

## How EU's Anticoercion Tool May Counter New US Tariffs

By **Vassilis Akritidis and Jean-Baptiste Blancardi** (March 10, 2025, 3:27 PM GMT)

In response to the new U.S. trade policy affecting the European Union, there are calls for the EU to retaliate by using different means than those employed during the trade dispute between the EU and the U.S. that began in 2018.

In particular, member states are calling for the deployment of the anticoercion instrument, or ACI, a trade legal instrument never used before, which was adopted by the EU in late 2023.[1]

### Background

On Feb. 11, U.S. President Donald Trump announced the imposition of new 25% tariffs on steel and aluminum imports to apply from March 12.[2] Two days later, Trump announced his so-called fair and reciprocal plan on trade. This plan aims to "correct longstanding imbalances in international trade" and highlights the possibility of imposing reciprocal tariffs on certain goods imported from the EU, such as cars or shellfish.[3]

At the same time, the new administration is reportedly considering launching an Office of the U.S. Trade Representative Section 301 investigation into the EU's Digital Services Act in support of the interests of U.S. Big Tech companies.[4]

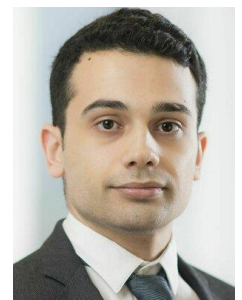
Under the Section 301 framework, the U.S. trade representative may investigate whether a country's act, practice or policy is unjustifiable, thus constituting a burden or restriction on U.S. trade. Based on this investigation, Trump may impose retaliatory tariffs on imports from the country concerned.

These measures, a cornerstone of the recently unveiled "America First Trade Policy,"[5] could mark the reactivation of a trade dispute between the EU and the U.S. under Trump's first term, which was suspended with the 2021 EU-U.S. agreement on steel and aluminum.[6]

This article examines the ways in which EU-based companies may be able to address the potential U.S. tariffs in the context of the ACI. In particular, it addresses the most immediate questions EU businesses may have: What is the ACI? How does it work? What measures can the EU implement under the ACI? How can businesses play a proactive role in its use?



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## **Anticoercion Instruments**

In short, the ACI provides a legal framework for a centralized and structured EU response to third-country coercion through diplomatic means, and failing that, through any countermeasures deemed necessary. The ACI states that one of its objectives is to ensure its responses are always in strict adherence to internal and international legality.

The ACI was adopted at the end of 2023 as part of the EU's open strategic autonomy, a trade policy that has been in place since 2021. To date, the ACI has not yet been used. Conceived as a new trade defense instrument, the ACI aims to reinforce the EU's ability to make its own choices and depend less on imports.

The ACI was passed at a time of increased coercive threat by certain third countries against member states and European companies alike. The commission calls it a deterrent against coercion from third countries.

With the contemplated wave of U.S. trade measures adversely affecting the EU, the ACI could serve as a catch-all retaliatory trade tool at the EU's disposal to fill the gaps in its legal arsenal.

In 2018, the EU responded to measures under U.S. Section 232 of the Trade Expansion Act 1962 — tariffs imposed on steel and aluminum based on national security concerns — on the basis of the EU Enforcement Regulation, as the EU considered President Trump's measures to be disguised safeguard measures under the cover of an alleged national security Section 232 investigation.[7]

Indeed, the EU may retaliate in only limited scenarios, including:

- Disputes under the World Trade Organization agreement or trade agreements, including in cases where the third party is unduly delaying adjudication;
- Rebalancing following third-country safeguard measures; and
- In cases of modifications of the concessions by a World Trade Organization member without compensation.

However, upcoming U.S. measures could escape these categories.

### **How The Anticoercion Instrument Works**

Under the ACI, the commission would initiate proceedings to determine whether a third-country measure could be considered to be economic coercion, as understood under the ACI's terms. If coercion is identified, the commission would submit a proposal to the EU council for an implementing act, which would be adopted and amended by the member states under the EU qualified majority voting rules.

In this way, the member states retain control over the use of the ACI. This means that if there are disagreements between the member states, this could effectively prevent the use of the ACI. Under the qualified majority voting rules, a negative vote from France and Germany, for example, would prevent the adoption of an ACI act.

If an implementing act is adopted, it would then be for the commission to take the diplomatic initiative

by requesting that the third country cease the economic coercion immediately and repair the injury. It would also request that the third country start a consultation phase with the third country concerned. If diplomatic efforts fail, the commission would then be able to adopt any measures that are deemed necessary and in the overall interest of the EU.

### **Response Measures**

When selecting response measures, the commission must consider several factors, including the gravity of the economic coercion, its economic impact on the EU or a member state, and the rights of the EU and its member states. It must ensure that its response is proportionate and does not exceed the level of injury caused to the EU.

The ACI offers the commission a wide choice of response measures. It provides for the possibility of increasing customs duties, restricting importations or exportations, excluding participation in public tenders. It also allows for the nonperformance of applicable international obligations in numerous fields — international property rights, insurance, banking, chemicals, etc.

Such response measures can also target specific individuals and companies that engage or might engage in activities falling under the EU's common commercial policy, and are connected or linked to the government of the third country. However, legal or natural persons that advocate for the relevant government to coerce the EU are not captured by the ACI. Therefore, response measures under the ACI should not be used to retaliate against lobbying efforts.

### **Role of EU Businesses**

The ACI provides for the consultation of stakeholders at several points in the procedure. First and foremost, economic operators can submit a substantiated request asking the commission to examine whether a third-country measure is coercive in the sense of the ACI. In addition, the commission may invite stakeholders to submit information to help determine whether the third-country measures are coercive. This enables EU economic operators to play a role at the initial stages of the procedure.

Then, and perhaps more importantly, any response measure must be in the general interest of the EU, which includes, among others, the interests of EU economic operators. This includes upstream and downstream industries, and the interests of EU final consumers affected or potentially affected by the economic coercion, or by any EU response measures.

Response measures must be proportionate and effective. They must avoid or minimize, to the greatest extent possible, any negative impact on EU actors. This is especially the case if these actors have limited alternatives for doing business with the coercive third country as a source of supply for goods or services. The commission is obliged to be mindful of the investment environment in the EU or a member state when choosing how to respond.

Thus, when assessing what constitutes a lawful response measure under the ACI, the commission will have to seek the views of EU economic operators. This will also be the case when the commission intends to amend, suspend or terminate the ACI measures. In this way, the voice of EU businesses will be heard at every stage of the procedure and will play an essential role in determining the EU interest at large.

### **Use of Anticoercion Instruments**

The ACI defines the term "coercion" in broad terms. It covers any third-country measure affecting trade or investment in order to prevent or obtain the cessation, modification or adoption of a particular act by the EU or a member state.

Thus, the third-country measure must necessarily be linked to a particular act, whether a legal act or the expression of a position, and regardless of whether this particular act emanates from the EU, a member state, a third country or an international organization.

Given that broad definition and the associated political pressure, we anticipate that EU member states and their politicians will closely examine the extent to which the ACI can be used to protect EU interests in response from the U.S. to any new policies or challenges to existing policies.

The ACI tool appears better designed to capture challenges to EU legislation, e.g., challenges to the application of the Digital Services or Digital Markets Acts, which appear nonnegotiable according to the latest reports, and less well-tailored to U.S. actions that the latter justifies on national security grounds, as in the case of Section 232 measures.[8]

However, we expect the EU to closely examine any action and weigh carefully its ability and political willingness to respond. EU Commissioner Valdis Dombrovskis confirmed in January at the World Economic Forum in Davos, Switzerland, that the EU will respond in a proportionate way to any U.S. increase in tariffs on the EU.[9]

However, for the ACI to be effective as a response to changes in U.S. policy, a number of things need to happen. First, the member states must decide on a concerted response against the U.S. This is not a given. The saga of whether to impose tariffs on battery electric vehicles from China in October showed the reluctance expressed by some EU member states to challenge major powers on burning issues.[10]

As the U.S. is a key trading partner and a military ally of EU member states, initiating an ACI case against the U.S. could cause transatlantic relations to deteriorate to a point where it could be damaging for certain member states. Some may also consider that such a procedure would give too much economic or geopolitical power to the commission. In addition, some EU heads of state might prefer to engage in bilateral relations in the hope of securing a better trade deal.

### **Practical Takeaways**

In sum, despite the commission's displayed intention to negotiate, economic operators should expect the commission to contemplate initiating an ACI procedure and prepare accordingly. It is always a good idea for companies to examine their exposure to trade in goods that have previously been targeted by the EU's rebalancing tariffs.

This would only be a start, as the ACI aims at expanding the scope of the retaliation. The EU could thus choose to target goods other than the usual suspects, such as bourbon, motorcycles, corn, jeans, etc.

If the ACI is activated, operators should bear in mind that, in many respects, the ACI shares common investigatory threads with other trade instruments. In particular, the ACI provides for consultation with the EU industry to determine whether the EU response measures are in the EU's interest.

Members of the EU industry will have the opportunity to express their views and defend their interests

during the procedure. In the absence currently of commission guidelines on the ACI, economic operators should draw on these familiar contexts when discussing the measures.

In contrast, EU companies are likely to have a limited role in initiating an ACI procedure, at least until the instrument is road-tested by the commission. The instrument remains politically sensitive, and its use requires qualified majority support from EU member states at initiation stage. In all likelihood, the launch of the first ACI procedure will be decided between the commission and EU member states behind closed doors.

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[1] [https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=OJ:L\\_202302675](https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=OJ:L_202302675).

[2] <https://www.whitehouse.gov/fact-sheets/2025/02/fact-sheet-president-donald-j-trump-restores-section-232-tariffs/>.

[3] <https://www.whitehouse.gov/fact-sheets/2025/02/fact-sheet-president-donald-j-trump-announces-fair-and-reciprocal-plan-on-trade/>.

[4] <https://ustr.gov/issue-areas/enforcement/section-301-investigations>; <https://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=CELEX:32022R2065>.

[5] <https://www.whitehouse.gov/presidential-actions/2025/01/america-first-trade-policy/>.

[6] [https://ec.europa.eu/commission/presscorner/api/files/document/print/en/ip\\_21\\_5724/IP\\_21\\_5724\\_EN.pdf](https://ec.europa.eu/commission/presscorner/api/files/document/print/en/ip_21_5724/IP_21_5724_EN.pdf).

[7] <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A02014R0654-20210213>.

[8] <https://www.politico.eu/article/europe-peace-offerings-to-us-donald-trump-gas-cars-and-guns-maros-sefcovic/>.

[9] <https://www.cnbc.com/2025/01/22/europe-ready-to-respond-to-trump-tariffs-in-a-proportionate-way-top-eu-official-says.html>.

[10] <https://www.reuters.com/business/autos-transportation/germany-vote-against-eu-tariffs-chinese-electric-vehicles-sources-say-2024-10-03/>.