ITIF | INFORMATION TECHNOLOGY & INNOVATION FOUNDATION
AEGIS PROJECT FOR DEFENDING U.S. TECH LEADERSHIP

EU Regulatory Actions Against US Tech Companies Are a De Facto Tariff System

HILAL AKA | APRIL 2025

EU policymakers frame their legislative and regulatory actions against U.S. tech companies as measures to promote competition and protect consumers. But they operate as protectionist trade barriers and revenue-generating mechanisms.

KEY TAKEAWAYS

- The EU is leveraging regulation to abet its own firms, generate revenue, and advance domestic policy goals—functions that, in practice, mirror the effects of tariffs.
- Policies such as the General Data Protection Regulation (GDPR), the Digital Markets Act (DMA), the Digital Services Act (DSA), and the Artificial Intelligence Act (AI Act) are structured in ways that focus regulatory burdens squarely on the U.S. tech sector.
- The first clear sign that these EU policies function as tariffs is that, by their very design, they disproportionately target the leading companies in the U.S. tech sector.
- Second, fines levied against major U.S. tech firms represented nearly one-fifth of the EU's tariff revenue base last year, up from about 6 percent of the same base in 2023.
- Third, EU regulations are observably protectionist in their effect. Whereas traditional tariffs protect domestic industries by increasing the cost of foreign goods, EU tech regulations achieve similar outcomes through regulatory means.
- It is time for U.S. trade policy to treat these actions as what they truly are: a sophisticated system of digital tariffs.

INTRODUCTION

A common heuristic suggests: "If it looks like a duck, swims like a duck, and quacks like a duck, then it probably is a duck." This "duck test" offers a practical framework for assessing phenomena based on their observable characteristics rather than their designated labels. Applying this functional approach, this paper examines the nature of the European Union's regulatory posture towards the American technology sector.

According to the Congressional Research Service, while tariffs were historically a major source of revenue, they "are now typically used selectively to protect certain domestic industries, advance foreign policy goals, or as negotiating leverage in trade negotiations."[1] Tariffs traditionally raise the costs for foreign exporters or restrict market access. The EU is leveraging regulation as a source of revenue, trying to abet its own firms and advance its domestic policy goals, which are functions that, in practice, mirror the effects of tariffs in at least three ways:

1. They disproportionately target U.S. tech companies.
2. They extract significant revenue from these firms.
3. They create protectionist effects that benefit the EU's domestic tech industry.

In recent years, the European Union's assertive regulatory approach toward large technology companies has includes substantial fines and compliance burdens under the General Data Protection Regulation (GDPR), the Digital Markets Act (DMA), the Digital Services Act (DSA), and the Artificial Intelligence Act (AI Act).[2] While ostensibly designed to protect European consumers and ensure fair competition, these policies disproportionately impact American technology firms and appear structured in ways that focus regulatory burdens on the U.S. tech sector while generating significant revenue for EU authorities.

Despite their formal designation as regulatory measures, these actions function as significant trade barriers that go beyond typical non-tariff barriers (NTBs) and constitute a *de facto system of tariffs* on American tech companies. This classification stems from their unique combination of functions:

- They are often *punitive* in nature and designed to *extract substantial revenue* directly from targeted firms via large fines (unlike many NTBs that primarily impose compliance costs).
- They focus these burdens on large foreign companies deeply invested in the EU market and thus unlikely to exit, making the measures less of a barrier and more of an extractive levy on captive players.
- And they blend this extractive function with clear *protectionist aims*.

A systematic examination of their financial impact, targeted application, and protectionist effects reveals how EU tech regulations exhibit the fundamental characteristics of tariffs, even while avoiding the name. Therefore, EU policy posture towards U.S. tech should be recognized and addressed as functionally equivalent to tariffs, particularly in the context of trade negotiations.

THREE KEY INDICATORS THAT EU ACTIONS FUNCTION AS DE FACTO TARIFFS

1. EU Policies Disproportionately Target U.S. Tech Companies

Despite employing seemingly neutral criteria to designate platforms subject to regulation, such as high revenue and user thresholds, EU regulatory frameworks like the Digital Markets Act have a demonstrably disproportionate impact on American technology companies.[3] The Digital Markets Act, for instance, initially designated six corporate entities as "gatekeepers" subject to special obligations, five of which are U.S. firms: Alphabet (U.S.), Amazon (U.S.), Apple (U.S.), ByteDance (Chinese), Meta (U.S.), and Microsoft (U.S.). (Booking.com, a Dutch company, was added later.)[4] While the EU maintains the designation criteria as objective and nationality-neutral, this outcome mirrors how tariffs can be selectively applied to impact specific countries' economic interests. It defies reason to believe that the EU would have passed a law targeting five European firms and only one American.

Furthermore, statements from key European officials involved in the DMA's creation suggest a clear focus on the largest global platforms, which happen to be predominantly American. For example, reports indicate that DMA rapporteur Andreas Schwab suggested focusing on the "top five" rather than diluting the focus to include European firms merely to "appease the U.S."[5] This implies an intent to target the leading U.S. tech firms, adding non-U.S. firms later for plausible deniability.

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Other European policies, such as national Digital Service Taxes (DSTs) enacted by member states including Austria, France, Italy, and Spain utilize high revenue thresholds (e.g., €750 million globally) and target specific digital services (such as online advertising and marketplaces) in ways that primarily implicate U.S. tech leaders.[6] This led the U.S. Trade Representative (USTR) to investigate these DSTs and conclude they were discriminatory against U.S. companies, burdened U.S. commerce, and represented a tax grab by the EU from the U.S. Treasury.[7]

The pattern of enforcement further underscores this focus. The largest fines and most significant regulatory investigations under the GDPR, the DMA, and antitrust rules have predominantly involved American firms rather than European or non-EU companies.[8] For example, 9 out of 10 of the largest GDPR fines to date have been levied against U.S. companies.[9] This targeting effect, imposing costs and scrutiny primarily on specific foreign competitors, is functionally analogous to how tariffs operate.

2. The EU Derives Significant Revenue From the U.S. Tech Industry

Regulatory actions against U.S. tech companies generate substantial revenues for the EU. In fact, fines levied against major U.S. tech firms reportedly totaled $2.03 billion in 2023, representing nearly 6 percent of the EU's tariff revenue base of $34.2 billion for the year.[10] By 2024, reported fines escalated significantly to nearly $6.7 billion, roughly one-fifth of the same base (19.5 percent).[11]

While legally distinct from import duties (which are penalties for rule violations or compliance levies), these financial extractions function similarly to tariffs in their economic impact:

- They impose significant financial burdens primarily on foreign (in this case, U.S.) companies.
- They generate substantial revenue for European authorities.
- They create economic friction and potential barriers to market participation or expansion.
- Often calculated based on *global* revenue, penalties are potentially massive and disproportionate to localized activities or harm, acting as a significant economic extraction similar to a high tariff.[12]

The sheer scale of these financial flows underscores their economic importance and aligns with the revenue-generating function historically associated with tariffs.

While the stated goals emphasize consumer protection and fair competition, the practical effect often aligns with traditional protectionist policies: disadvantaging leading foreign companies and creating opportunities for domestic or alternative players.

3. Protectionist Design: Creating Space for European Alternatives

The third indicator of EU regulations functioning as tariffs is their observable protectionist effect, intended or otherwise. Traditional tariffs protect domestic industries by increasing the cost of foreign goods. EU tech regulations achieve similar outcomes through regulatory means:

- They impose significant compliance costs and operational burdens (e.g., under DMA, DSA, and AI Act) that fall most heavily on the largest platforms, which are primarily American.
- They mandate interoperability and data sharing, potentially forcing established players to yield competitive advantages to rivals.
- They restrict business practices, such as self-preferencing and cross-platform data combination, that are integral to the established models of many successful U.S. tech firms.[13]

European officials frequently frame these policies under objectives like digital sovereignty, a concept ostensibly about control, security, and resilience but often translating into inherently protectionist measures aimed at reducing technological dependencies, particularly on American technology.[14] While the stated goals emphasize consumer protection and fair competition, the practical effect often aligns with traditional protectionist policies: disadvantaging leading foreign companies and creating opportunities for domestic or alternative players.

This dynamic is particularly relevant in sectors like cloud computing, digital advertising, and app ecosystems. For instance, EU-backed initiatives like Gaia-X, ostensibly aimed at creating federated European data infrastructure, and national certification schemes such as France's SecNumCloud, impose stringent requirements on data localization, security protocols, and governance that can effectively limit the market access of major U.S. cloud providers like AWS, Azure, and Google Cloud.[15] These efforts, pursued under the banner of sovereignty, function to

shield or promote domestic alternatives by creating regulatory hurdles for leading foreign suppliers. By increasing costs and operational friction for U.S. incumbents across various digital sectors, EU regulations function similarly to tariffs in their potential to protect domestic market segments.

RESPONSES TO COUNTERARGUMENTS

Critics, including EU policymakers, might argue several points against the tariff characterization:

Counterargument 1: These Are Legitimate Regulatory Actions Based on Rule Violations, Not Arbitrary Taxes

Response: While framed within regulatory systems, a functional analysis considers the operation and effect. The structure of these regulations, targeting specific business models and sizes dominated by U.S. firms and levying fines based on global turnover that seem disproportionate, mirrors the discriminatory impact and economic burden characteristic of tariffs. The "gatekeeper" designation under the DMA imposes significant compliance costs almost exclusively on the largest tech companies, most of which are American.[16] Fines calculated as percentages of global revenue are punitive and arbitrarily burdensome, paralleling the economic impact of tariff policies.

Counterargument 2: The EU Applies the Same Rules to All Companies Meeting the Criteria

Response: Facially neutral criteria can still result in targeted effects. The high thresholds and specific service definitions used in regulations like the DMA and national DSTs were structured in a way that predictably captured major U.S. firms while excluding most European counterparts. This structure provides plausible deniability against accusations of overt targeting. As noted, statements made during the DMA's legislative process, such as DMA rapporteur Andreas Schwab suggesting a focus on the "top five," indicate an awareness that the primary impact would be on U.S. firms and suggest that broadening the scope later might serve to strengthen this deniability against adverse U.S. reactions.[17]

This dynamic—where seemingly neutral rules have discriminatory effects—is illustrated by the landmark European Court of Justice case concerning Danish beverage container laws in 1988. Denmark had mandated approved reusable containers within a deposit-return system; while ostensibly pursuing environmental goals, this rule significantly disadvantaged imported beverages, often sold in cans. The court ultimately found the absolute requirement for specific approved containers to be a disproportionate and unlawful barrier to trade under EU law, demonstrating that facially neutral rules can function as trade barriers if their effect is overly restrictive on imports.[18]

Counterargument 3: Regulatory Goals Like Privacy Protection and Fair Competition Are Legitimate Policy Objectives, Not Protectionism

Response: Legitimate *stated* goals do not preclude a policy from having protectionist functions or effects. Historically, many trade barriers have been justified by noneconomic rationales while simultaneously serving protectionist interests. The critical assessment lies in the *function*: Do these regulations impose disproportionate costs on foreign competitors and create advantages for domestic alternatives? If so, then they align with tariff effects. Furthermore, the EU's narrative around "innovation through regulation," and occasional frank statements by policymakers about

needing to address dominant American tech companies, suggest motivations beyond purely neutral market regulation.

European policymakers often frame their expansive regulatory initiatives, like the DMA, under the ambitious banner of fostering a uniquely "European" model of innovation and ensuring "fair and contestable" markets.[19] This narrative suggests regulation itself can be a catalyst for progress and responsible technological development. However, a critical examination reveals that this approach often prioritizes potential competitors' commercial fortune*s* over demonstrable gains in broad consumer welfare. Key provisions within the DMA, such as strict mandates on interoperability, data sharing, and prohibitions on self-preferencing, seem tailored less to address concrete consumer harms and more to create artificial openings for European businesses that have struggled to compete on merit against successful U.S. tech companies.[20] This focus strongly suggests that the rhetoric of "innovation through regulation" serves primarily as a sophisticated veil for industrial policy, using regulatory power as a protectionist tool to re-engineer markets in favor of local players rather than allowing competition and consumer choice to drive innovation organically.

Counterargument 4: Actions Are Supported or Requested by U.S. Companies

Response: It is worth noting that some complaints fueling EU regulatory actions originate not from European competitors but from American companies themselves, seemingly contradicting the argument of EU-driven targeting. Some may ask why the United States should object if American firms are also requesting these interventions. However, this perspective misinterprets the dynamic. Rather than validating the EU's approach as neutral, it highlights how certain smaller American tech companies, facing intense competition from the leading U.S. platforms, strategically leverage the EU's uniquely interventionist regulatory environment. These firms may perceive the EU as an easy mark, a jurisdiction willing to impose broad, burdensome regulations that can effectively hobble larger American rivals. In essence, they seek to use EU regulation to do their dirty work for them, achieving through regulatory means what they struggle to attain through direct market competition. This exploitation of the EU's regulatory apparatus by some U.S. actors does not negate the fundamentally targeted and tariff-like nature of the EU's overall policy framework; instead, it underscores how these regulations distort fair competition and ultimately disadvantage leading U.S. tech companies under the guise of market regulation.

IMPLICATIONS

Recognizing EU tech regulations as functionally equivalent to tariffs has several important implications:

- **Trade policy context:** These measures should be analyzed not just as domestic regulations but as actions with significant international trade implications, potentially conflicting with principles of non-discriminatory treatment under WTO agreements.[21]
- **Diplomatic and trade responses:** The U.S. government should address these actions through established trade policy frameworks, including negotiations, dispute settlement, or reciprocal measures, as appropriate for trade barriers.
- **Economic analysis:** Their impact should be assessed using frameworks similar to tariff analysis, focusing on market access, competition, investment, innovation, and consumer costs.

- **International norms:** The EU's approach risks normalizing the use of complex domestic regulation as a substitute for traditional protectionism, potentially undermining transparency and predictability in the global trading system.

CONCLUSION

It has been clear to anyone who has seriously reviewed the EU's tech policies that Brussels and many member states not only have a deep animus against U.S. technology companies but also seek "digital sovereignty" and use these surreptitious attacks to gain it. And why not? EU officials have surely noticed that the United States so far has acted like a paper tiger in response; it might make some noises about why the EU should stop what it is doing, but it has prioritized broader issues, such as Russia and NATO, and it has been generally unwilling to take unilateral action.

The reality is that EU regulatory actions against U.S. tech companies functionally operate as a de facto tariff system. Looking beyond labels to assess substantive effects, the evidence is compelling:

- The financial scale of fines and compliance costs imposes significant economic barriers.
- The targeted impact falls disproportionately on American firms through carefully calibrated criteria.
- The protectionist effect creates space for European alternatives.

These elements collectively point to a system that functions like tariffs, regardless of its formal designation. The EU may label these actions as regulatory enforcement, consumer protection, or digital market governance, but their operational reality suggests otherwise. As global digital trade becomes increasingly essential, policymakers and scholars must recognize when regulatory actions functionally operate as trade barriers. The EU's approach (and those of other nations) to U.S. tech companies represents a concerning evolution in protectionism, one that operates through regulatory mechanisms rather than traditional border taxes but achieves similar economic effects.[22]

If it looks like a tariff, imposes costs like a tariff, targets American companies like a tariff, and protects domestic industries like a tariff, then it *is* a de facto tariff. The European Union's regulatory regime against American technology companies substantially meets these criteria. It is time to acknowledge this reality and address these actions for what they truly are: a sophisticated system of digital tariffs designed to disadvantage American technology firms and benefit European alternatives.

About the Author

Hilal Aka is a policy analyst at ITIF, focusing on U.S. technology competitiveness. Previously, she interned with the Center for a New American Security's technology and national security program and was an economic consultant on antitrust and competition matters at Charles River Associates. She holds a bachelor's degree from Wellesley College with a double major in economics and mathematics.

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