tariff quota”). A safeguard investigation should also be launched for aluminum. Possible EU measures must align with the WTO. Imposing safeguard measures in accordance with Article 6 of the WTO Agreement on Safeguards should only be carried out if the necessary preconditions, namely a surge in imports, are given and can be demonstrated. Furthermore, they need to take account of the Union interest, meaning the interests of processing industries. Barriers can be harmful for consumers: rising prices accompanied by a falling innovation potential reduce the competitiveness of downstream industries. On the whole German industry advocates rule-based action – without intensifying the existing potential for escalation.

- **Carefully weigh compensatory tariffs (rebalancing):** These could set a tit-for-tat spiral in motion and thus contribute to sparking and fueling protectionist tendencies. BDI therefore advocates de-escalation and keeping a cool head. Compensatory tariffs solve no structural problems.
- **Support the Global Forum on Steel Excess Capacity:** The necessary framework for addressing steel overcapacities and unfair trade is the Global Forum on Steel Excess Capacity under the G20. The Forum was founded following the decision by the heads of state and government at the G20 summit in Hangzhou (China) in September 2016. According to the G20 summit declaration of 2016, the G20 want to “enhance communication and cooperation, and take effective steps to address the challenges so as to enhance market function and encourage adjustment.”<sup>53</sup> Instead of undermining it, as the United States is presently engaged in doing, it should rather be strengthened. The initiative can only succeed with the commitment of the United States. The Argentinian B20 presidency should press ahead with the issue now that the course was mapped out under the German presidency last year. All members of the Global Forum should cut back subsidies in a transparent procedure. They should agree on a reliable monitoring mechanism to ensure greater transparency in steel markets. For the EU, the United States remains the most important partner in the G20 in their joint endeavor to prompt China to change its steel industry policy. In addition, consideration should be given to creating a similar forum for aluminum.
- **Sending a clear signal against protectionism and for open markets:** The Federal German government must send out a clear signal for open markets and against protectionism. In Germany it should press ahead with the complete ratification of CETA. At the EU level it should champion multilateral progress in the WTO and also the conclusion of trade agreements with other strategic partners such as Japan, Mercosur, and India. The goal must be not only to prevent new trade barriers or to keep them as low as possible but also to dismantle existing barriers.
- **Stay in dialogue with the United States:** The dialogue with the United States should be strengthened. The mutual exchange of views has to make clear the importance of transatlantic relations. The dialogue on trade issue must be stepped up both above and beyond the current conflict. The EU and the United States should discuss how the monitoring function of the WTO can be strengthened, for example so that excess capacities and illegal subsidies in individual markets can be prevented more effectively from the outset.

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<sup>53</sup> *G20 Leaders' Communique Hangzhou Summit*, 5 September 2016, p. 7, <[http://www.consilium.europa.eu/media/23621/leaders\\_communiquehangzhousummit-final.pdf](http://www.consilium.europa.eu/media/23621/leaders_communiquehangzhousummit-final.pdf)> (accessed 15 May 2018).

- **Removal of transatlantic trade barriers:** Tariffs and non-tariff barriers to trade are still unnecessarily burdening trade between the United States and the EU. The removal of these trade barriers would secure jobs and generate wealth and should remain the long-term goal of the negotiations between the EU and the United States. However, neither one-sided nor sectoral or product-specific tariff reductions by the EU vis-à-vis the United States, such as are currently being discussed, are compatible with WTO rules. If the EU unilaterally cut import tariffs on a specific product for the United States, it must also do the same for the other WTO partners. The principle of most-favored nation (MFN) states namely that tariff reductions vis-à-vis one partner outside a free trade agreement must also apply to all other partners in the WTO. Moreover, such unilateral steps would not be in the long-term strategic interests of the EU. The existing tariff rates are the result of earlier negotiations. The EU should therefore not act unilaterally and dispense with accommodating steps by the United States. In contrast, according to the rules of the WTO, a bilateral free trade agreement must liberalize “substantially all the trade” in order to be compatible with the WTO (Article XXIV GATT). What is more, looking at tariffs alone says little today about the actual market opening. For example, in the United States “Buy America” rules restrict access to procurement markets for foreign enterprises. A tariff-only agreement with the United States would therefore fall short of the expectations of German industry. It would, however, be desirable that the EU and the United States explore the possibility to re-start bilateral negotiations and determine whether the necessary preconditions – mutual trust, readiness on the part of the societies – are given.

## Imprint

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