

# Caught in the Middle

## Third-Country Exporters and the EU–US Trade Deal

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The European Union (*EU*) and the United States (*US*) have recently announced a new transatlantic trade initiative, labelled [the United States-European Union framework on an agreement on reciprocal, fair and balanced trade](#), that aims *inter alia* to abolish tariffs on US industrial goods. While the agreement is currently only a political declaration without binding legal force, it represents a significant policy signal. Once implemented, it could reshape competition in the EU market not only for US companies, but also for exporters from third countries such as Brazil, India, Japan, South Africa, or South Korea.

This briefing outlines the content of the US–EU “deal”, explains its potential tensions with the multilateral trading system, in particular the Most-Favoured-Nation (*MFN*) principle of the World Trade Organization (*WTO*), and assesses what options – legal and strategic – remain available to non-EU exporters who might face disadvantages as a result.

### The Trade Deal

In our opinion, the Joint Statement issued by the EU and the US is not a legally binding Free Trade Agreement. Instead, it sets out a framework for closer trade cooperation. One of the most prominent elements is the EU’s pledge to reduce tariffs on all US industrial goods to zero.

The declaration also touches on other areas:

- **A maximum 15% all-inclusive tariff** for EU goods with reciprocal tariffs; no extra tariffs for goods already at or above 15% MFN. The US commits to include EU pharmaceuticals, semiconductors, lumber, and automotive products under the 15% cap.
- **Exemptions:** Certain EU goods (e.g. cork, aircraft parts, generic drugs) will face only low or zero tariffs.
- **Joint trade & security goals:** Cooperation on steel/aluminium overcapacity, secure supply chains, digital trade, and economic security (e.g. investment screening and export controls).
- **Regulatory alignment:** Efforts to reduce non-tariff barriers through common standards and certificates.

- **Strategic cooperation:** Boosting transatlantic investment, critical minerals collaboration, and increased EU procurement of US defence equipment.

Implementation of the tariff commitment, in particular, would require the Council of the EU to adopt an Implementing Regulation amending the Common Customs Tariff (*TARIC*). Only then would the reduction of duties on US-origin goods become legally effective in the EU.

### WTO Law and the MFN Principle

The proposed tariff elimination for US goods alone raises serious questions under Article I(1) of the 1994 General Agreement on Tariffs and Trade (*GATT*), which enshrines the MFN principle. Under this rule, any advantage granted by a WTO member to the products of one country must be extended “immediately and unconditionally” to the like products of all other WTO members. A preferential tariff applicable only to US goods would, on its face, violate this obligation.

The EU might attempt to justify the measure under Article XXIV *GATT*, which allows exceptions for regional trade agreements covering “substantially all the trade” between the parties. However, the current Joint Statement does not seem to amount to an RTA: it lacks a comprehensive plan, timetable, and scope broad enough to satisfy the WTO requirements. At best, the EU could present it as an interim arrangement – but even this is questionable in the absence of a concrete programme leading to full liberalisation.

### Implications for Non-EU Exporters

For companies outside the EU and the US, the question may arise whether they could challenge the EU’s tariffs in court based on their potentially discriminatory nature. However, it would certainly be an uphill battle for non-EU exporters to challenge the EU’s potential tariff reductions for U.S. industrial goods.

An **annulment action** under Article 263(4) of the Treaty on the Functioning of the EU (*TFEU*) against the implementing act is likely to face difficulties already at the admissibility stage. Competitive disadvantages created by tariff preferences for the US could be seen as insufficient to establish standing:

- An action for annulment is only admissible if the claimant is directly and individually concerned by the contested act. However, a company from a third country may not be considered directly affected if a competitor from another country (here, the US) enjoys lower tariffs. The effect on the non-U.S. exporter may be seen as **indirect**, arising from increased competition rather than from a legal change to the company’s own rights or obligations.

- The EU's courts are also strict on the requirement of individual concern. Only persons specifically distinguished from the general public by unique circumstances or personal characteristics may be considered individually affected. Simply being a competitor disadvantaged by preferential treatment might not meet this threshold.

Another conceivable way would be a legal remedy against the tariffs levied in respect of exports by non-US companies to the EU. However, the European courts have traditionally taken a strict stance also in this respect:

- According to the constant case-law of the European Court of Justice (ECJ), WTO law does not generally have direct effect in the EU legal order. The ECJ has consistently refused to review EU measures against WTO law, emphasising the need to preserve political flexibility in trade negotiations. In a [2005 judgment](#), the Court even declined an invocation of a WTO ruling that had confirmed a violation of the MFN principle.
- Nevertheless, the situation here may present a stronger test case: if the EU grants zero tariffs exclusively to US goods, the violation of MFN would be clear and self-evident. One could also argue that Article I GATT is a precise and unconditional obligation, capable of direct application in line with the ECJ's case-law on other international trade agreements.

Convincing the ECJ to depart from its established case law would be challenging. But the Court has been criticised for its restrictive approach, and growing scrutiny of the EU's commitment to the multilateral system could provide new momentum.

In short, the legal path is narrow, but exporters from third countries should not exclude the possibility of litigation – whether by contesting customs decisions in national courts (with potential referrals to the ECJ) or by lobbying their governments to bring a challenge before the WTO Dispute Settlement Body. For instance, Brazil recently initiated [dispute settlement procedures](#) before the WTO in light of US tariff measures on Brazilian goods. Challenging EU measures before the WTO could be even more promising than doing so against the US, since the EU participates in the WTO's interim appeal arbitration mechanism to overcome the defunct Appellate Body and generally complies with WTO rulings.

## What to Do Now

Non-EU exporters should prepare for possible implementation of the US–EU tariff deal by taking the following measures:

- Closely monitoring the EU's legislative process for adoption of an Implementing Regulation;
- assessing the competitive impact of duty-free US imports on their market position;
- considering adjustments to supply chains or origin strategies to mitigate disadvantages; and
- engaging with trade associations and governments to ensure MFN concerns are raised both in Brussels and at the WTO level.

## Outlook

The US–EU tariff initiative is politically significant, but legally fragile. Whether the EU can implement it without breaching its WTO obligations remains uncertain. For third-country exporters, the key is vigilance and preparation: although the established ECJ case law makes direct challenges difficult, the evident MFN issues could revive debate over the role of WTO law in the EU legal order. Companies potentially affected should stay alert to opportunities, whether in litigation or diplomacy, to protect their competitive position.

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BLOMSTEIN will closely monitor further developments and keep you informed. If you have any questions regarding the US–EU trade deal and what it may mean for your business [Roland Stein](#), [Tobias Ackermann](#) and the entire team is ready to assist you.

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