

## What The Anti-Coercion Instrument Will Bring To The EU

By **Vassilis Akritidis and Jean-Baptiste Blancardi** (October 13, 2023, 12:25 PM BST)

On Oct. 3, the European Parliament adopted a report on a new trade defense instrument in the European Union: the so-called anti-coercion instrument, or ACI regulation.[1]

The ACI is expected to enter into force before the end of 2023 as a new addition in the EU's trade defense toolkit.

This article discusses the reasons that led the EU to reform its trade defense legislation; how the EU will use the ACI to respond to coercive measures; and how businesses can impact the EU's decision making.

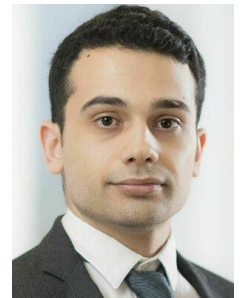


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### New Trade Defense Instrument

First announced in the 2021 Trade Policy Review, the ACI is a novel legal framework aimed at preventing third countries from taking, or threatening to take, measures affecting trade or investment that would interfere in the legitimate sovereign choices of the EU or a member state by seeking to prevent or obtain the cessation, modification or adoption of a particular act by the EU or a member state.[2]

Economic coercion by third countries as a response to EU trade defense or other measures is undeniably an issue that increasingly occurs. EU complainants in trade defense cases are sometimes deterred from filing a trade action due to the risk of such coercion.



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If economic coercion however is confronted with EU countermeasures, through introduction of the ACI, it is likely to function as a deterrent for third countries from utilizing such coercion tactics.

Preparatory works, such as the European Council on Foreign Relations' policy brief, highlight an "ever greater risk of economic coercion" for the EU, as well as increased coercion of private actors.[3] A prime example of this issue is evident in the trade restrictions created in 2021 by the People's Republic of China, targeting Lithuania in response to the opening by the Republic of China of a representative office in Vilnius under the name of "Taiwan."

### EU Response to Future Economic Coercion Measures

#### *Examination of Third Country Measures*

This examination can be carried out either ex officio or upon request. The request must be substantiated by any reliable source including information from member states, the European Parliament, economic operators or trade unions. During the examination phase, the EU Commission assesses whether there is a case of economic coercion and the impact of the relevant third country measures in coordination with member states and stakeholders. This process takes four months.

### ***Determination of Third Country Measures***

Following its examination, the commission may submit a proposal to the Council of the EU to adopt an implementing act determining that the third country measures in question constitute economic coercion under the ACI.

This proposal may include a request to the third country to repair any injury caused. The proposal is then adopted by the council by a qualified majority. This process does not normally exceed six months.

### ***Engagement With Concerned Third Country***

The third country can be involved early on in the procedure. Where useful for the purposes of the determination, the commission must invite the third country concerned to submit its observations prior to submitting its proposal to the council.

Thereafter, if the implementing act is adopted, the commission will consult with the third country and may enter into direct negotiations with it. It may also enter into mediation, conciliation or good offices with the involvement of a third party, or even submit the matter to international adjudication to seek the cessation of the economic coercion.

### ***EU Response Measures***

If the previous phases do not lead to the cessation of the coercive measures by the third country and, when requested, to the reparation of the injury, the commission may adopt response measures that can take the form of nonperformance of applicable international and internal obligations.

These measures can be of general application or specific to certain natural or legal persons, or to certain sectors or regions, which can lead to the introduction or increase of restrictions on the importation or exportation of goods or the imposition or increase of customs duties among other possible measures.

### ***Businesses and the Decision-Making Process***

Businesses can intervene at two different stages of the procedure: during the examination phase and prior to the imposition of response measures:

#### ***File a request to EU Commission***

In previous drafts of the ACI, only member states were granted the right to request the commission examine third country measures. This is no longer the case. Pursuant to the final legislative process negotiations, the current draft contains no restrictions on who can file a request to the commission to examine third country measures provided that it is duly substantiated under the ACI.

Thus, businesses can play a proactive role in the procedure, thereby providing potential for complaints

to be raised by an entire industry. That being said, support from member states remains paramount following completion of the investigation.

### ***Provide Information to EU Commission***

The ACI regulation designates economic operators and trade unions as reliable sources in the context of information collection. Businesses can therefore provide information to the commission during its examination phase of third-country measures, no matter who initiated the procedure. To this end, an online portal will be created by the commission.

The information shared to the commission can be treated confidentially upon the information provider's request.

### ***Stakeholders' Consultation***

Prior to the imposition of response measures, the commission will consult stakeholders, most notably associations acting on behalf of EU economic operators and trade unions affected by the envisaged EU measures. The goal is to identify the impact of the EU response measures, how they will fit into the relevant member state legislation and to understand the administrative burden occasioned by the measures.

This is a key element in assessing the EU interest, which is a main guiding principle for the response measures. Among the individual interests, which comprise the EU interest, the ACI regulation lists those of EU economic operators, including upstream and downstream industries, and of final EU consumers, affected, or potentially affected, by the economic coercion or by the EU response measures.

EU interest is also prevalent in the amendment, suspension and termination of the EU response measures that were imposed.

### ***Conclusion***

The adoption of the ACI will enrich the EU's trade defense toolkit with the possibility of high-level government action against countries that apply unfair economic pressure upon the EU or threaten to do so.

At present, economic coercion applied by third countries has remained unaddressed at government level due to the EU's adherence to its international obligations and the lack of a legal basis to act. It will therefore be of significant interest to see how far the ACI will be effective.

It is hopeful that in any event, it will be more so than prior to its adoption.

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[1]<https://www.europarl.europa.eu/news/en/press-room/20230929IPR06122/meps-adopt-new-trade->

tool-to-defend-eu-from-economic-blackmail.

[2] [https://eur-lex.europa.eu/resource.html?uri=cellar:5bf4e9d0-71d2-11eb-9ac9-01aa75ed71a1.0001.02/DOC\\_1&format=PDF](https://eur-lex.europa.eu/resource.html?uri=cellar:5bf4e9d0-71d2-11eb-9ac9-01aa75ed71a1.0001.02/DOC_1&format=PDF).

[3] <https://ecfr.eu/publication/measured-response-how-to-design-a-european-instrument-against-economic-coercion/>.