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EU retort to Trump's tariffs risks breaching WTO rules

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An EU plan to respond to Donald Trump's promised tariffs on aluminium and steel by targeting US products such as Harley-Davidson motorcycles risks running afoul of World Trade Organization rules itself, according to experts.

European Commission officials on Monday presented EU member states with a €2.8 billion list of more than 100 US products that could be affected in response to any move by Washington to levy tariffs.

Cecilia Malmström, the EU's trade commissioner, has insisted that the planned retaliatory measures would be "completely legal" and said that the EU would "calibrate" its response in accordance with WTO rules.

At play is the most immediate of the EU's proposed three-pronged response to the Trump tariffs. Besides attacking US products, the EU is also in discussions about challenging the issue at the WTO and imposing its own tariffs if the US move leads to a flood into Europe of dislocated steel and aluminium.

But the EU's proposed first move relies on what experts say is at best a creative interpretation of WTO law by rejecting the US's argument that it is acting in the name of national security.

Rules

Instead, EU officials argue that the US move appears to be a "safeguard" action – temporary tariffs that WTO rules allow in response to unanticipated import surges that hurt local industries. Under the WTO agreement covering such safeguards, other countries are allowed to retaliate proportionately if they do not receive compensation for the new trade restrictions within 90 days.

Both the US invocation of national security and the EU's rejection of Washington's argument would be rare manoeuvres in WTO history and be a test of the trade arbiter's ability to resolve disputes between its largest members.

At the least they would add to the legal mess surrounding what is expected to be a clash of titans in the WTO if Mr Trump presses ahead with the tariffs, as he insisted he would on Monday.

Edward Alden, a senior fellow at the Council on Foreign Relations in Washington, said that by stretching the rules the EU move could undermine the WTO and exacerbate a trade war. "This is just a hair's breadth away from a no-rules trade war," he said.

Simon Lester, an expert on WTO law at the libertarian Cato Institute, said there was also a risk that the EU could set a precedent akin to the one it was accusing the US of making by using a rarely used national security loophole in global trade rules. Either could open the door to other countries flouting WTO rules, he said.

“It creates a risk of tit-for-tat violations,” Mr Lester said.

Jennifer Hillman, a former member of the WTO’s appellate body who teaches law at Georgetown University, said the EU had a strong case that Mr Trump’s proposed action was akin to a safeguard. In its reports and public statements, the Trump administration had undermined its own national security argument by claiming it was addressing foreign dumping of steel and aluminium and rising imports, she said.

Still, the fact that the EU was even considering having that fight with the US highlighted the systemic risks being posed by Mr Trump’s proposed tariffs.

“We’re in a very bad place,” she said.

Cars

Mr Trump at the weekend threatened to raise tariffs on European cars if the EU retaliated, but US trade officials declined to comment beyond that on the EU’s proposed tactics.

EU officials insisted that their planned response was carefully considered and would only reflect a portion of the potential economic damage that could be wreaked on EU exports by Mr Trump’s tariffs.

While the commission estimates that the tariffs announced by Mr Trump could affect €5 billion in annual EU steel exports to the US, and €1 billion in aluminium exports, the EU’s “rebalancing” measures would only cover around €2.8 billion of US exports.

One EU official said it was a “very, very conservative” approach that stayed firmly within what is allowed under the WTO’s agreement on trade safeguards.

The size of the EU countermeasures reflects the impact the US tariffs would have on steel and aluminium products for which imports into the US did not even increase in 2017.

The European Commission is set to review the countermeasures on Wednesday.