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WORKING DOCUMENT

From:	NL Delegation
To:	Working Party on Trade Questions
Subject:	Anti-Coercion Instrument (ACI) - NL comments on clusters 3 and 4

**Table for MS comments on the 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**

Articles 7 to 17

	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	MS comments or questions	MS drafting suggestions
32	Article 7 Union response measures		
33	1. The Commission shall adopt an implementing act determining that it shall take a Union response measure where:		
34	(a) action pursuant to the Articles 4 and 5 has not resulted in the cessation of the economic coercion and reparation of the injury it has caused to the Union or a Member State within a reasonable period of time;	We believe the addition of “where appropriate” would be important here as reparation applies when there is a breach of international law – some acts of economic coercion could take place in a grey area where attribution would be challenging for example, and an act cannot be regarded as ‘internationally wrongful’.	(a) action pursuant to the Articles 4 and 5 has not resulted in the cessation of the economic coercion and, where appropriate , reparation of the injury it has caused to the Union or a Member State within a reasonable period of time;
35	(b) action is necessary to protect the interests and rights of the Union and its Member States in that particular case, and		

36	(c) action is in the Union's interest.		
37	In the implementing act, the Commission shall also determine the appropriate Union response from among the measures provided for in Annex I. Such measures may also apply with regard to natural or legal persons designated in accordance with Article 8. The Commission may also adopt measures which it can take pursuant to other legal instruments.	We believe it could be helpful if some examples are given of measures the Commission may also adopt 'pursuant to other legal instruments', that are also mentioned in the Communication accompanying the proposal.	
38	The implementing act shall be adopted in accordance with the examination procedure referred to in Article 15(2).	Close involvement of MS throughout application of the instrument is important to NL. We have questions on the examination procedure as currently proposed by COM, especially where it would concern response measures that are also linked to areas other than the common commercial policy (type of response measure or the level of application). We will take a further look at this part of the proposal after further discussion in Council, reflections of the Council legal service on this matter, as well as the Commission's further explanation on the range of response measures.	
39	2. The Union response measures shall apply from a specified date after the adoption of the implementing act		

	referred to in paragraph 1. The Commission shall set this date of application, taking into account the circumstances, to allow for the notification of the third country concerned pursuant to paragraph 3 and for it to cease the economic coercion.		
40	3. The Commission shall, upon adoption of the implementing act, notify the third country concerned of the Union response measures adopted pursuant to paragraph 1. In the notification, the Commission shall, on behalf of the Union, call on the third country concerned to promptly cease the economic coercion, offer to negotiate a solution, and inform the third country concerned that the Union response measure will apply, unless the economic coercion ceases.	We are curious how the Commission will determine whether economic coercion has ceased, as the discontinuation of acts can often have a considerable time lag, or some businesses might not be affected anymore, while others (e.g. those whose products enter a third market via other ports) continue to report issues.	
41	4. The implementing act referred to in paragraph 1 shall state that the application of the Union response measures shall be deferred for a period specified in that implementing act, where the Commission has credible information that the third country has ceased the economic coercion before the start of application of the adopted Union response measures. In that event, the Commission shall publish a notice in the Official Journal of the European Union indicating that there is such information and the date from which the deferral shall apply. If the third country ceases the economic coercion before the Union response measures start to apply, the Commission shall terminate the Union response measures in accordance with Article 10.		
42	5. Notwithstanding paragraphs 2, 3 and 4, the Union response measures may apply without the Commission, on behalf of the Union, first calling, once more, on the third country concerned to cease the economic coercion or without the Commission first notifying it that Union response measure		

	will apply, where this is necessary for the preservation of the rights and interests of the Union or Member States, notably of the effectiveness of Union response measures.		
43	6. On duly justified imperative grounds of urgency to avoid irreparable damage to the Union or its Member States by the measures of economic coercion the Commission shall adopt immediately applicable implementing acts imposing Union response measures, in accordance with the procedure referred to in Article 15(3). The requirements set out in paragraphs 2 to 5 shall apply. Those acts shall remain in force for a period not exceeding three months.	Considering, among other things, the geopolitical character of the instrument and the consequences application can have on relations with third countries, NL is not convinced of the desirability and necessity of the urgency procedure. In our view, the examination procedure already provides room for sufficiently swift decision-making, should this be necessary. We would appreciate information on why the Commission thinks the urgency procedure is necessary (e.g. based on past experiences).	
44	7. The Commission is empowered to adopt delegated acts in accordance with Article 14 to amend the list provided for in Annex I in order to provide additional types of measures to respond to a third country's measure. The Commission may adopt such delegated acts where the types of response measures would:	We do not support this proposed delegation of power, as it concerns amendments to what are in our view essential parts of the proposed Regulation, that can have far-reaching ramifications, and therefore cannot be delegated.	
45	(a) be as effective or more effective than the response measures already provided for in terms of inducing the cessation of measures of economic coercion;		

46	(b) provide as effective or more effective relief to economic operators within the Union affected by the measures of economic coercion;		
47	(c) avoid or minimise the negative impact on affected actors; or		
48	(d) avoid or minimise administrative complexity and costs.		
49	Article 8 Union response measures with regard to natural or legal persons		
50	1. The Commission may provide, in the implementing act referred to in Article 7(1), or in a separate implementing act, that:		
51	(a) legal or natural persons designated in accordance with paragraph 2 point (a) shall be subject to Union response measures; or		
52	(b) without prejudice to the responsibility of the third country under international law, Union natural or legal persons affected by the third country's measures of economic coercion shall be entitled to recover, from persons designated pursuant to paragraph 2, point (b), any damage caused to them by the measures of economic coercion up to the extent of the designated persons' contribution to such measures of economic coercion.	We understand the Commission has opted to include a recovery option in light of calls from business for a compensation mechanism. Following the article-by-article discussion, we still wonder how the recovery option would play out in practice. As previously discussed in the WPTQ, quantification of damages and attribution of economic coercion and especially to the extent of the	

		designated persons' contribution remain difficult. We would also like to point out difficulties experienced by businesses regarding the recovery option under the Blocking Statute, including the procedure being unclear.	
53	Those measures shall apply as of the same date of application as the Union response measures adopted pursuant to Article 7, or as of a later date specified in the implementing act pursuant to this paragraph.		
54	Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 15(2).		
55	2. The Commission may designate a natural or legal person where it finds:		
56	(a) that such person is connected or linked to the government of the third country concerned; or,		
57	(b) that such person is connected or linked to the government of the third country concerned and has additionally caused or been involved in or connected with the economic coercion.		
58	3. In making this designation the Commission shall examine all relevant criteria and available information, including whether the persons concerned are known to effectively act on behalf of, or are beneficially owned or otherwise effectively controlled by the government of the third country.		

59	4. Where the Commission has grounds to consider that persons should be designated pursuant to paragraph 2, point (a) or point (b) it shall publish a provisional list of persons and, where relevant, the possible measures pursuant to Annex I that they would be subject to. Before deciding on designation, it shall give any persons provisionally designated and other interested parties the opportunity to submit comments on the possible designation, in particular whether they fall under the conditions of paragraph 2, point (a) or point (b). The Commission may also seek additional information it considers pertinent concerning the potential designation.	Does the Commission foresee an appeal option following designation (besides the appeal option for persons at an EU court)?	
60	Article 9 Criteria for selecting and designing Union response measures		
61	1. Any Union response measure shall not exceed the level that is commensurate with the injury suffered by the Union or a Member State due to the third country's measures of economic coercion, taking into account the gravity of the third country's measures and the rights in question.		
62	2. The Commission shall select and design an appropriate response measure taking into account the determination made pursuant to Article 4, the criteria set out in Article 2(2) and the Union's interest, on the basis of available information, including as collected pursuant to Article 11, and the following criteria:		
63	(a) the effectiveness of the measures in inducing the cessation of the economic coercion;		

64	(b) the potential of the measures to provide relief to economic operators within the Union affected by the economic coercion;		
65	(c) the avoidance or minimisation of negative impacts on affected actors by Union response measures, including the availability of alternatives for affected actors, for example alternative sources of supply for goods or services;		
66	(d) the avoidance or minimisation of negative effects on other Union policies or objectives;	NL appreciates the Commission's explanation that (d) purposely covers a wide range "other Union policies or objectives". Based on previous discussions, we understand the Commission intends to follow a certain logic when selecting response measures (e.g. in choosing between measures affecting existing or new/ pending authorisations to minimize negative effects). As indicated in the comments to annex I, we believe a hierarchy of steps might be useful to address concerns regarding possible negative effects on other Union policies or objectives.	
67	(e) the avoidance of disproportionate administrative complexity and costs in the application of the Union response measures;		

68	(f) the existence and nature of any response measures enacted by other countries affected by the same or similar measures of economic coercion, including where relevant any coordination pursuant to Article 6;		
69	(g) any other relevant criteria established in international law.		
70	3. The Commission may decide to apply Union response measures under Articles 7 or 8 consisting of restrictions on foreign direct investment or on trade in services also with regard to services supplied, or direct investments made, within the Union by one or more legal persons established in the Union and owned or controlled by persons of the third country concerned where necessary to achieve the objectives of this Regulation. The Commission may decide on such application where Union response measures not covering such situations would be insufficient to effectively achieve the objectives of this Regulation, in particular where such measures could be avoided. In assessing whether to adopt such a decision the Commission shall consider, in addition to the criteria in paragraphs 1 and 2, amongst other things:	“The Commission may decide on such application where Union response measures not covering such situations would be insufficient to effectively achieve the objectives of this Regulation, <u>in particular where such measures could be avoided.</u>” > It is unclear what the underlined part of the sentence refers to. If this refers to risk of avoidance (which we assume), this could be clarified in our view.	
71	(a) the patterns of trade in services and investment in the sector targeted by the envisaged Union response measures and the risk of avoidance of any Union response measures not applying to services supplied, or direct investments made, within the Union;	Here, the relation between the risk of avoidance of response measures not specifically geared towards services supplied, or direct investments made, within the Union could also be clarified.	
72	(b) the effective contribution of such intra-Union restrictions to the objective of obtaining the cessation of the measure of economic coercion;		

73	(c) the existence of alternative measures capable of achieving the objective of obtaining the cessation of the measure of economic coercion that are reasonably available and less restrictive of trade in services or investment within the Union.		
74	Any decision to apply restrictions with regard to services supplied, or direct investments made, within the Union by one or more legal persons established in the Union shall be duly justified in the implementing act referred to in paragraph 1 of Article 7 in light of the above criteria.		
75	Article 10 Amendment, suspension and termination of Union response measures		
76	1. The Commission shall keep under review the measures of economic coercion deployed by a third country that have triggered the Union response measures, the effectiveness of the Union response measures adopted and their effects on the Union's interests and shall keep the European Parliament and the Council informed thereof.		
77	2. Where the third country concerned suspends the economic coercion, or where it is necessary in the Union's interest, the Commission may suspend the application of the respective Union response measure for the duration of the third country's suspension, or as long as necessary in light of the Union's interest. The Commission shall suspend the Union response measures if the third country concerned has offered, and the Union has concluded, an agreement to submit the matter to binding international third-party adjudication	What would happen in case there is a an agreement to submit the matter to binding international third-party adjudication, and the outcome of the examination procedure does not lead to the adoption of suspension of response measures via an implementing act?	

	and the third country is also suspending its measures of economic coercion. The Commission shall, by means of an implementing act, decide to suspend the Union response measure. These implementing acts shall be adopted in accordance with the examination procedure referred to in Article 15(2).		
78	3. Where it is necessary to make adjustments to Union response measures taking into account the conditions and criteria laid down in Articles 2 and 9(2), or further developments, including the third country's reaction, the Commission may, as appropriate, amend Union response measures adopted in accordance with Article 7, by means of an implementing act, in accordance with the examination procedure referred to in Article 15(2).		
79	4. The Commission shall terminate Union response measures under any of the following circumstances:		
80	(a) where the economic coercion has ceased;		
81	(b) where a mutually agreed solution has otherwise been reached;		
82	(c) where a binding decision in international third-party adjudication in a dispute between the third country concerned and the Union or a Member State requires the withdrawal of the Union response measure;		
83	(d) where it is appropriate in light of the Union's interest.		
84	The termination of Union response measures adopted in accordance with Article 7 shall be decided, by means of an		

	implementing act, in accordance with the examination procedure referred to in Article 15(2).		
85	5. On duly justified imperative grounds of urgency, the Commission shall adopt immediately applicable implementing acts suspending, amending or terminating Union response measures adopted in accordance with Article 7. Those implementing acts shall be adopted in accordance with the procedure referred to in Article 15(3) and they shall remain in force for a period not exceeding two months.	NL is not convinced of the desirability and necessity of the urgency procedure. In our view, the examination procedure already provides room for sufficiently swift decision-making, should this be necessary. We would appreciate information on why the Commission thinks the urgency procedure is necessary (e.g. based on past experiences).	
86	Article 11 Information gathering related to Union response measures		
87	1. Before the adoption of Union response measures or the amendment of such measures, the Commission shall, and before the suspension or termination of such measures, respectively, the Commission may, seek information and views regarding the economic impact on Union operators and Union's interest, through a notice published in the Official Journal of the European Union or through other suitable public communication means. The notice shall indicate the period within which the input is to be submitted.		
88	2. The Commission may start the information gathering at any time it deems appropriate.		
89	3. In conducting the information gathering under paragraph 1, the Commission shall inform and consult stakeholders, in particular industry associations, affected by		

	possible Union response measures, and Member States involved in the preparation or implementation of legislation regulating the affected fields.		
90	4. Without unduly delaying the adoption of Union response measures, the Commission shall, in particular, seek information on:		
91	(a) the impact of such measures on third-country actors or Union competitors, users or consumers or on Union employees, business partners or clients of such actors;		
92	(b) the interaction of such measures with relevant Member State legislation;		
93	(c) the administrative burden which may be occasioned by such measures;		
94	(d) the Union's interest.		
95	5. The Commission shall take utmost account of the information gathered during the information gathering exercise. An analysis of the envisaged measures shall accompany the draft implementing act when submitted to the committee in the context of the examination procedure referred to in Article 15(2).		
96	6. Prior to the adoption of an implementing act in accordance with Article 7(6) or Article 10(5), the Commission shall seek information and views from relevant stakeholders in a targeted manner, unless the imperative grounds of urgency are such that information seeking and consultations are not possible or not needed for objective reasons, for	Could the Commission clarify when information gathering would not be possible or needed in case of imperative grounds of urgency to ensure compliance with international obligations of the Union?	

	instance to ensure compliance with international obligations of the Union.		
97	Article 12 Confidentiality		
98	1. Information received pursuant to this Regulation shall be used only for the purpose for which it was requested.		
99	2. The supplier of information may request that information supplied be treated as confidential. In such cases, it shall be accompanied by a non-confidential summary or a statement of the reasons why the information cannot be summarised. The Commission, the Council, the European Parliament, Member States or their officials shall not reveal any information of a confidential nature received pursuant to this Regulation, without specific permission from the supplier of such information.		
100	3. Paragraph 2 shall not preclude the Commission to disclose general information in a summary form, which does not contain information allowing to identify the supplier of the information. Such disclosure shall take into account the legitimate interest of the parties concerned in not having confidential information disclosed.		
101	Article 13 Rules of origin		

102	1. The origin or nationality of a good, service, service provider, investment or intellectual property rightholder shall be determined in accordance with Annex II.		
103	2. The Commission is empowered to adopt delegated acts in accordance with Article 14 to amend points 2 to 4 of Annex II in order to amend the rules of origin and add any other technical rules necessary for the application of the Regulation, to ensure its effectiveness and to take account of relevant developments in international instruments and experience in the application of measures under this Regulation or other Union acts.		
104	Article 14 Delegated Acts	Please refer to our comment on art. 7.7 (line 44). While we see the need for a broad range of possible response measures to achieve an effective instrument that can be applied in a targeted manner, we are critical of the proposal of the Commission to be able to amend Annex I via delegated acts. We consider Annex I as an essential element of the proposal.	
105	1. The power to adopt delegated acts is conferred on the Commission subject to the conditions laid down in this Article.		
106	2. The power to adopt delegated acts referred to in Articles 7(7) and 13(2) shall be conferred on the Commission for an indeterminate period of time from [date of entry into force].	We believe this conferral should be for a specified period of time, with the possibility of tacit extension.	

107	3. The delegation of power referred to in Articles 7(7) and 13(2) may be revoked at any time by the European Parliament or by the Council. A decision to revoke shall put an end to the delegation of the power specified in that decision. It shall take effect the day following the publication of the decision in the Official Journal of the European Union or at a later date specified therein. It shall not affect the validity of any delegated acts already in force.		
108	4. Before adopting a delegated act, the Commission shall consult experts designated by each Member State in accordance with the principles laid down in the Interinstitutional Agreement on Better Law-Making of 13 April 2016.		
109	5. As soon as it adopts a delegated act, the Commission shall notify it simultaneously to the European Parliament and to the Council.		
110	A delegated act adopted pursuant to Articles 7(7) and 13(2) shall enter into force only if no objection has been expressed either by the European Parliament or by the Council within a period of two months of notification of that act to the European Parliament and the Council or if, before the expiry of that period, the European Parliament and the Council have both informed the Commission that they will not object. That period shall be extended by two months at the initiative of the European Parliament or of the Council.		
111	Article 15 Committee procedure	Close involvement of MS throughout application of the instrument is important to the Netherlands. We have questions on the examination procedure as currently proposed by	

		the Commission, especially where it would concern response measures that are also linked to areas other than the common commercial policy. We will take a further look at this part of the proposal after reflections of the Council legal service on this matter and further internal consultation.	
112	1. The Commission shall be assisted by a Committee. That committee shall be a committee within the meaning of Article 3 of Regulation (EU) No 182/2011.		
113	2. Where reference is made to this paragraph, Article 5 of Regulation (EU) No 182/2011 shall apply.		
114	3. Where reference is made to this paragraph, Article 8 of Regulation (EU) No 182/2011 in conjunction with Article 5 thereof, shall apply.		
115	Article 16 Review		
116	1. The Commission shall evaluate any Union response measure adopted pursuant to Article 7 six months after its termination, taking into account stakeholder input and any other relevant information. The evaluation report shall examine the effectiveness and operation of the Union response measure, and draw possible conclusions for future measures.	We understand that a review of response measures will not always yield useful insights for future application, but suggest a clarification of the text.	The Commission shall evaluate any Union response measure adopted pursuant to Article 7 six months after its termination, taking into account stakeholder input and any other relevant information. The evaluation report shall examine the effectiveness and operation of the Union response measure, and possibly draw possible conclusions for future measures.

117	2. No later than three years after the adoption of the first implementing act under this Regulation or six years after the entry into force of this Regulation, whichever is earlier, the Commission shall review this Regulation and its implementation and shall report to the European Parliament and the Council.		
118	Article 17 Entry into force		
119	This Regulation shall enter into force on the twentieth day following that of its publication in the Official Journal of the European Union.		
120	This Regulation shall be binding in its entirety and directly applicable in all Member States.		
	END	END	END

**Table for MS comments on the 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**

Annexes 1 and 2

	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	MS comments or questions	MS drafting suggestions
121	<u>ANNEX I</u> Union response measures pursuant to Articles 7 and 8	In this phase, we only submit comments and questions regarding the response measures listed in this annex. Following additional clarification by the Commission on the scope and possible application of the response measures, we will further determine our position and might submit drafting suggestions. In general, we feel that after the article-by-article exchange in the WPTQ, a lot is still unclear regarding annex I. This both concerns the scope of the measures and the manner in which these could be applied. While we support a broad range of possible countermeasures in view of the desired effectiveness of the instrument, in our view it might be necessary to further clarify some proposed measures, especially where the current description can be seen as	

		conflicting with other Union policy objectives. For example, when would the Commission select measures that affect existing registrations or authorisations instead of new or pending ones? In the Impact Assessment, the following is mentioned (p.35): “it would be necessary to analyse, on a case-by-case basis, the extent to which existing authorisations/ permissions/ grants should be withdrawn given these might impact an already established legal environment and whether the focus should be on future authorisations/permissions/grants” Why not make this selection process more explicit, similar to the additional considerations under art. 9.3 regarding services supplied, or direct investments made, within the Union? Furthermore, we still have questions on how some proposed response measures relate to existing legislative instruments concerning the internal market, and decisions on registrations or authorizations that take place under these instruments. What if an implementing act under ACI is	
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		adopted based on TFEU 207, whereas an existing registration has been granted based on legislation with TFEU 114 as the legal basis? A non-paper or briefing by the Commission on the response measures could also help to provide clarification.	
122	Measures which may be adopted pursuant to Articles 7 and 8 are:		
123	(a) the suspension of any tariff concessions, as necessary, and the imposition of new or increased customs duties, including the re-establishment of customs duties at the most-favoured-nation level or the imposition of customs duties beyond the most-favoured-nation level, or the introduction of any additional charge on the importation or exportation of goods;		
124	(b) the suspension of applicable international obligations, as necessary, and the introduction or increase of restrictions on the importation or exportation of goods, whether made effective through quotas, import or export licences or other measures, or on the payment for goods;	Which international obligations could apply and what type of restrictions “on the payment of goods”?	
125	(c) the suspension of applicable international obligations, as necessary, and the introduction of restrictions on trade in goods made effective through measures applying to transiting goods or internal measures applying to goods.	Does “transiting goods” refer to use of the Customs Transit procedure? Could the Commission illustrate which type of measures could fall under “internal measures applying to	

		goods”?	
126	(d) the suspension of applicable international obligations concerning the right to participate in tender procedures in the area of public procurement, as necessary, and:		
127	(i) the exclusion from public procurement of goods, services or suppliers of goods or services of the third country concerned or the exclusion of tenders the total value of which is made up of more than a specified percentage of goods or services of the third country concerned; and/or	We see the Commission follows the approach taken in the Trade Enforcement Regulation and 2014/25/EU. We do have doubts about the option to exclude tenders with a specified percentage of goods or services of the third country concerned. In IPI, this measure was abandoned in favor of focusing on the origin of economic operators instead of the origin of goods and services – and included an origin criterion under the additional contractual obligations following the application of an IPI-measure. Additionally, “more than a specified percentage of goods or services of the third country concerned” seems rather vague. Why has the Commission not opted for “originating in”?	
128	(ii) the imposition of a mandatory price evaluation weighting penalty ¹ on tenders of goods, services or suppliers of goods or services of the third country concerned.	While we realise the inclusion of a price adjustment measure has been taken from the Trade Enforcement Regulation, we wonder why the Commission has not opted for a broader score adjustment measure, as	

		has been provisionally agreed upon regarding IPI?	
129	1 Mandatory price evaluation weighting penalty means an obligation for contracting authorities or entities conducting public procurement procedures to increase, subject to certain exceptions, the price of goods or services falling under this paragraph that have been offered in contract award procedures.	What are the exceptions the Commission refers to here? Does COM intend to include the same exceptions as have been provisionally agreed upon regarding IPI?	
130	Origin shall be determined on the basis of Annex II;		
131	(e) the suspension of applicable international obligations, as necessary, and the imposition of restrictions on the exportation of goods falling under the Union export control regime;	Does the reference to ‘Union export control regime’ refer to all Union export control legislation here? Additionally, could “the imposition of restrictions on the exportation of goods” also include measures on providers of technical assistance, for example?	
132	(f) the suspension of applicable international obligations regarding trade in services, as necessary, and the imposition of measures affecting trade in services;	Would visa measures (as outlined under C2 in the Impact Assessment) also fall under (f)?	
133	(g) the suspension of applicable international obligations, as necessary, and the imposition of measures affecting foreign direct investment;	We would appreciate further information on the scope of measures that could fall under (g), besides the exchange that has taken place in the WTPQ on existing vs. new investments.	

134	(h) the suspension of applicable international obligations with respect to trade-related aspects of intellectual property rights, as necessary, and the imposition of restrictions on the protection of such intellectual property rights or their commercial exploitation, in relation to right-holders who are nationals of the third country concerned;	We would like to gain a better understanding of the possible actions that could be taken with regard to IPR. We understood from discussions in WPTQ that the Commission would primarily look at new requests, or to increase fees, but what are the possible type of measures exactly? Are these identical to the measures outlined regarding the Trade Enforcement Regulation and mentioned in COM(2022) 74 final regarding the report on the scope of the TER? Additionally, in the TER “granted by a Union institution or agency and valid throughout the Union” is included with regard to the scope of IPR measures. Limitation to Union rights in the TER is of importance, why has the Commission chosen to omit this?	
135	(i) the suspension of applicable international obligations with respect to financial services, as necessary, and the imposition of restrictions for banking, insurance, access to Union capital markets and other financial service activities;	Could the Commission specify what concrete measures restrictions on Union capital markets would entail?	
136	(j) the suspension of applicable international obligations with respect to the treatment of goods, as necessary, and the imposition of restrictions on registrations and authorisations under the chemicals legislation of the Union;	We would like clarification on the scope of the measures proposed. Does the Commission mean to include all Union legislation pertaining to chemicals? All legislation that falls under the remit of the European Chemicals Agency (ECHA)? Only	

		REACH?	
137	(k) the suspension of applicable international obligations with respect to the treatment of goods, as necessary, and the imposition of restrictions on registrations and authorisations related to the sanitary and phytosanitary legislation of the Union;	Here, we would also appreciate some further clarification on the scope (Union legislation included as well as type of measures).	
138	(l) the suspension of applicable international obligations, as necessary, and the imposition of restrictions on access to Union-funded research programmes or exclusion from Union-funded research programmes.		
139	<u>ANNEX II</u> Rules of Origin		
140	1. The origin of a good shall be determined in accordance with Regulation (EU) No 952/2013 of the European Parliament and of the Council. ²		
141	2 Regulation (EU) No 952/2013 of the European Parliament and of the Council of 9 October 2013 laying down the Union Customs Code (OJ L 269, 10.10.2013, p. 1).		
142	2. The origin of a service, including a service supplied in the area of public procurement, shall be determined on the basis of the origin of the natural or legal person providing it. The origin of the service provider shall be deemed to be:		

143	(a) in the case of a natural person, the country of which the person is a national or where the person has a right of permanent residence;		
144	(b) in the case of a legal person any of the following:		
145	(i) if the service is provided other than through a commercial presence within the Union, the country where the legal person is constituted or otherwise organised under the laws of that country and in the territory of which the legal person is engaged in substantive business operations;		
146	(ii) if the service is provided through a commercial presence within the Union,		
147	(a) if the legal person is engaged in substantive business operations in the territory of the Member State where the legal person is established such that it has a direct and effective link with the economy of that Member State the origin of that legal person shall be deemed to be that of the Member State in which it is established		
148	(b) if the legal person providing the service is not engaged in substantive business operations such that it has a direct and effective link with the economy of the Member State in which it is established, the origin of that legal person shall be deemed to be the origin of the natural or legal persons which own or control it. The legal person shall be considered to be "owned" by persons of a given country if more than 50 % of the equity interest in it is beneficially owned by persons of that country and "controlled" by persons of a given country if		

	such persons have the power to name a majority of its directors or otherwise to legally direct its actions.		
149	(iii) By derogation from sub-paragraph (ii)(a), if it is decided that Union response measures should apply to legal persons falling under subparagraph (ii)(a), the origin of that person shall be the nationality or the place of permanent residence of the natural or juridical person or persons who own or control the legal person in the Union. The legal person shall be considered to be "owned" by persons of a given country if more than 50 % of the equity interest in it is beneficially owned by persons of that country and "controlled" by persons of a given country if such persons have the power to name a majority of its directors or otherwise to legally direct its actions.	Why is the term “juridical person” used here instead of “legal person”?	
150	3. The nationality of an investment shall be:		
151	(a) if the investment is engaged in substantive business operations in the territory of the Member State where the investment is established such that it has a direct and effective link with the economy of that Member State the nationality of the investment shall be deemed to be that of the Member State in which it is established;		
152	(b) if the investment is not engaged in substantive business operations such that it has a direct and effective link with the economy of the Member State in which it is established, the nationality of the investment shall be deemed to that of the natural or legal persons which own or control it. The investment shall be considered to be "owned" by persons of a given country if more than 50 % of the equity interest in it is beneficially owned by persons of that country and		

	"controlled" by persons of a given country if such persons have the power to name a majority of its directors or otherwise to legally direct its actions;		
153	(c) by derogation from sub-paragraph (a), if it is decided that Union response measures should apply to legal persons falling under subparagraph (a), the nationality of the investment shall be the nationality or the place of permanent residence of the natural or juridical person or persons who own or control the investment in the Union. The investment shall be considered to be "owned" by persons of a given country if more than 50 % of the equity interest in it is beneficially owned by persons of that country and "controlled" by persons of a given country if such persons have the power to name a majority of its directors or otherwise to legally direct its actions.		
154	4. Regarding trade-related aspects of intellectual property rights, the term “nationals” shall be understood in the same sense as it is used in the paragraph 3 of Article 1 of the WTO Agreement on Trade-Related Aspects of Intellectual Property Rights.		
	END	END	END