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Anti-Coercion Instrument

The "bazooka" of the European Union to shield EU industry

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Amid escalating global trade tensions, the European Union (*EU*) faces significant challenges as U.S. President Donald Trump announced new tariffs impacting EU exports and sending shockwaves to the capital markets. A 20% tariff on all EU imports starting April 5, 2025 were introduced. These measures are claimed to reduce the U.S. trade deficit and bolster domestic manufacturing. As an affected company, you can check this list of exempted products not subject to the 20% additional tariffs. However, please be aware that some of these products are subject to their own tariffs, such as the 25% tariff on imported automobiles and automobile parts.

In response to the U.S.' action, EU officials are exploring diplomatic negotiations to address these tariffs. Additionally, the EU's Anti-Coercion Instrument (*ACI*) provides a robust mechanism to counteract such economic pressures. This briefing examines the ACI's framework, procedures, and potential implications for EU companies amid the current trade environment.

What is economic coercion?

The ACI defines economic coercion as measures taken by third countries that negatively affect international trade or investment with the aim of pressuring the EU or its Member States to adopt or refrain from adopting certain sovereign policy choices.

A prime example cited in the press for coercion is China's trade restrictions against Lithuania in response to Lithuania's decision to allow the opening of a "Taiwan" representative office in 2021. These restrictions included not only direct measures against Lithuanian products but also indirect threats towards EU companies using Lithuanian components.

It is debatable whether the U.S. tariffs alone are sufficient to speak of economic coercion to the EU as it is unclear to what behavior the U.S. wants to force the EU. However, forcing companies to invest or else to suffer tariffs might be in scope. In any event, the EU has a wide margin of discretion to ascertain economic coercion and will use the tool as part of the negotiations.

What is the procedure?

The ACI follows a multi-stage process, focused on deterrence first, then de-escalation, and countermeasures only as a last resort. If the European Commission suspects economic coercion by a third country, it initiates an investigation. The primary goal is de-escalation through diplomatic means such as negotiation or mediation. Only if these efforts fail, and the Council confirms the existence of coercion by qualified majority, the Commission may propose proportionate countermeasures. These measures are adopted via implementing acts by the Commission after consultation with stakeholders. The entire procedure is designed to be concluded within one year.

What are the possible countermeasures?

The countermeasures are designed to be proportionate and targeted, aiming to induce the cessation of coercive actions. The potential countermeasures include:

1. Imposition of Tariffs: Introducing new or increased customs duties on imports or exports.
2. Trade Restrictions: Implementing quotas or other quantitative limits on trade in goods.
3. Service and Investment Limitations: Restricting trade in services and foreign direct investment.
4. Public Procurement Measures: Limiting access to public procurement markets.
5. Intellectual Property Rights Restrictions: Suspending obligations related to intellectual property rights protections.
6. Financial Measures: Imposing restrictions in the financial sector, such as limitations on capital movements or payments.

The selection and design of these measures are guided by principles of proportionality and effectiveness, ensuring they are commensurate with the injury suffered and aim to induce the cessation of the coercive measures. The EU also considers the potential impact on its own economic interests and seeks to minimise unintended consequences.

Is the ACI compatible with WTO law?

Even if rule-based actions are currently not followed everywhere, it is worth noticing that the compatibility of the ACI with WTO law is a subject of legal debate. Critics argue that actions under the ACI could be viewed as unilateral, potentially conflicting with WTO obligations. However, the Commission maintains that the ACI addresses economic coercion – a matter of general international law not specifically covered by WTO agreements – and thus does not circumvent the WTO dispute settlement system.

Won’t ACI measures hurt the EU economy?

While the ACI’s primary aim is to safeguard the EU’s economic sovereignty, the implementation of countermeasures under the ACI can have significant implications for EU companies and the broader economy by a further escalating trade conflict with the U.S. This may restrict the EU companies' access to international markets even further. This is why the EU will think twice before enacting the ACI and in the event of application to design ACI measures that are proportionate and minimise negative impacts on its own economy.

BLOMSTEIN will continue to closely monitor the developments surrounding the trade conflict. If you have any questions on this topic, Roland M. Stein, Florian Wolf and Leonard von Rummel are ready to assist you.

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