

**"We have massive deficits with the European Union, massive like US\$350 billion if you can believe it. They don't take our farm product. They don't take our cars, they don't take almost anything, but we take their cars... So, the European Union has abused the United States for years, and they can't do that. And they want to make a deal... [T]hey charge us tariffs. European Union has a VAT tax, which is through the roof, OK. It's a similar thing, similar to a tariff".**

US President Trump, February 3, 2025

**"Our first priority is now to work on the many areas where our interests converge. And there is still scope to do so much more – from critical supply chains to emerging technologies. We will be ready for tough negotiations where needed and to find solutions where possible to work out any grievances and to set the foundations for a stronger partnership. We will be open and pragmatic in how to achieve that. But we will make it equally clear that we will always protect our own interests – however and whenever that is needed. This will always be the European way".**

European Commission (EC) President von der Leyen, February 4, 2025

Under the leadership of President Trump, the US has adopted a new trade policy that may lead to the adoption of trade measures on imports from the EU. Given the importance of the US/EU trade relationship and the EU's stated commitment to a free trade environment, the EU has said that it will adopt measures in response to such a US policy. During the election campaign, President Trump spoke of tariffs to re-balance the US economy and replace some tax revenue (i.e. new tariffs as a permanent feature of the trading landscape). So far, the president's use of tariffs has been more as leverage in negotiations on non-trade issues. The EU's response may be calibrated according to the purpose of tariffs applied by the US Administration.

First, we offer an overview of the legal basis on which the US government could rely to set trade measures on US trading partners, including the EU. Second, we provide an insight into the functioning of perhaps the most assertive (yet so far unused) trade instrument at the EU's disposal to retaliate, the EU Anti-Coercion Instrument (ACI, available [here](#)).



## The United States' Possible Policy

### New US Trade Policy

During his campaign and since his inauguration, President Trump has criticized the EU's trade and security practices and made several economic threats to persuade the EU to change its policies. Some of the reasons cited for imposing tariffs on the EU include to remedy what he believes to be an "unfair" trade deficit with the bloc that has been "taking advantage" of America. Trump has also previously mentioned concerns over value added tax (VAT) systems and low defense spending among NATO allies.

Beyond these grievances, President Trump set out an aggressive "American First Trade Policy" shortly after being inaugurated as 47th President of the US on January 20, 2024" (see [here](#)).

The America First Trade Policy is a memorandum directing a review of various trade policy issues, including large and persistent trade deficits, currency manipulation, the US-Mexico-Canada-Agreement (USMCA), China's implementation of the 2020 Phase One agreement, legislative proposals regarding China's Permanent Normal Trade Relations status, unlawful migration and fentanyl flows, as well as other issues.

The Secretaries of Commerce and the Treasury, and the US Trade Representative are required to provide reports and recommendations to the President Trump by April 1, and the Director of the Office of Management and Budget by April 30.

These reports could lay the foundation for several trade actions aimed at the EU and beyond which could be implemented by the President of the US under a number of existing authorities.

## The International Emergency Economic Powers Act (see [here](#))

The most likely statute for tariffs to be imposed quickly on the EU is the International Emergency Economic Powers Act (IEEPA), which grants the President of the US wide-ranging authority to declare national emergencies and respond with economic means, including import regulation. This is the authority that President Trump used on February 1, 2025, to declare a national emergency related to illicit drugs and impose a 25% tariff (10% on energy products) on Canada, a 25% tariff on Mexico and an additional 10% tariff on China, though the tariffs on Mexico and Canada have since been postponed for 30 days. As stated above, the rationale for a national emergency could rest on several factors, including many of the grievances President Trump has cited in relation to the EU in the past, such as the trade deficit, NATO funding and discriminatory taxation.

## Other Possible Legal Basis

Other potential tools President Trump could use to execute his America First Trade Policy agenda are as follows:

- §201 of the Trade Act of 1974 (Section 201) (see [here](#)) allows the President of the US to impose temporary duties and other trade measures if the US International Trade Commission (ITC) determines after an investigation that a surge in imports is a substantial cause or threat of serious injury to a US industry. Section 201 investigations can be: (1) filed by private stakeholders; (2) requested by the House Committee on Ways and Means Committee, the Senate Committee on Finance, the US President or Office of the US Trade Representative (USTR); or (3) self-initiated by the ITC. If the ITC makes an affirmative determination, it will provide the President of the US with a report and recommended remedy. The President of the US may impose relief in the form of a tariff increase, quota or orderly marketing agreement (bilateral arrangement with exporting country to reduce its exports without the use of import controls).
- §232 of the Trade Expansion Act of 1962 (“Section 232”) (see [here](#)) authorizes the President of the US to adjust imports if the Department of Commerce (DOC) finds—pursuant to an investigation—that certain products are imported in such quantities or under such circumstances as to threaten to impair US national security. Any department, agency head or “interested party” may request an investigation; DOC may also self-initiate an investigation. Once an investigation is initiated, the Secretary of Commerce has 270 days to present DOC’s findings and recommendations to the President of the US. If the Secretary of Commerce finds that imports threaten to impair the national security, the President of the US has 90 days to determine whether he agrees with the secretary’s findings and to determine whether he will use his statutory authority to adjust imports of the relevant product and its derivatives.  
  
Section 232 was relied upon by the US in 2018 to set tariffs on steel and aluminum imports. On February 10, 2025 President signed a proclamation raising tariffs on steel and aluminum imports to 25% ad valorem and eliminating exceptions that had been granted to certain trading partners, including the EU, from March 12th (see [here](#)).
- §301 et seq. of the Trade Act of 1974 (Section 301) (see [here](#)) authorizes USTR to take a broad array of actions to respond to certain unfair foreign trade practices. Authorized actions include: (1) imposing duties or other import restrictions; (2) suspending or withdrawing trade agreement concessions; or (3) entering into a binding agreement with the foreign country to eliminate the practice subject to the investigation or compensate the US with trade benefits. Actions taken under Section 301 require an affirmative finding after an investigation that US trade rights are being violated or foreign practices are unjustifiable, as well as burden US commerce or are deemed unreasonable or discriminatory. Authorized actions may be taken against any good or economic sector on a nondiscriminatory basis and without regard to whether such goods or economic sector were involved in the conduct of concern. However, if USTR determines that action shall be taken in the form of import restrictions, USTR must give preference to the imposition of duties over the imposition of other import restrictions.
- §337 of the Tariff Act of 1930 (Section 337) (see [here](#)) allows the ITC to investigate unfair trade practices infringing on patent, trademark and other intellectual property (IP) rights. Section 337 investigations are conducted through formal evidentiary hearings held before an administrative law judge whose orders and final decision are reviewed by the ITC. If the accused imports are found to infringe on a valid property right, the ITC may issue exclusion orders blocking products from entry into the US or cease-and-desist orders prohibiting certain actions. The President of the US (acting through USTR) can review the determination, but very rarely interferes with the ITC’s final decision.
- §338(a) of the Tariff Act of 1930 (Section 338) (see [here](#)) permits the President of the US to implement “new or additional duties” against imports originating from or imported on a vessel of any country that he finds either (1) imposes “any unreasonable charge, exaction, regulation or limitation” on US goods that are not equally applied to like articles from other countries, or (2) otherwise discriminates against the commerce of the US.
- §122 of the Trade Act of 1974 (Section 122) (see [here](#)) permits the President of the US to impose import measures to address a balance of payments deficit between the US and other countries, to prevent “imminent and significant depreciation of the dollar in foreign exchange markets,” or to cooperate with other trading partners to correct an “international balance-of-payments depreciation.” The permitted responses—a temporary import duty of 15 percent and/or temporary quotas limiting imports—may only be imposed for up to 150 days, after which they must be extended by Congress. The provision also allows the President of the US to unilaterally decrease tariffs by up to five percent or ease import restrictions for up to 150 days.
- §103(a) of the Bipartisan Congressional Trade Priorities and Accountability Act of 2015 (Section 103(a)) (see [here](#)) authorizes the President of the US to proclaim (1) the modification or continuance of an existing duty, (2) the continuance of existing duty free or excise treatment or (3) additional duties, as deemed appropriate, to carry out any trade agreement, “[w]henever the President of the US determines that one or more existing duties or other import restrictions of any foreign country or the US are unduly burdening and restricting the foreign trade of the US and that the purposes, policies, priorities and objectives of [the law] will be promoted thereby.” This authority is subject to certain restrictions and notifications to and consultations with Congress.



## The European Union's Possible Response

### EU Retaliation

Should the EU consider that its interests are impaired by the US measures, it may decide to take retaliatory action against it.

Such retaliatory action is already being announced. On February 11, 2025, following the US announcement of a 25% import tariff on steel and aluminum, EC President Ursula von der Leyen affirmed that the EU would respond to “unjustified tariffs” with “firm and proportionate countermeasures,” and that the EU will act to safeguard its economic interests” (see [here](#)).

The EU has different instruments at its disposal for this purpose, including setting retaliatory tariffs on US products, using conventional trade defense instruments or acting under the EU International Procurement Instrument.

The EU ACI is one of the more resolute tools at the EU's disposal. It is aimed at addressing economic coercion by third countries against the EU or one/several of its member states. So far, the ACI, which was adopted in 2023, has never been used by the EU. Nevertheless, the EU could choose to resort to it, should EU-US relations severely deteriorate.

In this client alert, we offer an overview of the functioning of the ACI, and the EU response measures it could trigger.

### When Could the EU Resort to the ACI

The ACI can only be resorted to in case of “economic coercion.” This is understood as a situation where a third country applies or threatens to apply a measure affecting trade or investment to make the EU or a member state thereof act (or stop acting) in a particular manner.

Certain circumstances may guide the EU towards an economic coercion finding. This includes the magnitude of trade or investment disruption, the pressure arising from it, the extent of the sovereignty encroachment or whether particular acts are expected from the EU or one/several of its member states.

### EU Examination of Third Country Actions and Omissions

The EC may examine any third country action or omission to evaluate if it constitutes economic coercion. It may do so at its own initiative or if requested to do so (subject to conditions).

Where the EC considers that the third country action or omission constitutes economic coercion, it must submit a proposal to the Council of the European Union (“the Council,” i.e. the EU member states) for an act formally determining that the third country action, or omission constitutes economic coercion. Should it declare economic coercion (by a qualified majority of its members), the Council may also request reparations for the injury to the EU.

### Consultations

Next, the EC would request the country in question to immediately cease such economic coercion (as well as to repair any injury, if requested to do so by the Council).

The EC would also seek consultations with the country in question. Options that could be explored in such consultations would include direct negotiations, or the submission of the matter to international adjudication, mediation or conciliation.

Simultaneously, the EC would seek to obtain the cessation of the economic coercion by raising it in international fora, where applicable. It could also collaborate with any country affected by the same or similar economic coercion, for example to coordinate their respective responses.

## EU Response Measures

Foreign economic coercion could result in the EC adopting response measures, which may amount to measures of general application (potentially affecting an entire third country, or only specific sectors, regions or companies thereof), or measures targeting specific natural or legal persons.

Substantially, response measures may include:

- Customs duties
- Other import charges
- Import or export restrictions
- Measures on transiting goods
- EU internal measures applying to goods
- The non-performance of international obligations concerning the right to partake in tender procedures
- Measures affecting trade in services (including through EU subsidiaries)
- Measures affecting access to foreign direct investment to the EU (including through EU subsidiaries)
- Restrictions on the protection of intellectual property rights or their commercial exploitation
- Restrictions in access to EU capital markets and other financial service activities
- Restrictions on the possibility of marketing goods subject to EU rules on chemicals
- Restrictions on the possibility of marketing goods subject to the EU sanitary and phytosanitary rules

Response measures should in any event be proportionate and not exceed the level of injury to the EU.

The adoption of response measures would in any event be subject to three conditions:

1. That any request to the third country in question to cease or repair the economic coercion, as well as any consultations and possible further action (such as international adjudication or mediation) has not resulted in the cessation of the economic coercion in a reasonable period of time
2. That the adoption of EU response measures is necessary to protect the interests and rights of the EU, and its member states in the particular case
3. That the adoption of the EU response measures is in the EU interest (including with respect to the ability of the EU and its member states to make legitimate sovereign choices free of economic coercion)

EU response measures are also possible where the economic coercion in question has ceased, but the third country has not repaired in full the injury to the EU, despite having been requested to do so.

## After the Imposition of Measures

Upon adoption of response measures, the EC would offer to negotiate a solution with the third country. The entry into force of the measures could be delayed by up to three months following their adoption, extendable where the third country in question would take steps to cease the economic coercion and, where appropriate, repair the injury to the EU.

Once response measures would be applied, the EC would monitor the evolution of the economic coercion – and potentially amend them. Where economic coercion would be suspended, the EC would also suspend the application of the response measures.

The EC would be required to terminate EU response measures when any of the following five situations would arise:

1. Where the economic coercion would end, and any requested injury reparation would be carried out
2. Where economic coercion would end without injury reparation (event where requested) – subject to conditions
3. Where a mutually agreed solution would be reached with the third country in question
4. Where a binding decision in relevant international third-party adjudication would require the termination of the restrictive measures
5. Where termination would be appropriate in light of the EU interest

Response measure termination would be carried out through EC implementing acts. To adopt such implementing acts, the EC would have to follow an examination procedure. As part of that examination procedure, a committee representing EU member states would have to deliver an opinion (adopted through a qualified majority) asking for the measures to be terminated. The EC would be required to follow the committee's opinion and terminate the measures. Under some circumstances and provided the committee would not deliver an opinion, the commission could also terminate the EU response measures at its own initiative.

## How We Can Help

The ACI is at the apex of the EU's policy arsenal in international economic matters – it is for that reason that it has been referred to as a “bazooka”. While it has never been used so far, a very aggressive trade policy measure against the EU could prompt the EC to at least brandish the ACI as one of the more assertive instruments at its disposal against third countries, including the US or China. Should it ever be triggered, ACI response measures could severely affect trade or financial relations. US goods and services may be directly targeted. At the most extreme end of the spectrum, US trade restriction measures and the EU's response could combine to alter current patterns of trade across the Atlantic for some time into the future.

Our presence on both sides of the Atlantic, and thorough knowledge of US and EU trade policy, means we are uniquely positioned to explain, advise, and act in relation to trade developments out of Washington DC and Brussels. As the US and the EU respond to each other's policies, we are able to anticipate what the next development may be and how best to prepare for it.

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