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WORKING DOCUMENT

From:	European Commission
To:	Working Party on Trade Questions
Subject:	Anti-Coercion Instrument - Presentation by the Commission at the Informal video conference of the members of the Working Party on Trade Questions on Thursday, 9 December 2021



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Anti-Coercion Instrument



protecting EU interests

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 (8 December 2021 COM(2021) 775 final/ 2021/0406 (COD))



Political context

- The EU is an open economy connected to the rest of the world that relies on trade and investment for both economic (including to recover from the pandemic and to remain competitive) and geopolitical reasons (to shape global solutions in line with its interests and values).
- In a context of rising geopolitical tensions with multilateralism in crisis and trade increasingly weaponised, the EU must have the necessary tools at its disposal to respond to economic coercion.
- Presently, there is no specific legal framework in an existing instrument to permit EU action against a third country to respond to coercive measures of third countries.
- The use of economic coercion for geopolitical ends has increased recently, blurring economic and geopolitical lines. Most recently, power conflicts are re-emerging in a more tense geopolitical environment.



Genesis



- The initiative for the creation of an Anti-Coercion Instrument originates in the legislative process during 2020 to amend the EU Trade Enforcement Regulation, where the European Parliament and a number of Member States raised concerns about coercion.
- In October 2020, the Commission, the Council and the European Parliament agreed on a Joint Declaration to create a new instrument to deter and counteract coercion (published in February 2021).
- The Commission President announced the initiative in her Letter of Intent to the President of the Parliament and President in office of the Council of 16 September 2020 under the heading “An economy that works for people”.
- The proposal of 8 December 2021 delivers on the Commission’s commitment to present a legislative proposal by the end of 2021. In the Joint Declaration, European Parliament and Council committed to consider the proposal in a timely manner.

Impact Assessment

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- Process
 - Inception impact assessment
 - Public consultation
 - Stakeholder meeting
 - Impact assessment report
- Main elements
 - Problem definition
 - Options
 - Likely impact



Objectives

- Contribute to preserving the legitimate policymaking space of the EU and Member States.
- Protect the international rights and interests of the EU and its Member States.
- Protect the economic interests of EU economic operators by preventing or limiting economic losses as a result of foreign countries' coercive actions.
- The instrument does this by seeking to deter coercion in the first place and counteract coercion if necessary.



Overview

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Assessment of third country measures

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Activation

Initiative of the Commission

Notice by any natural or legal person, association or public authority to the Commission on third-country measures



Examination: are the conditions of application met?

Interference in the legitimate sovereign choices of the Union or a Member State, by seeking to prevent or obtain some policy action

Applying or threatening to apply measures that affect trade or investment



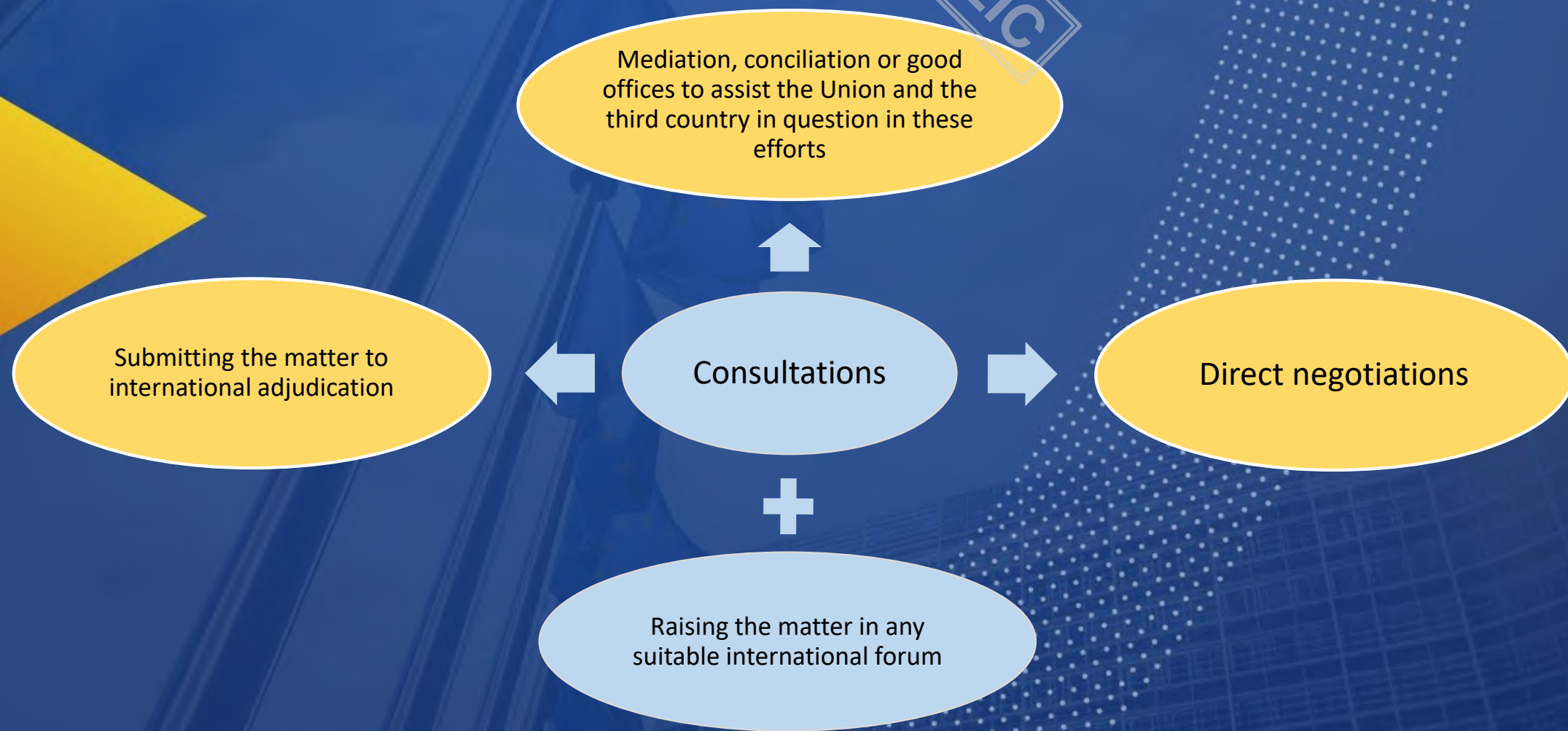
Determination via Commission decision

Communication of determination to the third country with request to cease the coercion

Possible request that any damage be repaired



Efforts to end the coercion





Response through countermeasures – procedure

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Assessment:
Cessation of the coercion and reparation for the damage?
Action necessary to protect the interests and rights of the Union and of the Member States?

Union's interest to take such action?

Information gathering:
Public communication and consultations with stakeholders

Adoption of the implementing act and call on the third country to end its measures within a certain period of time

Imposition of temporary countermeasures



Countermeasures provided by the Proposal – content and design

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Design Principles:

- Effectiveness
- Potential to provide relief to operators in the Union
- Avoidance or minimisation of negative impacts on affected actors or Union policies
- Avoidance of disproportionate administrative complexity and costs
- Existence and nature of measures enacted by other countries
- Any other specific criteria established in international law



Range of measures:

- New or increased customs duties
- Restrictions on the importation, exportation or transit of goods
- Exclusion from public procurement or price penalties
- Other internal measures on goods
- Restrictions on trade in services
- Restrictions on the protection or exploitation of intellectual property
- Restrictions on foreign direct investment
- Withholding of EU funding

Countermeasures within the Commission's powers

- Next to the countermeasures pursuant to the proposed Regulation, the Commission may consider to take measures not listed in the Proposal that fall under its prerogatives.
- Any such action must be synchronised with the action under the proposed Regulation.
- Communication from the Commission further specifies these countermeasures with special regard to the granting of EU funding.



International cooperation

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- General co-ordination on the issue of coercion
- Entering into consultations or cooperation with any other interested country, e.g. affected by the same or similar coercive measures or otherwise interested
- Where appropriate, coordination in relevant international fora and coordination in the response to the coercion

After the imposition of countermeasures

- Measures only as long as the coercion is in place: suspension/termination as soon as the coercion is suspended or terminated.
- Possibly resumption of talks/settlement efforts (adjudication?)
- The Proposal contains the mechanisms for these purposes.
- Overall objective remains to deter coercion, and stop it where the deterrence has not worked. Countermeasures are a “last resort”, but not the end of the process and certainly not the aim.



Flowchart



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

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

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

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

Solution found,
Country X ceases its coercion


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

Country X comes to terms with the EU, and as soon as the coercion stops, the EU removes its countermeasures



Further information

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- Website of the Anti-Coercion Instrument:
[https://trade.ec.europa.eu/doclib/press/index.cfm?id=2245
&title=Towards-an-EU-anti-coercion-instrument](https://trade.ec.europa.eu/doclib/press/index.cfm?id=2245&title=Towards-an-EU-anti-coercion-instrument)
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