



What is the EU's Anti-Coercion Instrument and when will it be used?

In the wake of restrictive trade measures announced by the US President Donald Trump, an important question on everyone's mind is how the European Union (EU) will respond to those measures. Many have argued for the recourse to the [Anti-Coercion Instrument](#) (ACI), a relatively new and very powerful tool in the EU's arsenal. The ACI entered into force on 27 December 2023 and has never been used so far. Is that about to change?

This client alert explains what the ACI is, how it operates and whether it can be deployed vis-à-vis the US.

WHAT IS THE ACI?

The ACI provides a legal framework for responding to economic coercion exercised by third countries against the EU or its Member States. According to the European Commission, the ACI's primary purpose is to deter economic coercion in an age of an "increased weaponisation of trade". Where coercive measures are nevertheless imposed, the ACI equips the Commission with the tools to seek an end to those measures, first through dialogue and engagement, and second – where diplomatic efforts to end the coercion have failed – through the imposition of "response measures" in the form of restrictions related to trade, investment and funding. The ACI also provides for the cooperation with the EU's allies and other states affected by the same or similar coercive measures.

HOW DOES IT WORK?

Economic coercion is defined as a situation where a third country attempts to pressure the EU or a Member State into making a particular choice by applying, or threatening to apply, measures affecting trade or investment against the EU or a Member State. According to the ACI, such measures could be any act or omission by a third country which affects trade or investment. They could include – but are not limited to – import and export restrictions, the imposition of tariffs on goods from the EU, or restrictions on the provision of services. Decisive for the operation of the ACI is that a measure is imposed to unduly influence the decisions of the EU or its Member States on any matter.

Where (the threat of) a measure by a third country is suspected to amount to economic coercion, the ACI sets out the following procedure:

- **Examination:** On the basis of a (substantiated) request or on its own initiative, the Commission may launch an examination of the measure. The examination must normally be concluded within 4 months, during which the Commission may invite stakeholders to submit information.
- **Determination:** If the Commission determines that the measure in question constitutes economic coercion, it makes a proposal to the Council explaining its findings. Within 8-10 weeks, the Council must make the final determination of whether the measure constitutes economic coercion under the ACI by means of an implementing act requiring a qualified majority vote.
- **Engagement:** After the final determination by the Council, the Commission enters into consultations with the relevant third country with the objective to stop the coercion and, where applicable, obtain reparation for any injury caused by the coercive measure.

- **Response measures:** Where the consultations have not resulted in the cessation of the coercion (and reparation of the injury, where applicable) after a reasonable period (normally max. 6 months), the Commission may adopt “response measures” as a last resort, if such measures (1) are necessary to protect the interests and rights of the EU and its Member States, and (2) would be in the interest of the Union.

In making that determination, the Commission must first consult with relevant stakeholders, e.g. affected economic operators, business associations, trade unions, and consumers, as well as Member States, to select the appropriate measure(s). The Commission must present its findings and proposed measures to a committee of Member States for approval before it can adopt the response measures through an implementing act.

The available response measures are set out in Annex I to the ACI and include, among others, the imposition of customs duties; restrictions on trade in services, or the import, export, or transit of goods; restrictions on intellectual property protections, foreign direct investment, public procurement or banking, insurance and other financial services. They may have general application or be designed to affect particular sectors, regions or operators or specifically target certain natural or legal persons. The response measures must be proportionate to the underlying coercion and be selected and designed in a way that minimises any negative impact on Union actors and other Union interests.

The measures must normally come into effect at the latest 3 months after their adoption, unless and until the third country stops the coercive measure and, where appropriate, repairs its injury to the Union. The Commission must remain open to consultations and negotiations with the third country even after the imposition of response measures.

The ACI also provides for the cooperation with third countries that are affected by the same or similar measure or are otherwise interested, to achieve the cessation of the coercion. To that end, the Commission may coordinate in international fora, share relevant information, and coordinate a response to the coercion with those third countries.

CAN THE ACI BE DEPLOYED AGAINST THE US?

Whether the ACI could be deployed against any measure threatened or imposed by the US would depend on the nature and context of a specific measure. When determining whether a measure amounts to economic coercion, the Commission and the Council must take into account, among other factors: the intensity, duration, magnitude and impact of a measure; whether the third country engages in a pattern of interference; whether the measure encroaches on an area of sovereignty of the Union or its Member States; whether the measure is imposed based on a concern internationally recognised as legitimate; and whether the third country has made serious, good-faith attempts to settle the matter before resorting to the measure. That determination must be based on facts and substantiated information gathered by the Commission on its own initiative as well as received from reliable sources.

At the time of writing, US President Trump has announced additional tariffs applicable to steel and aluminium imports, as well as a plan for so-called “reciprocal tariffs”, both of which would directly affect the EU. Some have argued for recourse to the ACI in response to these tariffs. The ACI could be used to react to those US measures insofar as they are designed to coerce the EU or its Member States to take specific policy decisions.

At least officially, the purposes of these tariffs are the protection of the US’ national security interest in its domestic steel industry and concerns about the US trade deficit. As such, these may appear as legitimate concerns. In practice, however, both measures are widely considered to serve as a bargaining tactic to obtain policy commitments from other states – a view which is supported by President Trump’s own statements. This interpretation of the ultimate purpose of the tariffs is further supported by the Trump administration’s decision to suspend tariffs imposed in early February 2025 on Mexico and Canada after these countries committed to new measures concerning immigration policy and border security.

Accordingly, if the US were to attempt to use the tariffs to coerce an annexation of Greenland, for instance, as Trump has spoken of repeatedly, this could be a prime example for a coercive measure under the ACI, encroaching directly on the sovereignty of a Member State. Equally, if the US relied on (a threat of) tariffs or other trade restrictions in an attempt to affect and dissuade the EU’s legislative efforts regarding artificial intelligence, digital services and markets, or ESG regulations (EU Carbon Border Adjustment Mechanism, Corporate Sustainability Due Diligence Directive, etc.), the ACI could be an appropriate tool with which the EU could respond. Ultimately, however, the application of the ACI is subject to a case-by-case analysis.

While both the Commission and the Council are required to “act expeditiously”, the timelines set out in the ACI do not allow for an immediate retaliation. It remains to be seen, therefore, whether the EU will resort to the ACI in response to any of the US measures and, if yes, how successful this action will be. It is also an open question, how any response measures under the ACI will interact with other measures that may be taken by the EU, including imposition of retaliatory measures under the EU Enforcement Regulation or initiation of a WTO dispute.

KEY CONTACTS



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