

The EU’s Possible Response to Trump II Tariffs

February 24, 2025

On February 1, 2025, U.S. President Donald Trump imposed a 25% additional [tariff on imports](#) of Canadian- and Mexican-origin goods (since suspended for 30 days) and a 10% additional tariff on imports of Chinese-origin goods. On February 9, President Trump announced a 25% [tariff on steel and aluminum](#) imports,¹ and is preparing “*a comprehensive plan*” to tackle “*non-reciprocal trading arrangements*”.² The EU is a key target of the new measures, with the EU’s 10% tariff on imported cars and ban on U.S. shellfish imports identified as unfair trade barriers. As with Canada and Mexico, any EU tariffs may be driven by other strategic objectives, such as NATO expenditure and a takeover of Greenland.

This alert memo discusses how the EU may react to a renewed tariff offensive under the second Trump administration, looking at its response to prior transatlantic trade tensions and its reinforced trade defense toolkit.

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

² [White House Fact Sheet](#), “President Donald J. Trump Announces “Fair and Reciprocal Plan” on Trade”, February 13, 2025.



I. The EU's Firm Political Stance

EU political leaders are promising a decisive response to the threatened U.S. tariffs.³ The heads of key EU Member States and senior EU institution figures have uniformly vowed to retaliate against “*unfairly or arbitrarily*” imposed U.S. tariffs and stressed the EU’s capacity to adopt robust and immediate countermeasures “*however and whenever that is needed*”.⁴ At the same time, the EU is keen to avoid a tariff war that is “*hurtful to all sides*” and will work to preserve the EU’s trade and investment relationship with the United States through diplomatic efforts.⁵

The EU’s forceful yet conciliatory messaging echoes its approach to the first Trump administration tariffs in 2018 (see our alert memo on the tariffs [here](#)). In March 2018, the Trump administration imposed tariffs of 25% on steel and 10% on aluminum imports (Section 232 tariffs) citing national security concerns. The EU responded with a three-pronged approach. First, it immediately launched a safeguard investigation into the EU’s steel imports, which led to new tariff quotas to protect EU producers from trade diverted from the United States.⁶ Second, the EU challenged the U.S. tariffs before the WTO. Finally, in June 2018, following the collapse of intensive talks during a three month grace period allowed by the United States,⁷ the European Commission (“**Commission**”) hit back with duties targeting a range of politically-significant U.S. exports such as whiskey, peanut butter, Harley Davidson motorcycles, jeans, orange juice, steel, and aluminum.⁸ These duties were adopted under Regulation (EU) No 654/2014, which allows for

rebalancing in response to third country safeguard measures. A diplomatic resolution was finally reached in 2021 under the Biden administration, with the United States agreeing to suspend tariffs imposed in the Boeing-Airbus dispute and to replace the steel and aluminum tariffs with a quota system.

II. A New Instrument at the EU’s Disposal - the EU Anti-Coercion Instrument

In response to a second round of Trump administration tariffs, the EU could turn to its new Anti-Coercion Instrument (“**ACI**”),⁹ adopted in November 2023. This would be the first time the instrument is used.

While the EU successfully mounted a swift response to the March 2018 Trump tariffs, the episode raised concerns that existing EU instruments – which reflected the WTO framework and its focus on safeguard action to protect domestic industries – were insufficiently broad or flexible to tackle economic coercion (*i.e.*, the use of trade or investment measures to interfere with EU or Member State policy choices). This perceived legal gap, combined with the WTO’s diminishing role and a global retreat from multilateralism, led the EU to adopt the ACI in November 2023. The ACI enables the EU to deploy a wide array of measures against economic coercion, encompassing trade, investment or other policy actions. The EU considers the ACI to be consistent with WTO rules since the latter do not cover economic coercion, although this position is yet to be tested before the WTO bodies.¹⁰ It also considers the ACI

³ See *e.g.*, EU [Statement](#) on the U.S. reciprocal tariff policy, February 14, 2025.

⁴ [Opening remarks](#) by Commission President von der Leyen at the joint press conference with President Costa and Polish Prime Minister Tusk following the Informal EU leaders’ retreat on February 3, 2025; [Speech](#) by Commission President Von der Leyen’ speech at the EU Ambassadors conference on February 4, 2025.

⁵ [Remarks](#) by EU spokesperson reported in Politico, February 2, 2025.

⁶ The EU adopted tariff-rate-quotas in the range of 10-25% duty levied on imports above traditional trade flows. The measures were provisionally adopted in July 2018 and

confirmed in early 2019, and have been extended to June 2026 after several reviews.

⁷ The U.S. temporarily exempted the EU (and other countries) from its steel and aluminium tariffs until end May 2018 to allow an opportunity to discuss and address its security concerns.

⁸ Implementing Regulation (EU) 2018/886.

⁹ 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.

¹⁰ The Commission’s [Q&A](#) on the ACI states: “The ACI concerns specific behavior, *i.e.*, economic coercion, which is

consistent with customary international law, as embodied in the ARSIWA,¹¹ which permits the adoption of countermeasures to a breach of international law that would otherwise be contrary to the injured party's international obligations.¹²

Article 2 of the ACI defines coercion broadly, as a situation in which “*a third country applies or threatens to apply a measure affecting trade or investment in order to prevent or obtain the cessation, modification or adoption of a particular act by the Union or a Member state, thereby interfering in the legitimate sovereign choices of the Union or a Member State*”.

The ACI establishes a procedure for the Commission to determine the existence of economic coercion before recommending effective measures to counteract this, while making efforts to reach an amicable solution with the third country concerned. In adopting any measures, the Commission must explain why they are justified, and why alternative options (such as direct negotiations, international adjudication or third party mediation) are unable to address the problem.

Under the ACI, the EU would be able to adopt a broad range of measures where proportionate, necessary, and effective to remove the economic coercion, which may include:

- Trade restrictions on goods and services (such as customs duties at the most-favored-nation level, import/export bans, or quotas);
- Limits on foreign direct investment;
- Restrictions on market access (such as the right to participate in public procurement or trade in services);

not addressed by the WTO Agreement. Therefore, the instrument does not respond to a breach of WTO (or FTA) law, but rather to a breach of international law. In no event will the ACI be a means to short-circuit the WTO dispute settlement system. It will not be a means to impose countermeasures to respond to a breach of WTO rules. There are multilateral rules requiring all WTO Members to settle WTO disputes through the WTO dispute settlement system”.

- Restrictions on intellectual property rights or their commercial exploitation;
- Financial measures (for example, restricting access to banking, financial services, and insurance markets for entities from the third country, or suspending the application of financial services agreements with that country);
- Measures targeting specific individuals or companies.

The ACI provides for a four-step process led by the Commission. The process is intended to be expeditious and given the strong political impetus, we expect the EU to aim for a response within two to three months, in line with the Trump I tariff timeline.

- (i) **Examination.** The Commission investigates if there is economic coercion and may call for evidence, for example from Member States, EU businesses and trade unions. These investigations may be launched *ex officio* or at the request of affected parties. This assessment must normally be concluded within four months.
- (ii) **Determination.** Based on a proposal from the Commission, the Council decides whether there is economic coercion. Decisions are adopted by qualified majority¹³ as an implementing act. The Council must act within eight to 10 weeks.
- (iii) **Engagement with third country.** Once the Council decides there is economic coercion, the Commission will seek to engage with the third country responsible for the coercion. It will look for a negotiated or mediated solution to stop the economic coercion and, if needed, repair any harm

¹¹ The Articles on State Responsibility for Internationally Wrongful Acts (ARSIWA) is a text adopted by the International Law Commission in 2001, and while of no formal binding force, has frequently been cited as a statement of the law on state responsibility, including before various international tribunals.

¹² ACI, recital 13.

¹³ This means votes by 55% (15) of the 27 EU Member States representing 65% of the EU population.

caused. The Commission will also raise the matter in relevant international fora.

- (iv) **Response measures.** After allowing for a reasonable period of consultation with the third country involved, the Commission will move ahead with response measures. The measures may be deferred by up to three months to allow a further opportunity for dialogue.

The EU must keep its countermeasures under review, and will suspend and eventually terminate them if the economic coercion has ceased, or been addressed through an agreement with the third country concerned or an international adjudication decision. The EU may also terminate the measures if they are no longer in the Union interest.

While the EU has been preparing to respond to Trump tariffs for months, very little has been disclosed about the scope or form of possible ACI countermeasures in contemplation. The EU is likely advancing different ACI (and hybrid) contingency plans in parallel. Its response will depend on the final shape of Trump's (still evolving) trade measures and wider geopolitical developments (such as talks on the future of Ukraine).

- The EU might hit imported U.S.-origin goods with tariffs, including a similar list to those goods targeted during the Trump I administration. Luxury items (such as bourbon) are particularly easy targets. The EU may also restrict strategically important EU exports to the United States, such as products that have no ready alternative sources due to limited supply or strict quality requirements. According to a recent study, the EU imports only 8 strategically important products from the United States (primarily chemicals and steel), while the United States imports 32 from the EU.¹⁴
- The EU may tighten market access for U.S. big tech companies, which account for much of the

EU's services €109 billion (2023) trade deficit with the United States, notwithstanding senior U.S. official complaints about EU "over-regulation" of digital markets. Plans for a digital services tax have been brewing at the EU level for some time.¹⁵ Four EU Member States (Austria, France, Italy, Spain) have passed digital tax rules, which triggered a U.S. trade investigation and retaliatory tariffs in 2020-2021. The United States paused these measures pending efforts to find a global tax deal through the OECD, but the suspension period expired in June 2024 without a deal and the Trump administration has since pulled out of the process. The EU may now reopen the issue, but may prefer to do so outside the ACI framework, so that any tax regime introduced can be maintained even after the economic coercion ceases.

III. Alternative or Complementary Instruments

The EU could deploy additional measures alongside or in place of ACI actions.

- (a) **Safeguard measures.** The Commission may pursue safeguard measures – as it did for steel imports in response to the first Trump administration tariffs – to examine and mitigate the impact of higher imports to the EU due to diverted trade flows. These would need to be carefully designed to comply with WTO rules (which implies that the safeguards should be temporary and applied to all states (*erga omnes*)) and avoid harming EU businesses that rely on imports of the impacted goods.
- (b) **Regulation (EU) No 654/2014 tariffs.** Under the first Trump administration, the EU imposed rebalancing measures based on Regulation (EU) No 654/2014, arguing that

¹⁴ K. Lefebvre, P. Wibaux, "[Import Dependencies: Where Does the EU Stand?](#)", CEPII Policy Brief, September 2024.

¹⁵ [Statement](#) of the Members of the European Council on digital taxation, March 25, 2021, para. 6(g); European

Council [conclusions](#) on fair and effective taxation in times of recovery, July 21, 2020, para. 147.

the U.S. Section 232 tariffs constituted safeguard measures that justified the application of this instrument. However, several WTO Panels have since found that these tariffs did not qualify as safeguards.¹⁶ These findings have been appealed to the WTO's non-functioning Appellate Body. Although not issued in a U.S./EU dispute (the EU had terminated its separate complaint by agreeing to arbitration), the findings could cast doubt on Regulation (EU) No 654/2014 as an appropriate legal basis for retaliatory tariffs.

- (c) **WTO complaint.** The EU may activate the WTO dispute settlement system to reaffirm its commitment to international law. The process would be of symbolic rather than practical value, at least in the near term, given the slow pace of the WTO process.
- (d) **Anti-subsidy and anti-dumping investigations.** The Commission may launch new investigations into possible subsidization or dumping by U.S. exporters that cause injury to the Union industry. However, these investigations require at least a year, and any resulting tariffs would target only the subsidized or dumped goods.
- (e) **Policy changes.** Various MEPs and EU leaders, including President Macron, have called for initiatives to tighten EU single market access such as a “Buy European Act” for public procurement or amended rules of origin requirements (such as the 75% minimum local content initiative recently demanded by the EU automotive industry). Such policies could be a response to general protectionist schemes adopted by the United States, such as the Buy American Act, that fall

outside the scope of the ACI, which can only address trade or investment action.

IV. Recommendations for Business

As the EU braces for potential new tariffs under a second Trump administration, businesses should prepare for trade disruptions. The ACI provides the EU with a structured process to counter arbitrary trade practices amounting to coercion through a mix of retaliation, litigation, and diplomacy. Due to the variety of potential retaliatory measures that could be adopted, companies should plan for a broad range of market impacts, such as price adjustments, supply chain disruptions, and potential market access restrictions.

The potential use of alternative trade and competition instruments as well as domestic policies, such as stricter rules of origin requirements, could also impact trade flows. Companies should adopt a proactive approach and closely monitor transatlantic policy shifts to develop strategies that manage the risks of reduced market access, tariffs, or other evolutions in their market landscape.

Finally, businesses can make their views heard during the adoption process of any measures under the ACI. Businesses concerned about economic coercion can make substantiated requests to the Commission to open an investigation. During the procedure, the Commission will also consult with stakeholders to gather information on the potential coercion. Finally, the Commission will need to consider if the adoption of countermeasures is in the Union interest – which takes into account the interests of EU importers, producers and end customers of the goods or services that could be covered by these measures.

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¹⁶ *United States — Certain Measures on Steel and Aluminium Products* in disputes initiated by China (DS544), Norway (DS552), Switzerland (DS556) and Turkey (DS564), and *China – Additional Duties on Certain Products from the United States* (DS558). In the former four disputes, the WTO Panels also determined the U.S.

tariffs did not fulfil the conditions for a security exception to its WTO obligations. In DS558, a Panel found that Chinese countermeasures violated GATT rules since the initial U.S. tariffs did not constitute safeguards. All findings have been appealed to the Appellate Body.