
LEGAL ASSESSMENT OF THE EU-US “DEAL” AND THE EU PROPOSAL OF REGULATION TO ELIMINATE EU TARIFFS ON US GOODS

Context

1. The “deal” between the United States (“US”) and the European Union (“EU”) came about after several months of widespread increases of US tariffs:
 - In March 2025, Donald Trump raised US tariffs on steel and aluminium to 25%,¹ invoking Section 232 of the Trade Expansion Act of 1962, which allows the US President to impose tariffs on imports if trade affects national security. These tariffs were later increased to 50%² and expanded to so-called “derivative products”.³
 - In April 2025,⁴ Donald Trump announced the imposition of so-called “reciprocal tariffs” on all goods entering the US set at 20% for the EU.⁵
 - In May 2025, Donald Trump further announced a 25% tariff rate on imported cars.⁶
2. On 27 July 2025, Ursula von der Leyen and Donald Trump reached a political agreement notably on tariffs.⁷
3. Following this agreement, on 31 July 2025, Donald Trump adopted an executive order laying out the new rates of US tariffs.⁸ On 5 August 2025, the Commission adopted a regulation cancelling its contemplated countermeasures in response to US tariffs.⁹
4. On 21 August 2025, the Commission published a Joint Statement (the “**Joint Statement**”)¹⁰ announcing that the EU and the US have agreed on a “Framework on an Agreement on Reciprocal, Fair, and Balanced Trade” (the “**EU-US Framework Agreement**”) and disclosing the main points of their agreement. In particular:
 - The EU commits to (i) eliminate EU tariffs on most US goods, (ii) considerably increase EU procurement of US energy products and defence equipment and (iii) revise some EU green deal regulations affecting US companies.
 - In exchange, Donald Trump accepts to lower his unilateral additional tariffs on EU goods from 20% to 15% or the ‘Most Favoured Nation’ rates. This does not apply to goods subject to ‘Section 232’ tariffs, except for automobiles and automobile parts, unavailable natural resources, aircraft and aircraft parts, generic pharmaceuticals and chemical precursors.

¹ White House’s [Fact Sheet](#) : President Donald J. Trump Restores Section 232 Tariffs, 11 February 2025.

² [Proclamation 10947](#) Adjusting Imports of Aluminum and Steel Into the United State, 3 June 2025.

³ [Notice](#) of the Industry and Security Bureau of Department of Commerce, dated 16 June 2025.

⁴ [Executive Order 14256](#) of 02 April 2025.

⁵ Liberation Day: Measures and Consequences, [PWC](#), 4 April 2025.

⁶ See <https://www.bbc.com/news/articles/c4grdke5r1jo>

⁷ See White House’s [presentation](#) of the “massive trade deal” with the EU.

⁸ [Executive Order 14326](#) of 31 July 2025.

⁹ Commission Implementing Regulation [2025/1727](#) of 5 August 2025.

¹⁰ European Commission Press Release, [Joint Statement on a United States-European Union framework on an agreement on reciprocal, fair and balanced trade](#), 21 August 2025.

5. On 28 August 2025, the Commission published two regulation proposals to implement EU commitments on tariffs: one regulation on the elimination of tariffs on lobster¹¹ – which is not addressed in this note, and another on the elimination and reduction of EU tariffs on US industrial and agricultural goods (the “**EU Regulation Proposal on custom duties**”).¹²
6. On 29 August, a US Appeals Court ruled that Donald Trump’s “reciprocal” tariffs are illegal as the power to impose tariffs belongs to Congress.¹³ The US Supreme Court will hear oral arguments on 5 November 2025 and may issue its ruling early 2026.¹⁴
7. This note provides an **overview of key concerns** raised by the EU Regulation Proposal on custom duties (1) and, more generally, the US-EU Framework Agreement (2).

1. KEY CONCERNS RAISED BY THE EU REGULATION PROPOSAL ON CUSTOM DUTIES

8. The EU Regulation Proposal on custom duties raises significant concerns: lack of protection of EU interests (1.1), incompatibility with WTO law (1.2), non-compliance with EU law (1.3) and shortcomings in the text of the Regulation Proposal (1.4).

1.1. Lack of protection of EU interests

- **Lack of reciprocal, clear and stable concessions from the US**

9. The Regulation Proposal would **eliminate all EU tariffs on US industrial goods** and on **numerous agricultural goods**, while lowering tariffs and opening quotas at 0% or reduced rate on other US agricultural goods.
10. In exchange, the **US only commits to a partial rollback of its unilateral and unlawful tariffs** at levels that remain above or equal to MFN rates.
11. In addition, the list of goods subject to ‘Section 232’ tariffs – which are excluded from tariff commitments – is not defined. Therefore, **the US may unilaterally expand the scope of excluded products**,¹⁵ notably steel and aluminium ‘derivative products’. In fact, on 19 August 2025, 407 new products including industrial equipment, vehicle-related parts and components were added to the list of goods covered under Section

¹¹ Commission proposal for a Regulation of the European Parliament and of the Council on the non-application of customs duties on imports of certain goods, [COM\(2025\)472 final](#).

¹² Commission proposal for a Regulation of the European Parliament and of the Council on the adjustment of customs duties on the import of certain goods originating in the US and opening of tariff quotas for imports of certain goods originating in the US, [COM\(2025\) 471 final](#).

¹³ [US court rules many of Trump's global tariffs are illegal](#).

¹⁴ [Reuters](#), 18 September 2025.

¹⁵ Pursuant to the Joint Statement “All modifications to US Section 232 tariffs will be executed in a manner that reinforces and is consistent with US national security interests” which suggests that the US reserves its right to change the list of products subject to section 232.

232.¹⁶ In September 2025¹⁷ a new publication consultation was launched for the potential inclusion of new products such as machinery and metalworking equipment.¹⁸

12. Besides, despite the agreement, Donald Trump is still threatening to impose **“substantial additional tariffs” on countries with digital regulations**,¹⁹ which clearly targets the EU as Donald Trump and US Big Tech regularly criticise the Digital Services Act (DSA) and the Digital Market Act (DMA).

- **Significant loss of customs revenues for the EU**

13. According to the Explanatory Memorandum, based on 2024 figures, the removal or reduction of tariffs on US goods, will incur a loss of approx. **€5 billion** (€4.6 billion for industrial goods and €293 million for agricultural and seafood products).

- **Detrimental impact on EU industry**

14. Whereas the Regulation Proposal would fully exempt US industrial goods from custom duties, EU industrial products will continue to suffer US tariffs at 15%, the MFN rate if higher, or 50% for steel, aluminium and “derivative products”. This distorts competition in favour of US industry over EU operators.

15. According to the Commission Regulation of 24 July 2025,²⁰ the US “safeguard measures ... significantly limit Union exports” to the US, with EU exports **“affected by the reciprocal tariffs amounted to around EUR 285 billion in 2024.”**

16. Recent analyses show that, despite the recent decrease in US tariffs from 20 to 15% in average, exports of EU industrial goods continue to face unpredictable tariffs, lack of clarity and significant administrative hurdles for steel and aluminium ‘derivative products’ to the point that “some companies have just stopped exporting to the US”.²¹

- **Detrimental impact on EU farmers**

17. The cuts in EU tariffs and increased import quotas would benefit hundreds of US agricultural products, including dairy products, cheese, pigmeat, tomatoes, wide range of fruits, nuts, non-alcoholic beverage...). In turn, EU agricultural products do not have preferential access to the US market.

¹⁶ Steel and aluminum goods under Section 232 tariff coverage expanded, [PWC](#), 20 August 2025.

¹⁷ [Notice](#) of the Opening of the Inclusions Window for the Section 232 Steel and Aluminium Tariff Inclusions Process, dated 17 September 2025.

¹⁸ ‘National Security Investigation: Section 232 Opportunities for U.S. Factories’, [Buchanan](#), 26 September 2025.

¹⁹ See Trump’s message on Truth Social of 26 August 2025.

²⁰ Commission Implementing Regulation (EU) [2025/1564](#) of 24 July 2025 on commercial rebalancing measures concerning certain products originating in the United States of America and certain products exported from the Union to the United States of America, recital 15.

²¹ [The Guardian](#), ‘One of Europe’s biggest farm machinery firms halts US exports over “hidden” tariffs’, 13 October 2025 ; [Euronews](#), ‘Tariffs and a strong euro are hurting Europe’s exports to America’ 26 September 2025.

- **Legitimation of Donald Trump's illegal unilateral tariffs**

18. The EU Regulation Proposal tends to legitimate Donald Trump's unilateral tariffs (considered illegal by the Commission²² and found illegal by a US Court of Appeals on the ground that Donald Trump interfered with the Congress' powers). The adoption of the EU Regulation Proposal might be used as an argument to justify the unilateral tariffs before the Supreme Court, ultimately going against the interests of EU economy.

1.2. Incompatibility with WTO law

19. The implementation by the EU of preferential tariffs solely to the US would **breach Article I:1 GATT**, which provides that any tariff advantage granted to any country must be extended to all WTO members, in accordance with the "most-favoured nation" ("**MFN**") principle.²³

20. In addition, it is unlikely that the EU's preferential tariffs would benefit from the exception of Article XXIV GATT, which permits WTO members to enter into preferential trade agreements going beyond WTO commitments as the contemplated EU-US Framework Agreement does not meet WTO standards:

- It would not liberalise "substantially all the trade" between the US and the EU (as required by Article XXIV:8(b) GATT),²⁴ since it **lacks genuine reciprocal liberalisation**.²⁵ The US would only reduce its additional WTO-inconsistent tariffs from 20% to 15%, and maintain MFN rates on a limited set of EU products.
- It does not qualify as an "interim agreement" within the meaning of Article XXIV(5)(c) GATT, which allows interim agreements "leading to the formation of a free-trade area", as it lacks an actual "plan and schedule" and merely expresses a vague "intention" to expand the deal over time. The Regulation Proposal likewise only states that the parties will "*consider*" other sectors "for which the MFN tariffs would apply" and refers to a "first step in a process that *can* be further expanded over time".²⁶ In addition, the US-EU Framework Agreement has not been notified to WTO members, as required by Article XXIV:7(a).

21. Other exceptions, such as Article XXI GATT – which preserves WTO members' right to protect their essential security interests, are equally unlikely to justify the Regulation Proposal. This provision indeed covers measures "taken in time of war or other

²² See. Regulation (EU) [2025/1727](#): "the safeguard measures of the United States remain incompatible with the Agreement Establishing the World Trade Organization" (Recital (6)).

²³ MFN tariffs refer to the standard import duties a WTO member applies to goods from other members. They represent the baseline treatment that must be applied to all WTO members to ensure non-discrimination.

²⁴ Article XXIV:8(b) GATT stipulates that "the duties and other restrictive regulations of commerce ... are **eliminated on substantially all the trade**" between the parties. This requirement is generally considered to refer to liberalisation of at least 90% of the total trade value among the parties (see e.g. EU Parliament, "[Understanding import tariffs under WTO law](#)" (March 2025), p. 2).

²⁵ See also, <https://www.fratinivergano.eu/en/trade-perspectives/8-september-2025/#EU>.

²⁶ [COM\(2025\) 471 final](#), Explanatory Memorandum, p. 1.

emergency in international relations". As such, recent panels rejected US arguments invoking this exception to defend its tariffs on aluminium and steel.²⁷

22. Given the current geopolitical context and the relatively low risks associated with non-compliance, breaching WTO rules can be contemplated as part of a strategic option. However, such a course of action should be adopted by the Commission in the pursuit of the EU's own interest and in response to unlawful or hostile actions by other States – not dictated by external economic coercion – and could potentially be extended to other policy areas where justified.
23. Otherwise, it would **set a precedent of the EU yielding to economic coercion by adopting measures that are manifestly unlawful under international law**. This could undermine the EU's credibility and broader efforts to promote and uphold the rule of law towards third countries and even Member States.

1.3. Non-compliance with EU law

24. The Regulation Proposal may infringe various EU principles:
 - From a **procedural standpoint**, the **lack of any impact assessment** and of **public or stakeholder consultation** prior to submitting the Regulation Proposal is at odds with the Better Regulation Guidelines.²⁸
 - Under the Better Regulation Guidelines, an impact assessment is required notably for Commission proposals that are likely to lead to significant economic, environmental, or social impacts.²⁹ There is no exemption for trade policy.³⁰ This requirement may only be waived in exceptional circumstances, when there is a "political imperative to move ahead quickly", "an emergency that requires a rapid response"³¹, or a "political urgency".³² However, the Commission must provide a substantiated reasoning for departing from the Better Regulation Guidelines.
 - Given the estimated losses in customs revenue and its considerable impact on EU industry and agriculture, the Regulation Proposal will undeniably have a significant economic impact so that an impact assessment should have been conducted pursuant to the Better Regulation Guidelines.
 - Furthermore, the Commission made trade-offs between, on the one hand, EU industrial sectors that will "benefit" from a 15% tariff ceiling (cars, pharmaceuticals, aeronautics) and, on the other hand, industrial sector that

²⁷ See e.g. C. E. Gascoigne and S. Alam, "[The Expansion of the 'National Security' Exception in Trade Law: Trump's Tariffs and Broader Trends](#)" (Cambridge International Law Journal, 23 September 2025).

²⁸ Better Regulation Guidelines, Chapter VI "Impact Assessments", November 2021, [SWD\(2021\) 305 final](#).

²⁹ Better Regulation Guidelines, Chapter VI "Impact Assessment", November 2021, [SWD\(2021\) 305 final](#).

³⁰ For example, recommendations for a Council Decision authorising the Commission to open negotiations on free trade agreements are subject to impact assessments in accordance with the Better Regulation Guidelines. See, for example, the Commission [webpage](#) listing impact assessments which have been conducted by the Commission in trade matters.

³¹ Better Regulation Guidelines, Chapter I "'Better regulation' in the Commission", November 2021, [SWD\(2021\) 305 final](#).

³² Better Regulation [Toolbox](#), July 2023, p. 10.

face tariffs of up to 50% (steel, aluminum, derivative products and other products subject to section 232), and the agricultural sector facing more US imports. Thus, an impact assessment is all the more necessary to assess the overall impact of these trade-offs on the EU economy. Given that the Commission has been working for months – even years – on the implications of US tariffs for the EU economy and on potential EU responses (through the adoption of various regulations on EU countermeasures), it should not hide behind the urgency excuse³³ to prevent the EU Parliament from voting based on a clear and detailed understanding of the economic consequences.

- Whereas the Better Regulation Guidelines are not binding on the Commission, the lack of impact assessment and consultation may infringe on the principle of proportionality set out in Article 5(4) TEU, which has been found to be “a criterion for the lawfulness of any act of the institutions of the Union”.³⁴
- The **lack of reciprocity and adequate protection of EU economic interests** also raises issues under EU law. According to Article 3(5) TEU, in its relations with the wider world, the EU must uphold and promote its values and interests and contribute to the protection of its citizens.

1.4. Issues with the drafting of the Regulation Proposal

25. In view of the serious issues that the Regulation Proposal raises, the EU Parliament may well reject it.
26. If it were to adopt it for geopolitics reasons, the text should at least be scrutinised and amended to provide more legal certainty for EU operators.
 - **Recitals:** Contrarily to other EU texts,³⁵ the recitals **do not mention the origins of US unilateral tariffs nor the fact that they breach WTO law**. This should be added for legal certainty. In addition, the statement that the US committed to “an all-inclusive tariff ceiling of 15%” is inaccurate as MFN rates apply where they are higher than 15% and many EU products are excluded from the 15% tariff ceiling (steel, aluminium, “derivative products” and other goods subject to ‘section 232’ which are not mentioned in US commitments).
 - **Suspension clause (Article 3):**
 - The reference to a failure by the US to “implement the Joint Statement” as a suspension cause lacks clarity as the list of products concerned by US commitments is not defined and can be modified unilaterally by Donald Trump. Thus, for legal safety and clarity, **an annex should be added** listing the goods concerned by the 15% tariffs cap or the MFN cap.

³³ See [COM\(2025\) 471](#) final, Explanatory Memorandum, p. 1 mentioning the need to urgently implement that the tariff-related aspects of the Joint Statement in order to stabilise the trade relationship with the US

³⁴ ECJ, Judgment of 29 June 2010, [Case C-441/07, Alrosa](#), para. 36; ECJ, Judgment of 3 December 2019, [Case C-482/17, Czech Republic v Parliament and Council](#), para 85.

³⁵ See e.g. Commission Implementing Regulation (EU) 2025/1564 of 24 July 2025, Recital 8, stating that the measures introduced by the US “consist of a departure from the United States’ obligations flowing from the Agreement Establishing the WTO”.

- The use of “**may**” in the first sentence leaves discretionary powers onto the Commission to decide whether the suspension clause should be triggered, even if one of the suspension conditions is met. **It should be made mandatory for the Commission to suspend the advantages** where the circumstances listed in Article 3 are met, as in Regulation [654/2014](#) on the exercise of the Union’s rights for the application and enforcement of international trade rules.
- **Acts of economic coercion** within the meaning of Article 2 of the Anti-Coercion Instrument³⁶ should be added as an explicit cause for suspension, to anticipate Donald Trump’s practices that could trigger the implementation of an anti-coercion response, particularly in light of his recent threats of new tariffs.
- The **role of the EU Parliament** should be strengthened by allowing it to request the Commission to examine any US action to determine whether it meets the suspension conditions.
- **Lack of reporting and review clause:** Drawing from the Anti-Coercion Instrument, a reporting and review clause could be added.
- **Annexes:**
 - As mentioned, an annex should be added listing the US rates to be applied on EU goods in order to determine when the suspension clause may be triggered.
 - As regards the existing annex on EU tariffs and quotas on US agricultural goods, it should be verified that agricultural and food products that are included are “non-sensitive” products, as stated by the Commission.
 - The inclusion of steel, aluminium and their derivatives products in the list of industrial products benefiting from 0% EU tariffs³⁷ raises questions in view of the wording of the Joint Statement, pursuant to which the EU and the US “intend to consider the possibility to cooperate on ring-fencing their respective domestic markets from overcapacity, while ensuring secure supply chains between each other, including through tariff-rate quota solutions”. This statement suggests reciprocal measures which do not seem in line with EU unilateral elimination of tariffs.

³⁶ Regulation (EU) [2023/2675](#) of the European Parliament and of the Council of 22 November 2023 on the protection of the Union and its Member States from economic coercion by third countries (“Anti-Coercion Instrument”).

³⁷ “Iron and steel”, “Articles of Iron and steel’ and “Aluminium and articles thereof” are subject to a 0% tariff In accordance with Article 1(1) and pp. 6-7 of [Annex 1](#) of the Proposed Regulation.

2. KEY CONCERNS WITH THE CONTEMPLATED US-EU FRAMEWORK AGREEMENT

27. The contemplated US-EU Framework Agreement raised several significant concerns.

2.1. Increased dependency towards US energy, fossil fuels and EU defence

28. Under the Joint Statement, the EU intends to procure \$750 billion worth of US LNG, oil, and nuclear energy products. This is contrary to EU's objectives to lower its energetical dependency on third countries and to phase out fossil fuels in favour of renewables in order to meet its climate goal.³⁸

29. The EU also "plans to substantially increase procurement of military and defence equipment" from the US. This is not consistent with the recent objective of "strengthening [the] overall defence readiness, reducing strategic dependencies, addressing critical capability gaps and strengthening the European defence technological and industrial base".³⁹

2.2. US interference with EU norms

30. Under the Joint Statement, the EU commits to:

- "work to address the concerns of US producers and exporters regarding the EU **Deforestation Regulation**, with a view to avoiding undue impact on US-EU trade";
- "work to provide additional flexibilities in the **CBAM** implementation";
- "undertake efforts to ensure that the Corporate Sustainability Due Diligence Directive (**CSDDD**) and the Corporate Sustainability Reporting Directive (**CSRD**) do not pose undue restrictions on transatlantic trade", including to "propose changes to the requirement for a harmonised civil liability regime for due diligence failures and to climate-transition-related obligations".

31. This raises serious concerns as to the **democratic law-making process, the principle of autonomy of EU law, as well as the EU's response to economic coercion**.

³⁸ Several pieces of EU legislation actively try to implement such objectives. For instance, the REPowerEU plan puts forward "an additional set of actions to: save energy; diversify supplies; quickly substitute fossil fuels by accelerating Europe's clean energy transition" ([COM/2022/230 final](#)); RED III seeks to "achieve the long-term objective of an energy system that is independent of third countries", which involves "accelerating the green transition and ensuring an emission-reducing energy policy that reduces dependence on imported fossil fuels" (Recital 4 of Directive (EU) [2023/2413](#)).

³⁹ See e.g. Recital 2 of the Council Regulation (EU) [2025/1106](#) of 27 May 2025 establishing the Security Action for Europe (SAFE) through the Reinforcement of the European Defence Industry Instrument: "in its conclusions of 6 March 2025, the European Council ... stressed that **Europe must become more sovereign, more responsible for its own defence and better equipped to act and deal autonomously to cope with immediate and future challenges and threats**. At that European Council, all Member States committed to reinforcing their overall defence readiness, reducing strategic dependencies, addressing critical capability gaps and strengthening the European defence technological and industrial base (EDTIB)".

2.3. Incompatibilities with EU law

32. From a procedural standpoint, it has to be pointed out that the Commission lacked any mandate to negotiate the scope of the commitments made in the Joint Statement. Should this form the basis of a future US-EU treaty, it could be argued that the Commission bypassed the procedural requirements set out in Article 218(2) TFEU.
33. The substance of the US-EU Framework Agreement also raises various **serious concerns of incompatibilities with EU law**:
- US interference into EU law may be qualified as acts of economic coercion that are incompatible with the principles of **sovereign equality** and **non-intervention** under customary international law, which are embodied in Article 21 TEU.
 - Commitments in the Joint Statement to weaken the application of various EU policies (the CSDDD, the CSRD, CBAM and the Deforestation Regulation) run directly **counter to the principle of consistency of EU action**, enshrined in Article 21(3) TEU and Article 7 TFEU.⁴⁰
 - Other commitments in the Joint Statement, such as the procurement of LNG and oil products from the US, will hinder the EU's ability to achieve its net zero objective as enshrined in the EU Climate Law. Inconsistencies also exist with other EU policies, notably regarding the EU's energy policy and the EU's sovereignty in regulating the digital single market.

2.4. Possibility to request an Opinion from the EU Court of Justice on the future EU-US agreement

34. In view of the serious concerns raised by the contemplated EU-US agreement, the EU Parliament might request the Court's opinion regarding its compatibility with the EU Treaties, in accordance with Article 218(11) TFEU.
35. Such request must concern an "agreement envisaged". While hypothetical questions are not admissible, the Court does not necessarily require that the content of the future agreement be fully negotiated. The required degree of precision depends on the type and scope of the question asked. The Court has even accepted to issue an Opinion on an agreement for which the negotiations had not yet even started.⁴¹

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⁴⁰ Under Article 7 TFEU: "[t]he Union shall ensure consistency between its policies and activities, taking all of its objectives into account and in accordance with the principle of conferral of powers". See also, Article 21(3)(2) TEU on external action.

⁴¹ ECJ, Opinion 1/19, Convention of Istanbul, [EU:C:2021:198](#), paras 192-205.