

## EUROPEAN COMMISSION ANNOUNCES TARIFF RETALIATION STRATEGY AND LAUNCHES PUBLIC CONSULTATION ON COUNTERMEASURES

On 12 March 2025, the European Commission formally announced details of its response to the United States' imposition of tariffs on imported steel and aluminium (including a wide range of derivative products made from steel and aluminium). This briefing outlines some key takeaways for potentially affected businesses.

### What is the European Commission Proposing?

The Commission proposes to implement additional tariffs on €26 billion of US originating goods in two phases:

- **Phase 1:** First, effective from 1 April 2025, the EU will reimpose tariffs on a range of US goods based on existing tariff lists drawn up in [2018](#) and [2020](#) in response to US tariffs imposed during the first Trump Administration. These tariffs only partially entered into force, and they remained suspended following a 2021 deal with the US under the Biden administration to restore tariff-free access to the US market for EU steel and aluminium, up to an agreed quota. The tariffs cover a targeted range of sensitive US exports to the EU totalling €8 billion.
- **Phase 2:** Second, in mid-April 2025, the Commission aims to finalise implementing legislation imposing additional tariffs on a further €18 billion of US imports. The precise goods which will be subject to these tariffs is subject to Member States' and public consultation, and an extensive list of potential target goods is [available here](#). It includes steel, aluminium, cosmetics, clothes, wood, soybeans, chicken, beef and other agricultural produce. A [stakeholder consultation](#) process has already begun which is set to conclude on 26 March 2025, by which time a precise list of goods will be drawn up.

### What is the legal basis of the EU's response?

The Commission has used the [Trade Enforcement Regulation](#) as the legal basis for its proposed countermeasures. That Regulation enables the imposition of additional tariffs in prescribed circumstances, including to 'rebalance' tariff commitments following the imposition of safeguard measures (a specific type of tariff measure) by a trading partner. This rebalancing is – subject to certain procedural requirements – permitted under the WTO Agreement on Safeguards.

The use of the Trade Enforcement Regulation as the basis for countermeasures is therefore premised on US steel and aluminium tariffs constituting a *safeguard measure*. To that end, the Commission has (consistent with its approach during the first Trump Administration) expressly characterised US steel and aluminium tariffs as "*effectively ... a safeguard measure*." Notably, however, the US itself has not claimed its tariffs are safeguards, instead asserting that they have been adopted for the protection of US national

security interests. A WTO dispute settlement panel also concluded in 2022 that the first round of US steel and aluminium tariffs did not constitute safeguard measures.<sup>1</sup>

In line with expectations, the Commission did not rely on the Anti-Coercion Instrument as the basis for its countermeasures on steel and aluminium. The Anti-Coercion Instrument has been widely discussed recently as it is a relatively new, as yet untested, EU regulation which envisages the potential deployment of a wide range of countermeasures beyond tariffs in response to economic coercion by foreign States or State actors, including potential restrictions on foreign services, investment and intellectual property.

The use of Anti-Coercion Instrument – however – is premised on another State using (or threatening to use) trade or investment measures to interfere in the legitimate sovereign choices of the EU or its Member States. The Anti-Coercion Instrument is therefore not designed to respond to the adoption of protectionist trade measures *per se*, but rather to respond to acts of State coercion *made effective through* economic measures. It remains possible that the EU could nevertheless seek to rely on the Anti-Coercion Instrument in response to future developments and, given the very broad range of countermeasures available to the EU under that instrument, the impact of any recourse to that instrument could be potentially significant for businesses in a wide range of sectors.

### What can affected businesses do?

Businesses impacted by the proposed EU countermeasures should consider participating in the Commission's consultation, which is set to conclude on **26 March 2025**.

Businesses should also explore the feasibility of mitigating the impact of these tariffs through adjustments to their supply chains, while being mindful of the potential applicability of anti-circumvention provisions applicable under EU customs law (applicable in certain instances where production is relocated in order to avoid the application of EU countermeasures).<sup>2</sup>

If you have any questions regarding this update or would like to explore options for the navigating disruptions in the global trade environment, please contact any member of our Global Trade team.

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<sup>1</sup> Unadopted WTO Panel Reports, United States — Certain Measures on Steel and Aluminium Products (DS544 (China), DS552 (Norway), DS556 (Switzerland)). These panel reports remain unadopted by the WTO DSB, having been 'appealed into the void' by the United States (see further <https://www.cliffordchance.com/content/dam/cliffordchance/briefings/2019/11/the-wto-appellate-body-crisis-a-way-forward.pdf>)

<sup>2</sup> See, for example, recent judgments of the CJEU in *Harley Davidson v Commission* ([here](#) and [here](#)), upholding the Commission's findings that Harley Davidson's relocation of certain production operations to locations outside the US (in part to mitigate the application of EU countermeasures imposed during the first Trump Administration) was captured by anti-circumvention provisions applicable to the determination of origin under EU customs law.

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