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Navigating Transatlantic Trade Wars: Lessons from 2018 and Remedies in the EU Courts

European Union to Retaliate Against U.S. Tariffs

SUMMARY

The return of President Donald J. Trump to the U.S. presidency has revived and expanded the U.S.'s focus on trade defense measures. Following the imposition of tariffs on imports from China, Mexico and Canada, on February 10 and 11, 2025, President Trump announced the administration's intent to impose a 25% tariff on steel and aluminum imports to the U.S.

Further, on February 13, 2025, President Trump directed the initiation of a "Fair and Reciprocal Plan" to restore fairness in U.S. trade relationships by countering non-reciprocal trading arrangements with other countries.

In response to the above measures, the EU has stated and reiterated that it will not hesitate to impose countermeasures to safeguard European businesses from unjustified tariffs. Examining the EU's previous retaliatory measures and two key legal challenges brought by affected companies in the EU Courts provides valuable insight into what businesses can expect in terms of the scope and industries targeted by such responses, and may allow businesses to explore litigation in the EU Courts against EU trade measures that they consider to have been unfairly imposed on them.

BACKGROUND AND RECENT DEVELOPMENTS

In 2018, President Trump imposed tariffs of 25% on steel imports and 10% on aluminum imports from the European Union ("EU"). The value of the imports subject to such tariffs was approximately EUR 6.4 billion per year.

The EU retaliated by imposing high tariffs (up to 50% of the value of the relevant product and on top of the conventional rate) on a wide range of U.S. manufactured products entering the EU, such as steel, sweet corn, kidney beans, peanut butter, clothing, motorcycles (including Harley-Davidson

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motorcycles), tobacco products and bourbon whiskey (the “2018 EU Tariffs”). In 2020, the EU imposed additional tariffs on U.S. manufactured products, including lighters (such as Zippo). In 2021, the U.S. and the EU temporarily agreed to lift tariffs on each other’s products. Consequently, the application of the 2018 EU Tariffs is suspended until March 31, 2025.

Since returning to office, President Trump has revived and expanded the U.S.’s focus on trade defense measures. Following the imposition of tariffs on imports from China, Mexico and Canada, he turned his attention to the EU. On February 10, 2025, President Trump announced a 25% tariff on all steel and aluminum imports to the U.S. on national security grounds. Further, on February 13, 2025, he directed the creation of a “Fair and Reciprocal Plan” to restore fairness in U.S. trade relationships by countering non-reciprocal trading arrangements with other countries. In directing U.S. agencies to draft a Fair and Reciprocal Plan, President Trump specifically referred to the EU’s lack of reciprocity in tariffs imposed on shellfish and cars. Across the Atlantic, the EU has responded by asserting that the U.S. imposes higher tariffs on EU pickup trucks and reiterated that it will not hesitate to impose firm and proportionate countermeasures to safeguard European businesses from unjustified tariffs.

With trade tensions escalating between the U.S. and the EU, we set out below what companies may expect from EU retaliation measures, their implications for businesses, and the legal remedies potentially available in the General Court and the Court of Justice of the EU (“EU Courts”).

EU RETALIATION MEASURES AND IMPLICATIONS FOR BUSINESSES

If there is no agreement between the U.S. and the EU by March 31, 2025, the 2018 EU Tariffs will be automatically reinstated. The 2018 EU Tariffs covered a wide range of U.S. manufactured products. The value of the U.S. products subject to them was estimated at approximately EUR 2.8 billion a year, significantly affecting businesses selling these products in the EU. For example, Harley-Davidson reportedly relocated its production of motorcycles destined for the EU to Thailand to mitigate the financial burden caused by the tariffs. The EU is likely to target additional U.S. products, particularly in key U.S. economic sectors such as automotive, cosmetics and agriculture. Importantly, under EU law, any response from the EU must reflect the principle of proportionality, and be proportional to the injury suffered. Therefore, the EU will aim to counter the effects of the U.S. tariffs and of the Fair and Reciprocal Plan, which could lead to further, and possibly unprecedented, EU trade defence measures such as so-called “anti-coercion” measures under the recently adopted EU Anti-Coercion Instrument (the “ACI”).

The ACI entered into force on 27 December 2023 and establishes a framework enabling the EU to swiftly counteract coercive economic measures imposed against it by non-EU countries. Under the ACI, economic coercion exists when a non-EU country applies, or threatens to apply, a trade measure designed to prevent or modify the application of a certain act adopted by the EU or its Member States e.g., pressuring the EU to abandon a certain measure by applying, or threatening to apply, measures affecting trade or investment. Under the ACI, the EU must first consult with the non-EU country concerned with a view to resolving the dispute. If that fails, the EU may take action such as:

- Imposing tariffs;
- Introducing quotas and licences on the importation and exportation of goods;
- Adopting measures applying to transiting goods or affecting trade in services;
- Restricting or excluding participation by suppliers of the non-EU country concerned in EU public tenders;
- Requesting compensation for the damages suffered; and
- Restricting banking and insurance access to EU capital markets.

The ACI is an instrument of deterrence, to be used only as a last resort.

TARIFFS AND LITIGATION IN THE EU COURTS

The EU Courts can annul decisions taken by EU institutions (“EU measures”) – wholly or partly – if they infringe EU law. In the first instance, companies affected by an EU measure may bring an action for annulment of the measure in the General Court. In general, for a claimant to have standing to bring an action, the EU measure at issue must either have been specifically addressed to the claimant, or the claimant must be “directly and individually concerned” by the EU measure (a high standard to meet). Parties may subsequently appeal an unfavorable judgment of the General Court to the Court of Justice on points of law. When adjudicating actions for annulment of EU measures, the EU Courts review whether the relevant EU institutions have complied with applicable EU law, in particular with the EU Treaties and in the EU Charter of Fundamental Rights (the “Charter”). In the context of trade measures, the right to property and the freedom to conduct a business, as well as due process rights – such as the right to be heard, the right to effective judicial protection and rights of defence – are particularly relevant for companies adversely affected by EU Measures. These rights are aimed at ensuring that companies have the opportunity to present their views to the relevant EU institutions, have access to relevant information and, ultimately, can challenge trade measures in the EU Courts.

Two interesting cases in the EU Courts resulting from the prior U.S. – EU trade wars involving well-known U.S. companies (Harley Davidson and Zippo) illustrate the concerns of companies doing business in the EU (i) [T-324/21, *Harley-Davidson Europe and Neovia Logistics Services International v Commission*](#) (judgment of March 1, 2023, subsequently appealed in case [C-297/23 P](#)); and (ii) [T-402/20, *Zippo Manufacturing and Others v Commission*](#) (judgment of October 18, 2023, appeal pending in the Court of Justice in case *C-808/23 P*).

Harley-Davidson – Vigorous Enforcement of EU Trade Measures

The *Harley-Davidson* case examined the validity of Harley-Davidson’s actions to avoid the effects of an EU trade measure. Following the imposition of the 2018 EU Tariffs, Harley Davidson relocated the production motorcycles destined for the EU market from the U.S. to Thailand. The relocation was intended to enable Harley Davidson to avoid the 2018 EU Tariffs. However, the European Commission (“Commission”) refused to recognise any economic justification for the relocation and found that Harley Davidson had circumvented EU trade measures. Harley-Davidson challenged the Commission’s decision in the EU Courts, arguing that efficiency and strategic business considerations were the driving

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forces behind the relocation. The General Court and, subsequently, the Court of Justice, dismissed Harley Davidson's appeals, finding that if the main purpose of a relocation operation is to avoid the application of trade measures, then that relocation will not be considered to be economically justified and the company will not be exempt from the trade measure at issue.

If the EU delivers on its promise to retaliate "firmly", U.S. businesses exporting to the EU may be forced to reassess their supply chains and production locations in order for their products to remain competitive in the EU. The EU has stricter anti-circumvention rules in its trade regulations compared to the U.S., making it riskier for companies to mitigate tariffs by restructuring supply chains. The *Harley-Davidson* case is therefore an important precedent to remind businesses that: (i) there is high risk in transferring production with a view to avoiding or mitigating the effect of tariffs; and (ii) EU trade policy rules will be enforced vigorously.

Zippo – EU Trade Measures that Infringe Due Process Rights

Among the products that were impacted by the EU trade measures that followed the first Trump administration were metal mechanical windproof lighters, the majority of which were exported to the EU by the U.S. producer Zippo Manufacturing ("Zippo"). The EU imposed tariffs of 20% and 7% on these products.

In *Zippo Manufacturing and Others v Commission*, Zippo challenged the EU trade measure in the General Court. By virtue of being the sole U.S. exporter of those types of lighters into the EU, Zippo was the only company responsible for the payment of the additional tariffs. Zippo argued that during the decision-making process leading to the enactment of the relevant EU trade measure, the Commission had infringed its right to be heard. Highlighting that the right to good administration guaranteed by the Charter includes the right of every person to be heard before any individual measure which would adversely affect that person (subject to certain limitations which were not applicable in the circumstances), the General Court ruled in favor of Zippo. Accordingly, it annulled the relevant EU trade measure in so far as it concerned Zippo. Importantly, however, the Court also noted that infringement of the principle of good administration can lead to the annulment of an EU Measure only if there is a possibility that, because of that error, the outcome of the decision-making process might (not necessarily would) have been different.

The *Zippo* case is an important reminder that there are avenues in the EU Courts to challenge potentially unfair measures, and that changes in EU trade regulation must comply with the Charter and other general principles of EU law. In practical terms, the General Court's annulment of the measure at issue was highly advantageous for Zippo because it avoided a substantial monetary burden, which could have made its products uncompetitive in the EU market.

FINAL REMARKS

The urgency behind the EU's efforts to respond to recent U.S. trade measures could expose EU institutions to the risk of breaching fundamental rights of companies exporting goods to the EU. Companies should, therefore, carefully evaluate the implications of EU trade measures on their

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businesses and, if they are adversely affected by those measures, consider whether to seek redress in the EU Courts.

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