Proposed anti-coercion instrument

OVERVIEW

It is widely held that geopolitical tensions in the world are on the rise. One of the clear indicators of this phenomenon is the increasing use of economic tools for the pursuit of strategic and geopolitical aims. This can take the form of coercion exerted by one country on another through trade or investment restrictions to interfere with their sovereign choices. In response to the EU and its Member States becoming the target of deliberate economic coercion in recent years, on 8 December 2021 the Commission published a proposal for the adoption of an anti-coercion instrument (ACI) that would allow the EU to better respond to such challenges on a global scale.

While the new framework is primarily designed to deter economic coercive action through dialogue and engagement, it also allows – as a last resort – to retaliate with countermeasures comprising a wide range of trade, investment and funding restrictions. While there is broad support for creating a legislative tool to address the growing problem of economic coercion, opinions are divided as regards the severity of countermeasures and the manner of establishing when they should kick in.

Within the European Parliament, the file has been assigned to the Committee on International Trade (INTA). A draft report is expected to be published in April.

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<th>Proposal for a Regulation of the European Parliament and of the Council on the protection of the Union and its Member States from economic coercion by third countries</th>
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<td><strong>Committee responsible:</strong> International Trade (INTA)</td>
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<td><strong>Rapporteur:</strong> Bernd Lange (S&amp;D, Germany)</td>
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<td><strong>Shadow rapporteurs:</strong> Anna-Michelle Asimakopoulou (EPP, Greece); Marie-Pierre Vedrenne (Renew, France); Reinhard Bütikofer (Greens/EFA, Germany); Roman Haider (ID, Germany); Michiel Hoogeveen (ERC, Belgium); Helmut Scholz (The Left, Germany).</td>
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<td><strong>COM(2021) 775</strong></td>
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<td><strong>Next steps expected:</strong> Publication of draft report</td>
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**Introduction**

The Commission defines economic coercion as: ‘interfering with the legitimate sovereign choices of the Union or a Member State by seeking to prevent or obtain the cessation, modification or adoption of a particular act by the Union or a Member State – by applying or threatening to apply measures affecting trade or investment’. The European Parliament and a number of Member States first expressed concerns about economic coercion in 2020, during the legislative process launched to amend the EU Trade Enforcement Regulation. The Commission also shared these concerns, and it took note of Parliament’s call for new measures addressing them. This resulted in a Joint Declaration of the Commission, the Council and the Parliament on an instrument to deter and counteract coercive action by third countries, which was published together with the amended Trade Enforcement Regulation. The Commission committed to tabling a legislative proposal in its 2021 work programme. That proposal was submitted on 8 December 2022.

**Context**

The EU is a staunch advocate and a major beneficiary of the rules-based international order, which is underpinned by multilateral cooperation and a globalised economy interconnected through free markets, open trade and finance. It is widely held that this order is increasingly challenged: in the area of trade and economy, this finds expression in issues such as a weakened role of the WTO, the rise of protectionism, and increasing deployment of the economy as a geopolitical tool. The pandemic has exacerbated other undesirable trends, such as increased uncertainty, aggravated tensions between major players and a switch to unilateral measures, which all pose threats to stability. The EU responds to these challenges by building up its open strategic autonomy: while the exact definition of this concept remains debated, it essentially means taking an active role in shaping global economic governance, strengthening multilateralism, reinforcing existing alliances and forging mutually beneficial new relations, while remaining open to trade and investment. At the same time, it means that the EU is becoming more assertive and resilient to unfair and abusive practices and economic distortions, while shaping a greener and fairer world. The policy toolbox related to strategic autonomy has been expanding for some time, and the 2021 trade policy review, as shown in Table 1 below, adds further details on planned initiatives.

Table 1 – EU trade and investment initiatives contributing to open strategic autonomy

<table>
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<tr>
<th>Tackle economic distortions</th>
<th>Defend against economic coercion &amp; extraterritoriality</th>
<th>Link values and sustainability</th>
<th>Ensure resilience of critical infrastructure &amp; supply</th>
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<td>Trade defence instruments</td>
<td>Anti-coercion Instrument</td>
<td>Carbon Border Adjustment Mechanism</td>
<td>Foreign Direct Investment screening framework</td>
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<td>Foreign subsidies regulation</td>
<td>Blocking statute</td>
<td>Due diligence &amp; conflict minerals</td>
<td>Strategic dependencies: industrial alliances, IPCEI, critical raw materials</td>
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<tr>
<td>International Procurement Instrument</td>
<td>Financial resilience</td>
<td>Dual-use export controls &amp; human rights sanctions</td>
<td>International partnerships</td>
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<td>Enforcement Regulation &amp; Chief Trade Enforcement Officer</td>
<td>INSTEX</td>
<td>EU trade agreements &amp; export credits strategy</td>
<td>5G toolbox</td>
</tr>
</tbody>
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Source: T. Gerhke, Threading the trade needle on Open Strategic Autonomy, with author’s modifications.
As underlined by the Commission Executive Vice-President responsible for Trade, Valdis Dombrovskis, ‘at a time of rising geopolitical tensions, trade is increasingly being weaponised and the EU and its Member States [are] becoming targets of economic intimidation’. Coercive practices aim to influence the sovereign choices of the EU and its Member States; for example, a third country may attempt to deter them from introducing a measure or to shape their future regulatory initiatives by introducing or threatening to introduce – which can also be effective – its own measures affecting their trade and investment in ways that are unfavourable to them.

In its 2021 public consultation carried out before tabling the proposal, the Commission gathered examples of what the stakeholders consider to be such coercive measures applied by various countries. These include enforcing administrative rules in an excessively strict and burdensome way, causing deliberate delays, denying or delaying the granting of licences or authorisations necessary to engage in business activities, or extending the processing times for product authorisations issued to foreign manufacturers. Other examples include imposing scientifically unjustified sanitary and phytosanitary measures or placing new barriers to market entry, such as higher local content requirements in public procurement. Yet other examples include introducing extra, discriminatory import duties and imposing targeted border or safety checks on goods from a given EU country. Stakeholders also mentioned having been subjected to illegal expatriation and to an overall state-organised boycott against the goods or investors from a country that criticises the actions of a coercive country.

The repercussions and pressure such actions create are felt in the EU in a variety of ways. For instance, enterprises directly engaged in trade and investment in a third country could bear direct economic costs, such as a loss of jobs or opportunities, which may impact their growth and business model. Importantly, even short-term coercive measures may have long-term effects on third-country consumers who refrain from purchasing EU products. Sometimes not the measures themselves but just the threat of introducing them is sufficient, as it creates uncertainty, unsettles business strategies and has negative impacts on commercial contractual relations. Furthermore, some measures are introduced instantly or overnight, making any advance reaction or dialogue impossible. Another issue is the under-reporting of coercive measures by EU companies and even entire sectors, due to fears of retaliation or further escalation.

**Case in point – Lithuania and China**

In May 2021, Lithuania announced its withdrawal from the 17+1 format: a cooperation framework between China and eastern European countries. Following that, Lithuania’s military intelligence and Defence Ministry highlighted risks to national security and cybersecurity posed by Chinese technology companies operating in Lithuania. In July 2021, the Lithuanian Foreign Ministry announced the forthcoming opening of a ‘Taiwanese representative office’ in Vilnius and a Lithuanian trade office in Taipei. The representative office for Taiwan opened in Vilnius on 18 November 2021 (other Taiwanese offices in Europe and the United States use the name Taipei).

In September 2021, Lithuanian businesses reported that their Chinese trading partners were not renewing their existing contracts or concluding new ones with them and that they were having problems with the supply of some raw materials. Their Chinese providers blamed power cuts for the shortages. Reports surfaced about threats to the future of Lithuanian enterprises in China, refusals of food export permits to Lithuanian firms, and closure of various financial institutions cooperating with Lithuanian exporters. On 1 December 2021, Lithuania disappeared from the Chinese customs administration’s country list, which effectively meant Lithuanian exporters were no longer able to file customs paperwork. Lithuanian reappeared on China’s customs’ list a week later, but shipments were still not being cleared. Import applications from Lithuania were being rejected. China also started blocking imports from other EU countries that contained components from Lithuania. Beijing denied having launched a trade boycott against Lithuania. The combination of trade and investment sanctions could lead to a drop in Lithuania’s GDP by 0.6 % in 2022 and 1.5 % in 2023, and heavily affect some sectors, such as laser production. Medium and long-term effects may be more severe.

Not only is economic coercion on the rise but the global trade and economic interdependencies are being increasingly weaponised as well. A number of empirical studies illustrate this trend. For instance, a 2021 paper concludes that open military conflicts have been to a large extent replaced...
by economic coercion and that the latter represents the new exercise of power among countries. A 2020 paper highlights that the 2010-2020 decade was characterised by the highest average number of trade sanctions imposed per decade since the 1950s, increasing by 80% from the 2000s. While noting the increase, an article by the Danish Institute for Foreign Studies analyses Chinese coercive policies and their impact, and concludes that ‘International reporting often overdramatizes the economic damage done by China by not weighing the relative value of restricted goods with the targeted country's total trade’. The institute argues that thus far Beijing has been applying limited economic pressure on its trading partners to suit its own trade and investment interests. Nonetheless, it may change, particularly if China achieves greater self-reliance in strategic sectors. As it is, the EU is the largest target of Chinese coercive measures (including economic coercion) and some experts see that the risks are on the rise.

A 2021 joint report by the Asia Society Policy Institute and the Perth USAsia Centre also concludes that coercive practices are growing and posing significant threat to the global trading system. Coercion infringes on the core WTO principles of non-discrimination and transparency. Furthermore, it disproportionately affects small and medium countries, which do not have the capacity to retaliate, and erodes trust in rules-based approaches to trade.

Existing situation

In the explanatory memorandum to the proposal, the Commission states that it aims to close an important legislative gap concerning the increasingly prominent issue of economic coercion. As things stand, the EU does not have a legislative instrument to address this issue.

The impact assessment accompanying the proposal explains its broader context: ‘Coercive measures by third countries targeting the EU or Member States can be considered a breach of customary international law, which prohibits certain forms of interference in the affairs of another subject of international law when there is no basis in international law for doing so’. The EU and its Member States have the right to launch countermeasures if the coercive act breaches international law. If this is not the case, they still have the right to resort to ‘retorsion’. However, the means under international law can be deployed at the EU level, only when the respective powers are bestowed on it, namely through the principle of conferral.

Countries affected by economic coercion tend to resort to the WTO dispute settlement system. Australia, frequently subjected to coercive practices by China, shared its concern with the WTO bodies, alleging that these practices infringe WTO rules. Similarly, Canada successfully asked for the establishment of a panel in another possibly coercive case. The EU has also launched a case against China for its treatment of Lithuania. However, some experts believe that the WTO dispute settlement system, already weakened, is not effective in addressing all the infringements. They blame this on lengthy procedures, lack of interim relief measures, problems with enforcement of decisions and the fact that the dispute settlement system is not fit to offer remedies for victims of trade coercion, including because it does not offer compensation for past injuries. Importantly, the impact assessment explains that economic coercion falls outside the WTO’s scope: ‘WTO disputes can only deal with the WTO-inconsistency of the measures in question, not the separate infringement of general international law that lies in the coercive act and intention. The latter does not fall in the remit of the WTO dispute settlement system’. For example, in countries where the economy is controlled by the ruling political party, there is a wide range of informal coercive measures at hand.
(such as ordering companies to stop imports of goods or ordering travel agencies to stop tourism to a country that is subject to sanctions), which are not covered by the WTO rulebook yet are increasingly being deployed. Therefore, the impact assessment argues that a dedicated instrument that addresses such coercive practices is needed. Targeted countries deal with coercion in many ways that are not obvious, ranging from accepting it and trying to minimise the commercial damage, not reporting it to international bodies, or giving disguised responses outside a rules-based framework. The EU cannot act this way, since it needs a legal basis for an EU-level response.

Comparative elements

The United States has a tool that can be used to coerce other countries but also to address measures directed against it: Section 301 of the US Trade Act of 1974 allows for actions to be taken against acts, policies or practices that are unjustifiable (defined as those that are inconsistent with US international legal rights). Such actions include imposition of duties or other import restrictions and withdrawal or suspension of trade agreement concessions. It has been used mostly with relation to WTO cases and in WTO dispute settlement cases. In October 2021, a bi-partisan Countering China Economic Coercion Act was submitted to Congress for consideration. If approved, it would establish a high-level inter-agency task force to streamline tools and mechanisms for deterring and targeting Beijing’s economic coercion. It is also aimed at intensifying cooperation with the private sector and allies and partners of the US.

Australia has chosen to redirect its exports from China by focusing on some new FTAs. The Agri-Business Expansion Initiative gives grants, market information and technical assistance to businesses to help them expand abroad.

China, despite being a textbook case of a country deploying coercion – or maybe because of that – adopted its own Anti-Foreign Sanctions Law in June 2021. This law prohibits Chinese and foreign organisations and individuals from helping to enforce 'harmful' foreign policy of other states, and provides financial compensation to Chinese companies affected by the measures imposed on them abroad. It also provides for far-reaching countermeasures against a wide range of actors and actions. They cover any individual, their spouses and immediate family members and any organisation and its management, which are directly or indirectly involved in the formulation, adoption and implementation of the foreign 'harmful actions'. The countermeasures include a travel ban to mainland China, Hong Kong and Macao, freezing of assets, and prohibition or restriction on doing business with listed persons and organisations and entities associated with them.

Parliament's starting position

During the legislative process on amending the Enforcement Regulation, the EP insisted that the Commission come up with the proposal for an instrument allowing the EU to deter and counteract third countries' attempts to force policy choices on the EU. This has been reiterated in the resolutions on a Trade Policy Review and on Trade related aspects and implications of Covid-19.

Council starting position

In the joint declaration annexed to the adopted Trade Enforcement Regulation, the Council (together with the Parliament) committed to fulfil its institutional role as co-legislator and to consider the ACI proposal in a timely manner. This will be done by 'taking into account the Union’s
obligations under public international law and WTO law as well as relevant developments in international trade. 

Czechia and Sweden submitted preliminary comments on the ACI to the Commission in November 2021, arguing that ‘the use of the instrument must remain an exceptional and last resort solution’. They also believe that the ACI would have extensive foreign policy impacts and that therefore the Member States should be fully involved in the decision-making on this proposed instrument. The two countries will hold the rotating presidency of the Council after France, and may be involved in shaping the instrument’s final form. The French Presidency considers ACI a priority.

According to the Financial Times, Estonia, Finland and Italy are sceptical towards ACI, questioning the need for such instrument and being wary of its possibly harmful effects such as escalating trade disputes. Reportedly, Ireland cautions that the instrument should not lead to more protectionism, while France and Germany broadly support it, as it will help the EU defend its interests in an increasingly challenging global environment. Lithuania is in favour of rapid adoption of the ACI.

Preparation of the proposal

The Commission engaged in an intensive consultation process to collect a wide range of comments from all parties: a stakeholder consultation on the inception impact assessment was followed by a general public consultation, an online stakeholder meeting and exchanges with specific groups including businesses, academia, Member States and governments of third countries.

The feedback received confirmed that economic coercion is a growing and pressing problem that needs to be addressed by a dedicated legislative instrument. A number of examples were given and all stakeholder groups supported the deterrence objective of the instrument, giving priority to non-interventionist measures (such as diplomacy). They considered the use of countermeasures as a last resort, arguing that deploying them requires careful advance consideration due to their likelihood of causing collateral damage and escalation of trade conflicts. Before countermeasures are triggered, their impact should be thoroughly analysed and the affected businesses and organisations should be properly consulted.

There was also strong emphasis on designing the instrument in a way that is compatible with international law and for engaging in international cooperation against coercive practices. The instrument should be broad enough to also cover informal economic coercion, and the EU should be able to choose from a wide range of response options. The views were mixed on the possible creation of a financial compensation scheme for actors affected by coercive measures. Many stakeholders also underlined that the instrument must be coherent with the planned upcoming (Q2 2022) Commission initiative on reforming the Blocking Statute.

The Commission carried out an impact assessment, which set out three options: 1) no policy change; 2) a new legal instrument (ACI) based on several design parameters; and 2) adding a resilience office overseeing the functioning of the ACI. Policy option 2 was the preferred one. It would cover explicit,
disguised, silent coercion and boycotts as well as extraterritorial sanctions targeting the EU or its Member States. If the extraterritorial sanctions are used to pressurise private economic operators, they would be covered by the Blocking Statute, once it is revised. It will be based on a two-step approach, deploying non-interventionist measures before countermeasures are used as a last resort. The Regulatory Scrutiny Board gave a positive opinion with reservations, asking for instance for greater clarity on the coherence of the new instrument with existing legislative tools (such as the EU Blocking Statute) and for clearer criteria on the procedure for launching a case and for adopting measures. The assessment was then revised accordingly.

The changes the proposal would bring

The aim of the ACI is to effectively protect the EU and its Member States from coercive external measures affecting trade and investment. This is to be achieved by a new framework enabling the EU to respond to such actions through deterrence and – as a last resort – through countermeasures. The Figure annexed to this briefing gives a detailed overview of the ACI procedure.

The proposed regulation applies when two cumulative conditions are fulfilled: i) ‘a third country interferes in the legitimate sovereign choices of the Union or a Member State by seeking to prevent or obtain the cessation, modification or adoption of a particular act by the Union or a Member State’. Such interference involves ii) ‘applying or threatening to apply measures affecting trade or investment’. To determine coercion, the Commission should take into account the intensity, severity, frequency, duration, breadth and magnitude of the measure and the pressure it creates. The Commission should examine whether the third country is engaging in a pattern of interference, and determine the extent to which the measure encroaches upon an area of sovereignty. It should also take into account whether the third country has made serious attempts, in good faith, to settle the matter through international coordination or adjudication, either bilaterally or using the relevant international forum.

The Commission may launch an examination of the coercive measures on its own initiative or following information received from any source. It may also look for information about the impact of the measures and may invite the third country concerned to submit its observations. If existence of coercion is established, the Commission will notify the third country concerned and request it to discontinue its coercive practices and, where appropriate, repair the injury suffered by the EU or its Member States.

The Commission shall be open to engage on behalf of the EU with the third country concerned, to explore options that would lead to the termination of coercive practices, either through direct negotiations, mediation, good offices or international adjudication. It may also raise the matter in any relevant international forum. The proposal also allows for engagement in international cooperation with other third countries affected by the same or similar measures of economic coercion in order to cease it though finding a multilateral solution.

If no solution can still be found and if taking action is deemed necessary and in the EU’s interest, the Commission can adopt an implementing act – see explanation in the box at the end of this section – which specifies the appropriate countermeasures (prepared with the involvement of
relevant stakeholders) and a set deadline for its application. When designing the measures, the Commission must seek information on their impact on third-country actors or EU competitors, users or consumers or on EU employees, business partners or clients of such actors, the interaction of such measures with relevant Member State legislation, the possible administrative burden and the EU’s interest. The Commission notifies the third country concerned about the implementing act and calls on that country to abandon the economic coercion, while offering to negotiate a solution. If the coercion ceases before the deadline, the countermeasures will be lifted.

The Commission has the possibility to launch a wide range of countermeasures that are detailed in Annex I to the proposal, together with any measures pursuant to other legal instruments. They may also apply with regard to natural or legal persons when they can be linked to the government of a coercive country or to the economic coercion. The measures should be proportionate and effective, and avoid or minimise negative impacts on EU policies and actors.

The potential countermeasures include: i) tariff concessions suspension and imposition of duties and new charges on goods; ii) import or export restrictions; iii) restrictions on trade in goods, including measures on transiting goods or other internal measures applying to goods; iv) suspension of rights to participate in tender procedures, including exclusions or introduction of mandatory price evaluation weighing penalty; v) restrictions on the exportation of goods falling under the EU export control framework; vi) measures affecting trade in services; vii) restrictions on foreign direct investment; viii) constraints on intellectual property rights; ix) restrictions on financial services, including access of banking and insurance firms to EU capital markets; (x) imposition of restrictions on registrations and authorisations under the chemicals legislation as well as related to the sanitary and phytosanitary legislation; and xi) exclusion or limited access to EU-funded research programmes.

Annex II contains specific provisions on determining the rules of origin of goods and services and ‘nationality of investments’, which will determine if they are the object of the countermeasures. Furthermore, the communication accompanying the proposal contains information on possible further ways to counter coercion through actions related to EU funding granted to third countries. It mentions actions such as not engaging in new financial commitments, opposing new financing operations, or refraining from proposing new macro-financial assistance to a country in question. The EU may also consider obstructing financing through the European Investment Bank or the European Bank for Reconstruction and Development.

The adoption, amendment, suspension or termination of countermeasures shall be rendered effective through an implementing act adopted by the Commission, subject to the examination procedure under the EU’s comitology procedure. The latter provides that a committee composed of representatives from all the Member States votes on a formal opinion on the proposed measures. A qualified majority (55% of EU countries representing at least 65% of the total EU population) is necessary for adoption. The proposal provides an exception to this rule: ‘On duly justified imperative grounds of urgency to avoid irreparable damage … the Commission shall adopt immediately applicable implementing acts imposing Union response measures’. These shall be are then submitted for consideration to the relevant committees. Such implementing acts would remain in force for a maximum of three months. The Parliament would only be capable to scrutinise these implementing acts but not to stop them. Widening the range of possible countermeasures and adapting the rules of origin would be carried out through delegated acts, a process through which the Commission prepares and adopts these acts after consulting with expert groups composed of representatives from each EU country, who meet on a regular or occasional basis. The Parliament should receive all documents in a timely manner, to be able to take part in the preparation of delegated acts; furthermore, it would have the power to revoke them.

Advisory committees

Neither the European Economic and Social Committee nor the European Committee of the Regions is planning to examine the ACI in detail.
National parliaments

The question of the proposal's conformity with the principle of subsidiarity does not apply, as third countries' measures of economic coercion and the EU responses to these fall under common commercial policy, in which the EU has exclusive competence. The national parliaments of Czechia, Lithuania and Sweden have commenced their scrutiny processes.

Stakeholder views

According to BusinessEurope Deputy Director-General Luisa Santos, the ACI's main purpose must be deterrence. The threat of using countermeasures should be sufficient to persuade their target to abandon their coercive measures.

Aegis Europe, a manufacturing industry alliance, strongly recommends that the EU-China Comprehensive Agreement on Investment is only ratified after there is substantial progress on the ACI, which aims 'to provide an adequate level of protection against distortions of competition originating from China'. In its contribution to the consultation with stakeholders, Aegis suggested that the ACI should cover not only actions targeting the EU or its Member States but also actions targeting EU economic operators. It would also like the Commission to have the power to 'require the cooperation of any operator having an EU interest and/or conducting economic activity on the EU market in its investigations' and to impose sanctions in cases of non-cooperation.

The Federation of German Industries (BDI) supports a legislative solution, but argues that the proposed regulation must not be state-centred, instead recognising that it is businesses that are primarily affected and bear the brunt of such measures. The BDI supports governments (Council) being in the driving seat, taking decisions based on continuous, structured feedback on economic coercion. It would also like to see the ACI cover secondary financial sanctions and other forms of extraterritoriality.

The European Semiconductor Industry Association (ESIA), supported the ACI in its contribution to Commission's stakeholder consultation. It argued in favour of using the countermeasures only as a last resort, as they may be counterproductive and cause problems for businesses operating in global supply chains. It prefers that extra-territorial sanctions are covered by a separate instrument.

The Confederation of Swedish Enterprise called for assessing the added value of ACI in relation to the current sanctions framework and to 'the development of a toolbox for countering hybrid threats within the framework of the EU's Strategic Compass in the field of security and defence'. It voices its support for enabling the ACI to address forms of coercion not directly violating international law. However, it opposes countermeasures that undermine the functioning of the market economy, such as restricting third-country intellectual property rights in the EU, suspending equivalence decisions on the rights of financial operators from third countries, and using food safety regulations or standards for consumer products to block the goods coming into the EU.

Economiesuisse, the federation of Swiss business, argued in its contribution to the stakeholder consultation that lifting countermeasures only after the coercive measures have ceased, limits the room for a negotiated solution. It also warned that the ACI should not create negative effects on uninvolved economic actors.

The proposal is open for further feedback until 11 March 2022. The findings will be summarised by the European Commission and presented to the European Parliament and the Council to enrich the legislative debate.

Academic views

Niclas Poitiers, a research fellow at Bruegel, claims that, as the ACI is aimed at tackling rapidly evolving trade disputes, it is better suited to react to coercion than the WTO. He also adds that
decisions regarding the ACI will not have to be taken with unanimity, as required for decisions on EU foreign policy, and the ACI therefore stands a better chance to be a believable deterrent.

On the other hand, the Swedish National China Centre, (part of the Swedish Institute of International Affairs) argues that the ACI will not deter China from its increasingly confrontational course, because China will estimate the cost of countermeasures to be lower than the cost of backing away from what it perceives as ‘defending its red lines’. This is likely to lead to a damaging spiral of escalating measures and countermeasures. The centre also believes that, since most cases of coercion are not reported or found out, they would fall outside the scope of the ACI. Instead, it proposes to ‘absorb’ the effects of coercion by providing support to affected EU actors and states – perhaps through a solidarity mechanism – to mitigate the economic fallout and render coercion attempts ineffective.

Law professors Baetens and Bronckers, in an analysis published on the blog of the European Journal of International Law, conclude that ‘the exacerbating circumstances listed in the ACI suggest that only instances of grave economic coercion will provoke the EU into action’. They argue that the limited scope of the instrument, aimed at deterring the EU’s major trading partners from heavy-handed interference, is sensible from the point of view of both international law and politics. However, this should be clearly stated, so that the EU’s smaller trade partners would not fear being targeted by the ACI. The professors recommend deploying the ACI only in major cases and with significant economies in mind. This would also help avoid situations where developing countries benefitting from the General Scheme of Preferences (GSP+, under which the EU can demand the adoption of certain policies in return for granting zero duties), might claim that it is the EU that is coercing them.

The European Council on Foreign Relations (ECFR) argues that some illegal secondary or extraterritorial measures can still remain beyond the scope of the ACI. To remedy this, the Council recommends including a ‘flexible resilience mechanism’ in the ACI, under which particularly serious instances of such coercion would trigger countermeasures, subject to acceptance by the Member States. The ECFR also proposes including ‘withholding investment’ in a coercive country in the countermeasures.

The Danish Institute for Foreign Studies supports using the ACI to deter coercive acts but underlines that it is only a part of the solution: coerced countries need to act on multiple policy platforms to build deterrence, such as launching market diversification strategies and working together to create a joint fund for affected companies and sectors. The institute also proposes offering coerced countries political risk- and credit insurance and pushing the WTO reform. The Asia Society Policy Institute and the Perth USAsia Centre recommend creating like-minded coalitions to counter coercive practices based on shared intelligence and information and coordinated diplomatic responses. Going a step further, the Center for a New American Security favours applying joint pressure on China by the US, the EU and like-minded allies, through common anti-coercive measures (within international rules and norms and at limits agreed together).

**Legislative process**

In the European Parliament, the file has been allocated to the INTA committee, to which the Commission presented the proposal and its technical aspects on 8 December 2021. The INTA Chair, Bernd Lange (S&D, Germany), was appointed rapporteur on 9 December 2021. His early comments on the ACI suggested that it needs to contain a comprehensive definition of coercive practices and a rapid procedure to determine whether a measure is coercive. He also added that some automaticity should be introduced in the instrument, to lower the risks of divisions among the EU and its Member States over taking decisive action. According to him, if several countries are affected, they should seek a common response with regard to countermeasures and coordinated action in multilateral institutions. A first exchange of views in INTA took place on 25 January 2021 and a draft report is expected to be published in April. In the Council, the delegations received the proposal and the annexes on 10 December 2021. It is one of the priority files of the French Presidency.
The Proposed anti-coercion instrument

EUROPEAN PARLIAMENT SUPPORTING ANALYSIS


OTHER SOURCES

Protection against economic coercion by third countries, Legislative Observatory (OEL), European Parliament.

ENDNOTES

1 They mentioned China, Indonesia, Libya, Nigeria, Russia, Turkey, Tunisia, and the US.
2 The IA explains that ‘Retorsion is the accepted term in international law scholarship to designate a state's response to another state's action when the response is not in departure from international obligations which the responding state has’.
3 These concern alleged use of anti-dumping and countervailing measures on Australia's wine and barley in retaliation for its advocating for an independent investigation into the origins and early handling of the Covid-19 outbreak.
4 These concern alleged use of import restrictions on canola seed by China, allegedly retaliating for the arrest of Huawei executive Meng Wanzhou in Canada.
5 The assessment considered establishing an office as unnecessary since the Commission can perform the same tasks.
6 It is worth noting that the ‘price evaluation weighting penalty’ in public procurement is similar to the ‘price adjustment measures’ proposed under the International Procurement Instrument.
7 This section aims to provide a flavour of the debate and is not intended to be an exhaustive account of all different views on the proposal. Additional information can be found in related publications listed under ‘European Parliament supporting analysis’.

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First edition. The ‘EU Legislation in Progress’ briefings are updated at key stages throughout the legislative procedure.
Annex – The anti-coercion instrument process

Country X disapproves of a policy adopted or planned by the EU or a Member State

**EXIT RAMP**

- Knowing that the Anti-Coercion Instrument leaves it vulnerable to countermeasures, Country X is deterred from taking any coercive action, and no problem develops

Country X adopts, or threatens to adopt, measures which affect trade or investment with the intention of pressuring the EU/Member State(s) into changing their policy

The EU formally and publicly determines that these measures constitute economic coercion

The EU openly engages with Country X (e.g. through direct negotiations, mediation, arbitration etc.) in order to find a solution

No solution is found, the coercion continues, and countermeasures become available for consideration

The EU sets a deadline for the application of these countermeasures. Countermeasures are prepared with the input of various stakeholders

The deadline expires and countermeasures start applying

Country X ceases its coercion before the deadline and the matter is resolved

Throughout the process, the EU raises the issue in relevant international fora and coordinates with affected countries, like-minded partners and allies, aiming at bringing the coercion to an end

Solution found, Country X ceases its coercion

Source: European Commission.