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What Effect Will Trade Wars Have on Industries and Restructurings?

by INSOL International

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Impact of the WTO on Trade Wars and Restructurings

- International Dispute Forums

The **WTO** is an organization supporting free trade and creating a forum for negotiating trade agreements and resolving trade disputes between its 164 member countries

Where there is a trade dispute with a European nation, like illegally subsidizing a specific product, there is a civilized means for resolving it through the WTO court

Current events

- Earlier this year in March 2018, the US announced that they will increase tariffs on steel and aluminum from all countries, including the EU and NAFTA countries. In response to these higher tariffs, China, the EU, Canada and Mexico filed a retaliatory tariff package with the WTO.

CPB Background Document published in July 2018 by CPB Netherlands Bureau for Economic Policy Analysis: Trade Wars: Economic impacts of US tariff increases and retaliations An international perspective

- According to a ***CPB Background Document***, there are three projected scenarios related to trade war escalations:
 - (i) the US and the EU engage in a trade war with uniform tariffs increasing from 2.5% to 40%
 - (ii) Add China to the US-EU trade war, where both the EU and China have bilateral uniform tariff increases with the US, but not with each other
 - (iii) In addition to including the previous trade war scenarios, the US also engages in trade wars with all remaining OECD countries (ie. Canada, Mexico, Japan, South Korea, Australia and the rest of the OECD), where uniform tariffs between the US and all these countries increase from 2.5% to 40%

Trade wars and the OECD

- However, when the trade war of the US is extended to all OECD country members, Canada and Mexico are the most affected countries. They both have very strong trade and economic ties with the US and hence, have the most to lose from these potential trade wars
- In a discussion paper produced by the ***International Food Policy Research Institute on US Trade Wars with Emerging Countries in the 21st Century of August 2017***, it notes that overall the literature concludes that:-
 - (1) in global trade wars, all countries lose in terms of welfare
 - (2) a trade war between a large country and a small country can result in gains for the large country but losses for the small one and,
 - (3) a trade war cannot lead to gains for all countries involved, and cooperation may lead to a better solution for all countries.

WTO Legal Dispute Procedure

- Despite threats of major retaliation, the WTO tightly restricts what countries are allowed to do. The legal discipline of the WTO makes things more predictable than they appear.
- The WTO stands for and sets rules for a predictable, reliable and non-discriminatory trading system, it is designed to prevent countries applying unilateral and protectionist measures [that are] illegal under WTO law
- The WTO does not convene panels until the parties have attempted to settle disputes through consultation
- The minimum is usually 18 months before a judgment is obtained

Global Impact

- If the US were to unilaterally pull out of its existing trade arrangements and/or apply broad tariffs outside the scope of the World Trade Organization (WTO), it would cause damage to long-run growth and require a highly disruptive near-term adjustment as the distributional effects of international trade would unwind.
- Large Tariffs are likely to be charged on emerging market countries and commodities sectors

Global Impact cont'd

- There are regional trade agreements and international trade policy institutions and a legal infrastructure in place providing forums where trade disputes can be aired before they devolve into broader tariff escalations
- The broadest such forum is the WTO Dispute Settlement Body, which has seen over 500 disputes since 1995 and issued more than 350 rulings in those cases.

Findings of WTO Settlement Body

Under President Barack Obama the U.S. brought more cases to the WTO than any other country during that time, including 16 against China. It won all that have been decided. The U.S. desires to remand dispute resolution back to domestic courts challenges one of the main institutional pillars of the global trade enforcement regime (notwithstanding the specific merits of the NAFTA panels) from the perspective of US interests.

Potential outcomes

- EU, Canada and Mexico and other trading partners of the US have been hit with steel and aluminum tariffs
- Reworking of the global supply chain, when it occurs, will be highly disruptive. The manufacture of many goods involves multiple cross-border movements
- Escalating global trade disputes could both adversely impact global output and harm smaller jurisdictions through higher import costs

Potential Outcomes

- Overall it is expected that the impact will be cost cuts, price increases and layoffs resulting in a slowdown of US GDP growth and pain for the economy
- US farmers, manufacturers and their workers will face tougher foreign competition in both import and export markets.

How Tariffs Are Set in the United States and Potential Impact of Steel Tariffs



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Congress delegated power to set most tariffs to the President – the President does not act alone

Article I of the Constitution gives Congress the “Power to lay and collect Taxes, Duties, Imposts and Excises, to pay the Debts and provide for the common Defense and general Welfare of the United States,” and to “Regulate Commerce with foreign Nations and among the several States and with Indian Tribes.”

Unites States v. Yoshida Int’l, Inc., 526 F.2d 560, 581 (“The people of the United States, in adopting the Constitution, granted the power to ‘lay and collect duties’ and to ‘regulate commerce’ to the Congress, not to the Executive.”)

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**What does this mean?
Tension between branches of US Government**

- The President has the power, by and with the advice and consent of the Senate, to make treaties and trade agreements, provided two-thirds of the Senators present concur
- Congress controls the imposition of tariffs and can regulate commerce in much the same manner as they control how taxes are set.



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So what is the framework of treaties and laws governing tariffs in place today?

- Prior to 1930s Congress generally set tariffs directly
- 1934-1974, power often delegated to the President
- Trade Act of 1974
 - Established what is known as trade promotion authority
 - More power placed with President, but always subject to revocation

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What is the President's power today?

- **To oversimplify- what we are seeing the President do today is exercise a variety of powers that Congress granted to adjust Tariffs after the President makes certain threshold findings:**
 - In the past two years President Trump has made several “findings”
 - Congress has not acted to repudiate those findings and in most cases they have not been successfully challenged in the courts.
 - Trade Expansion Action of 1962.



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Source of U.S. steel and aluminum tariffs

- **February 16, 2018. Commerce Department report finds that “the present quantities and circumstances” of both steel and aluminum imports are weakening the internal economy and threatening to impair the national security under Section 232 of the Trade Expansion Action of 1962**



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The Impact

- Will steel and aluminum tariffs create distressed investment opportunities and work for restructuring professionals?
- Will American jobs be gained or lost? Did the President analyze this with care?
- Who will win and who will lose?



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TRADE TARIFFS, BREXIT AND SANCTIONS

A PERSPECTIVE FROM WESTERN EUROPE
CHRISTIAAN ZIJDERVELD - 18 OCT 2018

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WESTERN EUROPEAN ISSUES

- Trade tariffs
- Brexit
- Sanctions

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TRADE TARIFFS

- Initial impact in western Europe was limited
- Mainly an issue for steel and car industry
- And Europe is facing other issues
- E.g.: NATO, Turkey, immigration, and ...
-Brexit

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BREXIT

- Most likely in any scenario:
 - UK no longer a party to EU Insolvency Regulation and Rome I regulation
 - No more automatic recognition of UK proceedings and issues with UK Scheme (?)

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SANCTIONS

- Quite relevant in restructuring practice
- Russian consortia (financial and Oil & Gas) are active throughout Europe
- Sanctions impact restructurings at every level

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