



Detailed results of the open public consultation on an EU anti-coercion instrument

Introduction

The [open public consultation](#) has been the central consultation activity in the impact assessment process for this initiative.¹ It was open to all stakeholders and citizens and lasted for 12 weeks, starting on 23 March 2021 and closing on 15 June 2021. It was available via [EUSurvey](#), in all EU official languages. The online questionnaire contained 32 questions, with the possibility for open remarks for each question and for submitting a position paper. The questionnaire is downloadable [here](#).

The report relies on citations that are edited for presentational purposes only. The report and the contributions received cannot be regarded as the official position of the Commission and its services and thus do not bind the Commission.

Respondents' Profile

48 contributions to the public consultation were recorded via EUSurvey with **12** position papers, whereas **12** additional contributions were received outside of EUSurvey. The contributions outside the EUSurvey do not form part of the statistics in the graphs below (but are equally analyzed).

The contributors to the responses were business associations (23), companies (7); EU citizens (6); public authorities (4); trade unions (2), NGOs (1) and academic/research institutions (1), others such as liberal professions (4). The geographical spread of the responses was wide, covering EU and non-EU countries: Belgium (11), China (1), Czech Republic (1), Denmark (1), Estonia (1), France (12), Germany (9), Hungary (1), Italy (4), Malta (1), Nepal (1), Spain (1), Sweden (1), Switzerland (1) and Taiwan (1). The contributions made outside EUSurvey came by business associations (7) and public authorities (5), from Germany (2), France (2), Denmark (1), Belgium (5), Sweden (1) and Austria (1). The list of respondents can be found below as well.

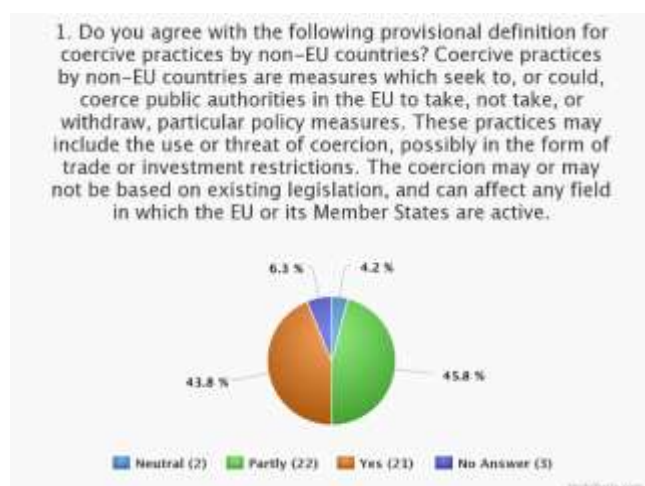
The following industries participated (in and outside of EUSurvey): aerospace and defence industries; textiles; footwear; semiconductors; automotive; food and drink manufacturing industry; alcohol; healthcare; optics, photonics, analytical and medicinal technologies;

¹ The other consultation activities included a stakeholder meeting and targeted consultations throughout the period March-June 2021. The consultation strategy is available [here](#).

finance and banking; energy; telecommunications; ceramics; retailers; metals; agriculture (seeds and seedlings); technology in general; rail supply; as well as representations of industries at national or EU level or outside the EU (e.g. manufacturing, technology). The majority are export-oriented and operating internationally with global exposure. The size of the participating organisations was evenly divided. It is of note that the micro and small companies are predominantly represented by business associations, rather than SMEs as such.

Results per question of the public consultation

Q1 Provisional definition for coercive practices by non-EU countries: *Coercive practices by non-EU countries are measures which seek to, or could, coerce public authorities in the EU to take, not take, or withdraw, particular policy measures. These practices may include the use or threat of coercion, possibly in the form of trade or investment restrictions. The coercion may or may not be based on existing legislation, and can affect any field in which the EU or its Member States are active.*



21 respondents agreed with the definition, 22 respondents agreed partially, 2 respondents were neutral. A business association submitting a position paper disagreed with the definition on the ground that it does not relate to extra-territorial sanctions more precisely.

Business associations and companies reacted broadly in favour of the definition (and the instrument). They referred to the importance of the

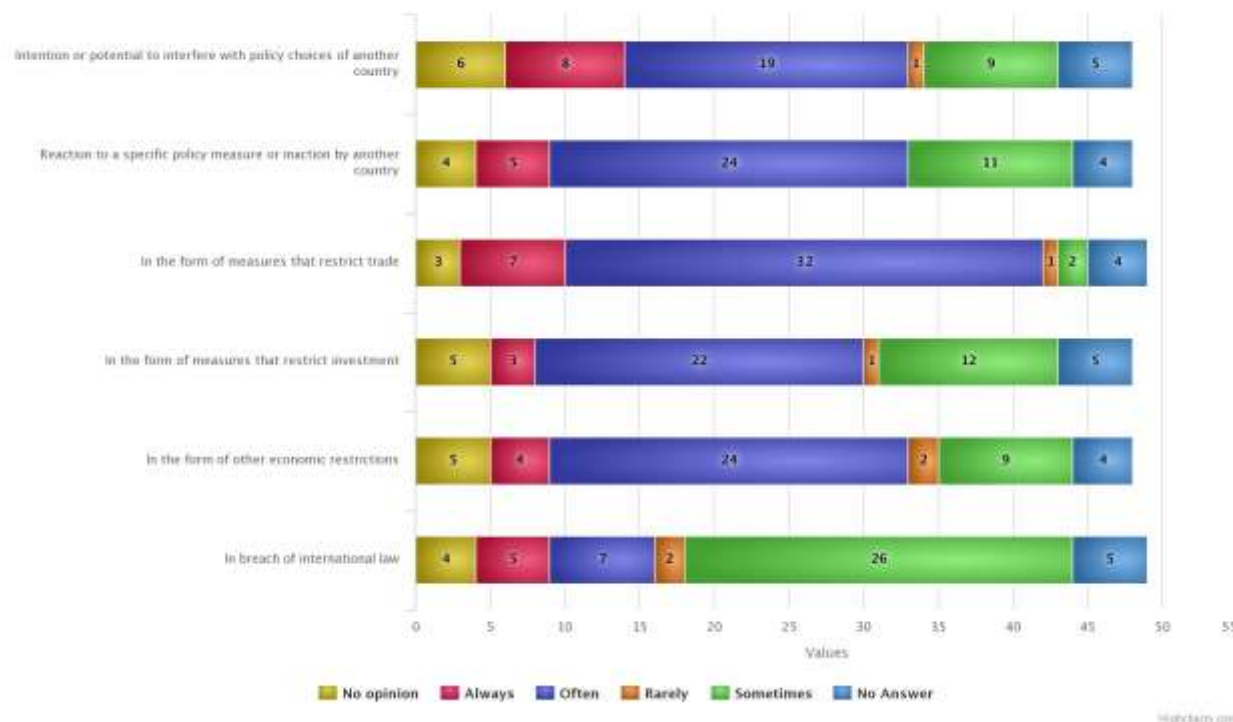
initiative. Those that agreed partially with the definition frequently expressed the desire to include coercion specifically against private economic operators and cover extra-territorial sanctions, because of the significant economic implications. Additionally, this group voiced concerns regarding focusing too narrowly on “existing legislation” which could ignore diplomatic pressure, public pressure, targeted administrative measures or informal, more subtle coercion.

Public authorities also generally agreed with the definition while pointing to the need to clarify the interplay between government and private coercive action, the coverage of non-trade/investment economic practices and the link to the market access strategy. Some suggested only targeting illegal forms of coercion. Others argued that any form of economic coercion must be covered without exceptions. Yet others raised the need to clarify the process of assessment of the intention of coercion, and how a certain policy decision of the EU or a Member State could be linked to an intended coercion.

Respondents who had marked themselves as part of the “other” category stated also that the definition should be broadened to cover coercion against companies.

Q2 Possible elements of a non-EU country’s coercive action.

2. In your experience, are the following elements present when a non-EU country takes coercive action (whether directed at the EU, an EU Member State or another non-EU country)?



Stakeholders across the groups agreed that the suggested elements are mostly “often” to “sometimes” present. No major differences exist between the groups.

Businesses pointed at further examples of coercive practices such as: existing rules are suddenly enforced in a much stricter and burdensome manner, diplomatic threats or sanctions, sanitary and phytosanitary (SPS) regulations sometimes not scientifically justified (e.g. Russia with Poland), in highly regulated sectors, such as medical technology, new barriers to market entry are often built up, such as new (higher) local content requirements in public tenders or longer processing times for foreign manufacturers for product authorisations; legal constraints exerted against companies or their staff members in the context of judicial or extra-judicial proceedings.

In their further remarks, some business associations suggested that the appreciation of whether a measure is deemed to be coercive should not only focus on the intended effect on the EU’s and its Member States’ policies but also the expected effect on EU companies and their market position. Experience shows that through coercion, companies can be affected by ricochet. Others expressed the view that the instrument should not be limited to situations where it can be affirmatively established that the coercive actions amount to a breach of international law (let alone that it first be found to be such in a ruling of an international law tribunal). They suggested that although coercive actions by third countries may amount to a breach of the customary rule of international law prohibiting intervention in the domestic affairs of another government, it is not necessarily the case that all

coercive actions could be established to amount to such a breach in a manner that should permit a timely and effective action.

Public authorities added that the EU should make efforts to cooperate with partners who face the same problems regarding Chinese coercion (US, Canada, Japan, South Korea, Australia, etc.) In particular, the EU should make use of the transatlantic partnership and engage in a joint assessment of the cost of economic coercion for both the EU and the US.

Q3 Possible types of coercion, in general or a specific case.

Business associations commented that different types of coercion may include harshly enforced administrative rules, deliberate delays, denials of licenses, extra-territorial measures, illegal expropriation, SPS regulations sometimes not scientifically justified (e.g. Russia with Poland), in highly regulated sectors, such as medical technology, new barriers to market entry, such as new (higher) local content requirements in public tenders or longer processing times for foreign manufacturers for product authorisations; cases when existing rules are suddenly enforced in a much stricter and burdensome manner; China's boycotting of products from individual EU countries (e.g. to stifle criticism). They also distinguished between coercion at state-to-state level and coercion at state-to-company level. Others expressed the view that coercion might not be intentional.

Public bodies referred to indirect and direct forms of coercion. A public authority considered it beneficial to divide coercion into economic coercion, diplomatic coercion and company-based coercion.

Companies also distinguished between measures that are outside the remit of WTO rules and those that are extra-territorial sanctions. They also distinguished between the various formal and informal measures of coercion.

Q4 Evidence of non-EU countries' legislation either specifically designed to impose coercive measures on other countries or that can be used for that. Evidence of unwritten measures or practices that are used for coercion.

Stakeholders referred to examples involving China, Russia, Indonesia, Turkey, Tunisia, Libya, Nigeria, US as follows:

- China's retaliation against certain EU members of parliament as a response to EU's sanction on certain Chinese officials involved in human rights violations against the Uyghur population;
- China not allowing prices to be determined by market forces as coercive. The respondent added that it affected the manufacturing industry and caused damage to the economic sector;
- China's unwritten practices of diplomatic pressure;
- China's MOFCOM Ordinance No. 1 of 2021 on "Regulations to Combat Unjustified Extraterritorial Use of Foreign Laws and Other Measures"; a sanction applied against EU officials and which was intended to counteract the impact of applying foreign extra-territorial laws;

- China's Belt and Road Initiative, which is a centerpiece of the Chinese foreign policy. The initiative essentially rests on economic cooperation and investment for the purpose of developing large infrastructure projects (aimed at unlocking trade with China) and as such does not violate international law. However, there is a huge coercive potential as the Belt and Road Initiative can easily be manipulated for debt-trap diplomacy, i.e., China saddling smaller nations with huge debts to increase its leverage over such nations. The situation in Montenegro where the financing of a highway project with a massive Chinese loan has led to financial hardship is a case in point;
- China's various actions at the time of the EU anti-dumping and anti-subsidy investigations of solar modules and cells in 2012-2013;
- EU companies excluded from public tenders in countries such as China or Saudi-Arabia due to sanctions imposed by the EU or even just due to critical remarks made by German or EU politicians directed to these countries' governments;
- Third countries' threats to exclude EU companies from public tenders or black-list them, when these companies comply with EU regulations and decide to reject an order from a third country. There is no legal ground for these measures in the third country itself but sometimes the threat is enough to jeopardize future business for EU companies in these third countries;
- Nigeria limiting import licenses for milk and dairy to six importers;
- Russia's annexation of Crimea;
- Russia's general coercive practices limiting importation and having the effect of blockages and difficulties generally;
- Russia's policy decisions lately aiming at exercising coercion on individuals or companies with a nexus to the Russian economy, e.g. establishing its own system for financial communication (SWIFT) or limiting arbitration – Russian courts must be involved in disputes and foreign judgments are not enforceable anymore;
- Indonesia's de facto import ban on alcoholic beverages from the EU, which was an unofficial type of coercion; the objective was to pressure the EU to change its palm oil policy and the effect was that it blocked EU exports of alcohol to Indonesia;
- Turkey's, Tunisia's and Libya's threats to let migrants pass to the European coasts;
- Turkey's boycott of French goods following President Macron's speech after the murder of Samuel Paty;
- 2014 US sanctions on Iran and the SDN listing of Deutsche Forfait as a coercive action; the objective was to secure compliance with US sanctions laws and the effect was a loss of 9 million EUR among others;
- Following US sanctions on Iran, the accessibility of Iran's rail market has dramatically fallen and is now considered completely closed to European rail suppliers; besides massive losses of business opportunities, this has significantly increased the industrial and export imprint of competitors from countries not exposed to these sanctions. The large presence of European rail suppliers on the US

market exposes them significantly to sanctions, especially when the latter are not coordinated between the US and the EU;

- US Section 301 of the Trade Act 1974 import duties (currently suspended) following the investigation into the digital tax proposal in France; the objective was to put pressure on France to withdraw the tax proposal;
- US in the context of the Cuban Liberty and Democratic Solidarity (LIBERTAD) Act of 1996;
- US Foreign Corrupt Practices Act (FCPA), Foreign Account Tax Compliance Act (FATCA), CLOUD Act and Dodd Franck Act as coercive extra-territorial sanctions;
- US export control regime; the measure was applied in various ways with the objective to advance US interests; US' FCPA measure as coercive –Discovery, Deferred Prosecution agreement (DPA) applied to Statoil ASA, Alcatel-Lucent, Airbus, Alstom; the stated objective was to tackle international corruption and it had the effect of giving US authorities exorbitant power over controlled companies; US re-export controls;
- US controls on containers, which was applied by freezing goods at the border and a mandatory disinfection to release goods. In describing the measure, the respondent stated that containers of Italian tiles were opened, unloaded and inspected in every corner; a dead bug was found and they blocked all the cargo. The objective was to block imports and it had the effect of additional costs for businesses (storage and disinfections), non-compliance with agreed delivery times, a loss of customers and a damage to the image of the companies;
- Threatening characteristics of US sanctions in general, e.g. the "Oligarch" list of 2018 that left in the vague whether sanctions against these persons could be imposed or the letter of senators to executives of the port of Saßnitz;
- Implementation of US monitors to work from within a bank to ensure compliance of such bank with US laws;
- OFAC visits in Germany and invitations of banks to OFAC visits in US Consulates or the US Embassy during which one is reminded to comply with US laws;
- US targeting third country entities and business dealings with economic operators or making threatening public statements;
- US efforts in engaging with allies against the expansion of the Chinese 5G industry with political measures. One example is the US decision in October 2020 to finance purchases by Brazilian telecom companies of equipment from competitors of Huawei through EXIM and the "Program on China and Transformational Exports". This is one example of coercive action which does not violate international law, inasmuch it 'forces', through significant economic pressure, a political choice in the context of the '5G war'. Similar action could be taken with respect to European businesses;
- US final expanded FPD (Foreign Direct Product) Rule as coercion which restricts trade. It was applied to Huawei with the objective of limiting Huawei's acquisition of technology and had the effect of loss of business for the company;

- US's embargoes on Cuba, Iran and Syria as coercive measures;
- US 25% ad valorem tariff applied to the wine and spirits sector of the EU since late 2019 in relation to the WTO case Boeing-Airbus; the effects included losses worth 1 million EUR and divisions in the EU based on interests;
- Iran Sanctions Act of 1996; Iran Freedom and Counter-Proliferation Act of 2012; Iran Threat Reduction and Syria Human Rights Act of 2012; Countering Iran's Destabilizing Activities Act of 2017; the respondent stated that this was the extra-territorial sanctions type of measures applied to Iran, the objective was deterrence of Iran's nuclear proliferation activities and the effect on EU businesses was spillover effects of the sanctions.

Q5 Duration of the internal decision-making process or the adoption of coercive measures for the countries indicated in Q4 (or for other countries).

The answers varied as follows: instantly, 1-2 days, 10 days, a month, 3-6 months, a year.

Q6 Possible imminent threat of a coercive action by a non-EU country towards the EU, its Member States or another non-EU country.

Stakeholders referred to China with regard to sanctions for human rights violations in the Autonomous Province of Xinjiang, e.g. exclusion of public tenders, non-processing of product authorisations; China's retaliation against certain members of the European Parliament as a response to EU's sanction on certain Chinese officials involved in human rights violations against Uyghurs; China's Anti-sanctions law of June 2021, China's Export control law, China's Unreliable Entity List, China's Blocking Statute, China's Belt and Road Initiative, India's new mandatory requirements for footwear, US Section 301 tariffs of 25% on Austria, India, Italy, Spain, Turkey and the United Kingdom (currently suspended), US pressure on Germany to ban Huawei, US retaliatory tariffs, recurring tensions with Russia, China and the US (agri-foods often targeted as flagship products); EU-Turkey statement addressing the migration crisis.

Q7 Any particular coercive actions planned by a non-EU country towards the EU, its Member States or another non-EU country (for example over the last 5 years) that did not materialise.

The various answers pointed towards the US departure from the JCPOA and subsequent sanctions policy, US Section 301 tariffs following the investigation into the Digital Services Tax (suspension until 29 November 2021); in Russia, plans have been put in place for criminal liability for compliance with foreign sanctions; Waiver for German companies involved in Nord Stream 2 in May 2021; Announcement of the sanctioning of further oligarchs in January 2018 ("classified and unclassified lists"): the report by US Treasury according to Section 241 of CAATSA explicitly states that it "is not a sanctions list, and the inclusion of individuals or entities in this report, its appendices, or its annex does not and in no way should be interpreted to impose sanctions on those individuals or entities."; Long-

standing US practice of suspending lawsuits under Art. III Helms-Burton (until amended by President Trump).

Q8 Possible threat in the medium to long term of a particular coercive action by a non-EU country towards the EU, its Member States or another non-EU country.

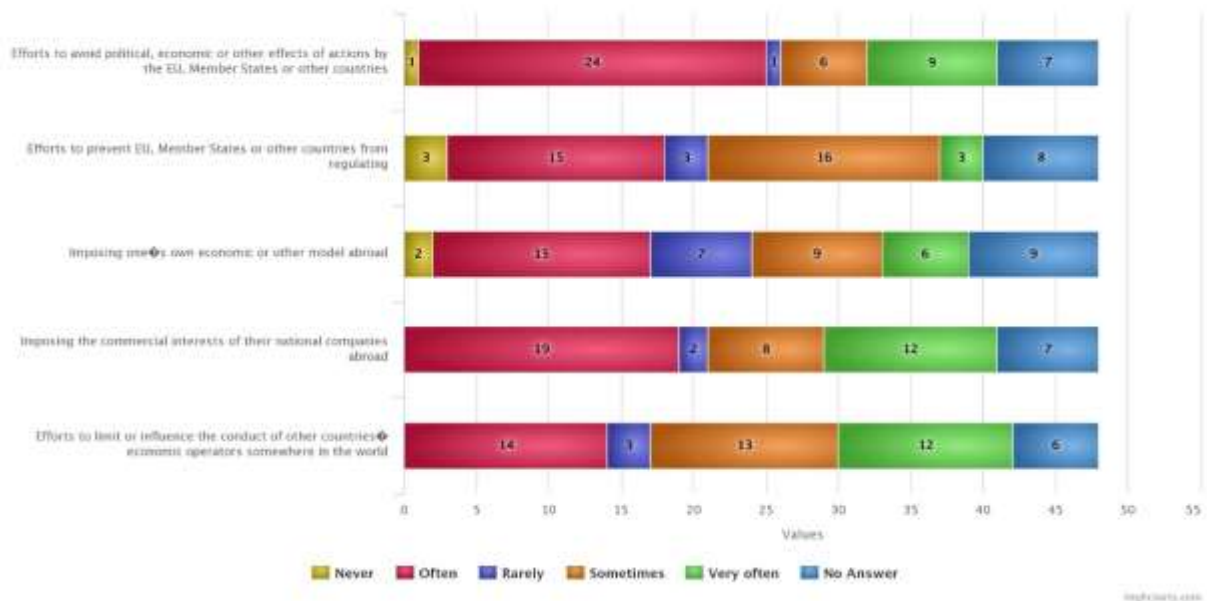
Business associations and companies referred to implications of the US-China decoupling; US Section 301 tariffs; China's Export control law; China's requirements on technology transfer and rules on raw materials and natural resources; China's trade defence measures regarding imports from Australia of various products, arguing that a similar situation could arise with EU exporters, should the broader EU-China relationship deteriorate; Russia's geopolitical hostility near its borders, arguing that given the state of the broader geopolitical relationship with Russia and the existing tensions, the possibility of coercive action cannot be excluded; in view of the UK's departure from the EU and its new regulatory autonomy, the UK could undertake coercive practices; threat of coercive actions from countries like China and Russia, due to wide differences in values; threat of additional extra-territorial sanctions from countries like the US, China and Russia; possibly by China and Russia due to EU sanctions; by Morocco towards the EU and Germany due to the conflict over Western Sahara; Turkey, Tunisia and Libya on immigration; the reaction of countries to the EU Carbon Border Adjustment Mechanism.

Q9 Areas or sectors that could be affected most if a particular non-EU country uses coercion.

Stakeholders referred to energy, (new) technology, ICT area, raw materials, financial sector and (critical) infrastructure, R&D, transport, equipment, seeds, ceramics, tiles, furniture, IT/digital industries, textile, footwear, agri-foods, manufacturing, aerospace and defence, chemical, health, retail, product registration, participation in public tenders, public procurement sectors in general as linked to public authorities, import bans, technical regulations and cooperation with authorities in third countries. The services sector can be particularly exposed to coercive pressure in case they are subject to particular authorisations or concessions. As a result of foreign policy objectives coercive restrictions could be expected in various domains, e.g. artificial intelligence, next generation telecommunications infrastructure, cloud systems, development of cutting edge semiconductors, tech nodes. A public authority expressed the view that the sectors of a specific importance for the EU or its Member States are the most sensitive. Another public authority noted that all sectors that depend on exports – manufacturing, including agricultural production, service exporters including technology and IT, start-ups could be at risk. Also, the most serious damage to EU Member States may be feared in sectors related to the provision of vital services, but uncertainty will have a negative impact on innovation and economic development as a whole from all sectors.

Q10 Possible drivers of the coercive practices by non-EU countries.

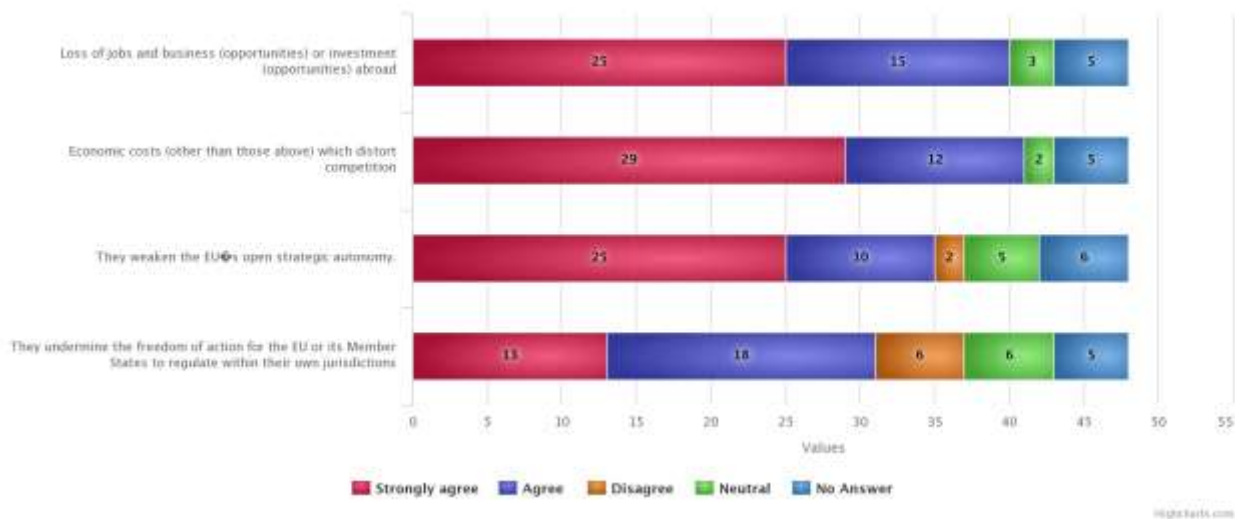
10. What do you think are the possible drivers of the coercive practices by non-EU countries?



All stakeholder groups gave predominantly a positive answer to each suggestion (very often, often, sometimes). Answers such as 'rarely' and 'never' were in the minority for all groups. No major differences in the replies was observed within each stakeholder group.

Q11 Consequences for the EU or its Member States as a target of coercive practices by non-EU countries.

11. What are the consequences for the EU or its Member States as a target of coercive practices by non-EU countries?



The majority strongly agreed or agreed with the suggested consequences. A few disagreed with the last two consequences.

More specifically, business associations and companies strongly agreed that a loss of jobs and business (opportunities) or investment (opportunities) abroad as well as economic costs (other than those above) which distort competition were consequences for the EU. They strongly agreed that they weaken the EU's open strategic autonomy and agreed that coercive practices undermine the freedom of action for the EU or its Member States to

regulate within their own jurisdictions. They noted in their further comments that the damage from coercion can only be partly quantified.

Similar results appear for the other stakeholder groups.

Additionally, respondents pointed out effects such as impeded business growth and development, hampering of optimal access to the market of the third countries in question, difficulties with diversification of trade flows and distortion of global value chains. Further comments included the observation that the coercive measures are particularly designed to have impact swiftly or in a very short period of time.

Q12 Effects and costs (direct or indirect) experienced by public authorities because of coercive practices. Evidence (if possible, quantitative). Effects also due to the extra-territorial application of sanctions by a non-EU-country.

The answers stated that costs of public sector bodies increased, for example, by advising and supporting companies, loss of tax revenue due to the deteriorating situation of companies and a higher administrative burden due to the processing of measures.

Q13 Effects and costs (direct or indirect) experienced by economic operators because of coercive practices. Evidence (if possible, quantitative). Effects also due to the extra-territorial application of sanctions by a non-EU-country.

The specific answers were as follows:

- an increase in the companies' direct costs as companies bear the increase in the price of the product and reduce its commercial margin, loss of business and revenue, increased administrative burdens;
- costs of detaining the goods stranded under customs control in ports or even the costs of returning the goods or destroying them, which vary depending on the quantities and number of days blocked (from EUR 5 K to more than one million, etc.);
- longer times for processing product registrations, queues before importation in the third country concerned, loss of market access, cancellation of client orders, loss of reputation in the third country (difficult to quantify and depends on the individual case of the company concerned);
- even temporary coercive acts can influence the purchasing behaviour of local consumers more sustainably; practices of import barriers may develop a form of consumer patriotism that will direct purchases towards local products;
- threats of coercive practices give rise to serious concerns and uncertainties among exporters, destabilising their business strategy even before coercive practices are introduced; threats are sufficient to break trade contracts with importers;
- a number of Italian banks experienced distorted effects due to the impossibility of dealing with financial and commercial operators due to sanctions imposed by third countries;

- many companies and even sectors have had the experience of coercive conduct by third country governments but will not speak openly about specific experiences, especially because of an ongoing fear of retaliation or further coercive behaviour;
- banks are reluctant to do business with Iran after the US withdrew from the JCPOA; banks are refraining from participating in Nord Stream 2;
- in late March 2019, the importer of one large European spirits group in Indonesia was notified by the authorities that spirits originating in the EU have been denied approval for entry into Indonesia. In contrast, spirits of Australian, US and other Asian origin were approved. This move was a significant and concrete retaliatory measure taken by the Indonesians in response to the EU directive relating to palm oil use in biofuels. While it was progressively overturned in late 2020, and things have gone back to "normal" in 2021, the mid to long term damages are likely to be significant, as EU spirits will likely have lost certain markets for good as a result of the prolonged silent ban. The ban has also contributed to the rise of illicit trade.

Q14 As announced in the Communication "The European economic and financial system: fostering openness, strength and resilience", the Commission will work on additional policy options to further deter and counteract the unlawful extra-territorial application of unilateral sanctions by non-EU countries to EU economic operators (including possibly by amending Regulation (EC) No 2271/96, the 'Blocking Statute'). How can the present anti-coercion initiative and future EU initiatives countering the extra-territorial application of non-EU countries' sanctions reinforce each other to guarantee the EU's open strategic autonomy?

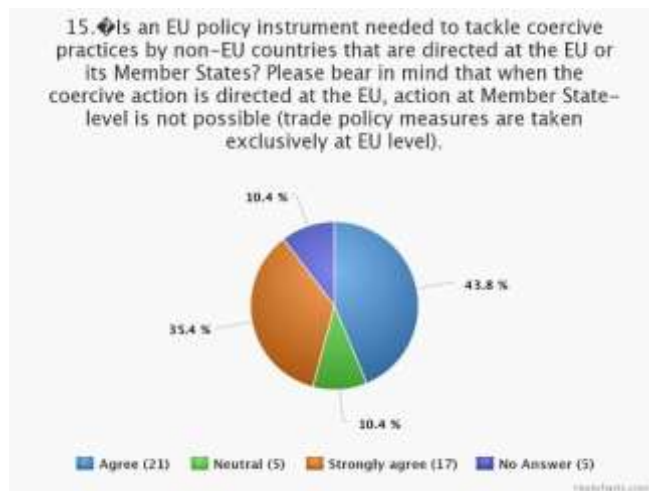
Generally, business associations considered it important that both instruments are complementary. A public authority also suggested complementarity and that it is important to avoid duplication. Business associations made some specific suggestions, which include the following:

- As it is difficult to distinguish between coercive measures and extra-territorial sanctions, because of their significant overlap, there must be a clear definition for each of the two categories, for the benefit of the stakeholders.
- The creation of two separate instruments for such closely related matters may create confusion.
- To cover extra-territorial sanctions in the anti-coercion instrument because this would allow to directly address those that deploy extra-territorial sanctions, rather than putting EU companies in a situation of conflicting obligations.
- Extra-territorial application of unilateral sanctions is a form of coercive action and so it is essential that the EU has adequate means to address coercion beyond that covered by the Blocking Statute.
- The scope of the instrument should cover any coercive action that is not within the scope of the Blocking Statute. Indeed, the Blocking Statute is a tool that deals with (only) one specific type of coercive government measure, one which sanctions

certain countries and those operators based in other countries which do not respect those sanctions;

- An anti-coercion instrument should not be linked to extra-territorial sanctions; trade and sanctions to be kept as separate instruments;
- The anti-coercion instrument should replace the Blocking Statute;
- The anti-coercion instrument should be designed as a back-up service, with the use of the Blocking Statute being incentivised so that companies systematically use it;
- Both initiatives should be as similar as possible in their objectives, but with clear definitions and delineations. The respondent expressed a preference for strengthening the Blocking Statute with accompanying support measures for businesses over other instruments against coercive measures.
- To guarantee a good articulation with the Blocking Statute, EU legislators should make sure that the anti-coercion instrument focuses on trade and investment responses to extra-territorial measures, whereas a strengthening of the Blocking Statute should aim at adding the possibility to impose non-trade responses such as countersanctions (denial of visas, asset freezes) and ease the enforcement of remedies before EU and non-EU judicial bodies to make sure that EU companies are either exempted from coercive measures or compensated. Secondly, the anti-coercion tool should be designed as a short-term and rapid corrective tool while the Blocking Statute should remain a mid-term protection shield against extraterritorial measures. Thirdly, impact assessments for both initiatives should explore which instrument is the most appropriate to provide for a direct compensating mechanism for EU companies suffering losses due to extraterritorial measures. Tariffs possibly imposed under the anti-coercion tool might provide with financial resources to fund a direct compensation mechanism, while the improvement of the Blocking Statute could focus on the strengthening of judicial remedies for compensation;
- As extra-territorial sanctions can also in some cases be considered a coercive action affecting the EU and Member States via coercion on private economic operators, the two initiatives must be linked and synergies be exploited where appropriate. This can be done especially regarding measures to increase resilience and/or to limit exposure to such action when possible (e.g. diversify options for international transactions, use of the Euro) as well as a centralized "one-stop-shop" for information exchange between EU and Member States. In addition to unilateral measures, it remains key to continuously seek a common understanding and agreement with partners in the frame of the WTO.
- For the sake of efficiency, a single instrument could provide trade and investment responses to the two categories of coercive measures: directed at and affecting EU companies as such and those targeting EU and/or Member States.

Q15 Need for an EU policy instrument to tackle coercive practices by non-EU countries that are directed at the EU or its Member States.



No respondents expressed disagreement. There are only positive replies or neutral/no answer.

Business associations agreed or strongly agreed, some added that today's geopolitical and trade context requires an instrument. Caveats included: a rapid and forceful defence of the EU's economic interests is a positive thing provided it does not put at risk – or hurt – the EU's offensive trading interests involuntarily by exposing sectors in

which the EU enjoys a strong trade surplus to third country retaliation as a result. A proper evaluation process including thorough consultations and public hearings of relevant stakeholders is essential in this respect.

Companies also agreed and stated that the link with extra-territorial sanctions was important.

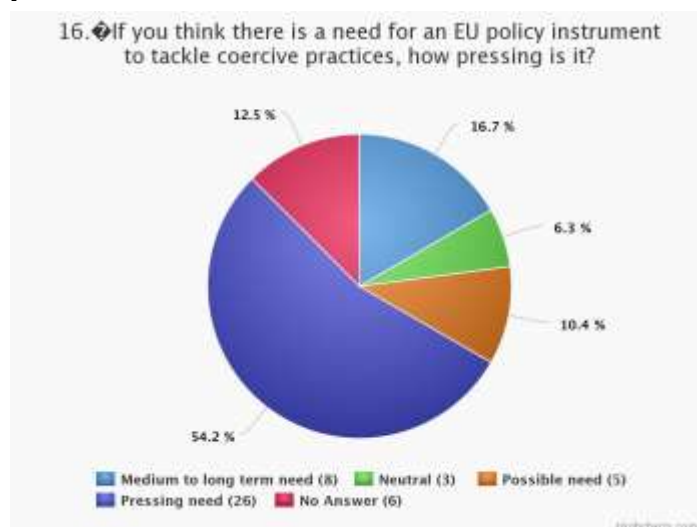
Public bodies were neutral to supportive, and emphasised the following:

- a sound factual analysis is needed prior to determining the need for an additional legal instrument;
- the need, in the use of the instrument, for assessment of the impact of any coercive measures (including informal coercion) and the potential impact of any countermeasures, which are to be deployed only as a last resort, as well as a thorough assessment of the EU's interest in counteraction;
- in order to avoid cumulative negative effects on relations with the EU's trading partners and wider EU trade openness and to preserve the transparency, consistency and legitimacy of the EU's trade policy, the instrument must be accompanied by a thorough impact analysis, including the importance of carefully analysing the interaction of the proposed instrument's measures with other trade defence initiatives;
- the deterrence value the instrument must have;
- if used as a last resort, it must be impactful enough to solve problems quickly, with a minimum of collateral damages for economic operators (always compensated to a maximum);
- its use should not create or fuel an escalation situation with trading partners.

NGOs were neutral and added that the measure must be coherent, established via a Regulation and not top-down in approach (not to force some Member States to act inconsistently with their foreign policy objectives). One NGO argued that adopting the EU countermeasures through either implementing or delegated acts would ignore the complicated nature of coercive practices of third countries. Without a properly established process including a consent of Member States, enacting trade, investment or other policy countermeasures might lead to more harm than gains.

The remaining groups agreed or strongly agreed and did not make remarks.

Q16 Possible pressing need for an EU policy instrument to tackle coercive practices.



Business associations felt that there was a pressing need for such an instrument. They additionally commented on their past difficulties and trade barriers they faced as a result of coercion and expressed that an appropriate response was essential. Almost all responses also stated that the Covid-19 crisis had made this situation more challenging.

Other stakeholders also felt a

pressing need for the instrument.

EU citizens, Trade unions and Academics/Think Tanks also stated a pressing need for the instrument. NGOs were neutral regarding the need for an instrument and did not make remarks on this issue.

Justifications for the urgent/pressing need:

- Urgent need for the EU credibility on the international stage, and need to encompass a long-term vision;
- In light of the weakened multilateral system;
- The current crisis period requires action; necessary to have the tools to be available in short term;
- The growing tendency towards “weaponisation” of trade (trade and investment measures being used to exert pressure on states and companies in the shape of coercive measures against them) over the last five years, make it urgent to adopt an anti-coercion instrument that could be deployed through a fast-track procedure;
- Given recent developments such as the Covid-19 crisis, the geopolitical tensions between China and the United States and the stalemate in WTO dispute settlement;
- The Covid-19 crisis has further exacerbated pre-existing tendencies towards protectionism, away from a rules-based trading system. In this challenging environment, it is important that the EU equip itself with the necessary tools to respond expeditiously and effectively to coercive practices and defend its interests. However, the aim has to be keeping the world open for trade as much as possible rather than building another wall to close Europe behind it.

Other remarks:

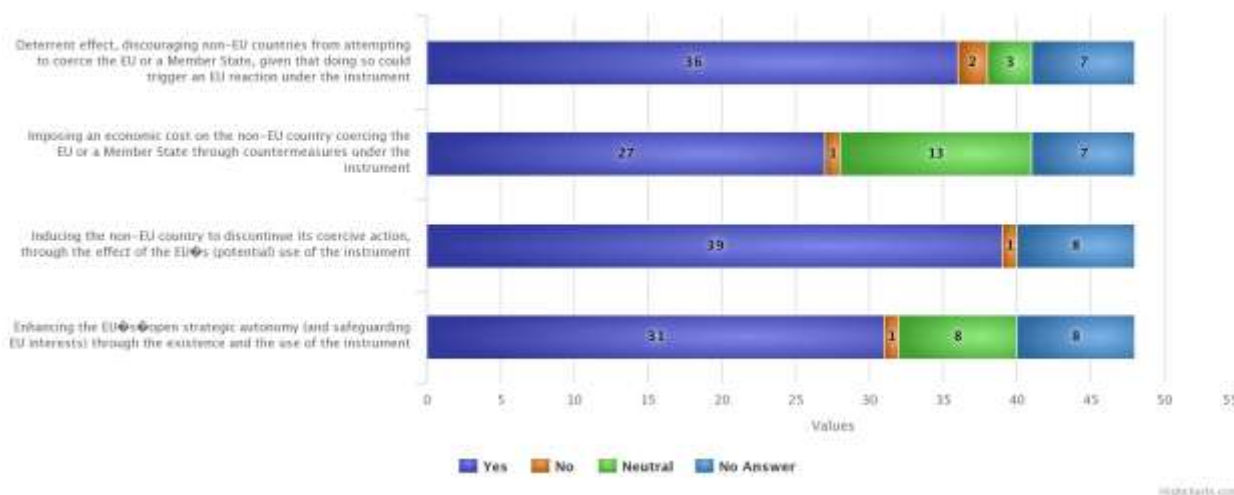
- Any such instrument has to be legal and consistent with EU international commitments and used only as a last-resort, in order to avoid negative consequences on EU credibility; to consider possible economic consequences of EU

countermeasures and further restrictions on trade, which are equally important; to avoid a situation where the costs of the tool will outweigh its benefits; (public authorities)

- The arrival of Joe Biden as President of the United States will not lead to a radical change in US trade policy, but it should nevertheless allow greater openness and even a discreet return to multilateralism. Nevertheless, the EU must embrace the need to change paradigm by applying a more assertive trade policy, for example with the appointment of a Chief Trade Enforcement Officer. It must continue to do so by sending a strong signal to its trading partners through this instrument. (others)

Q17 Possible general objectives of an EU policy instrument.

17. Assuming an EU policy instrument is necessary, its general objectives (including for its concrete use) should be the following, to ensure the degree of intervention is appropriate:

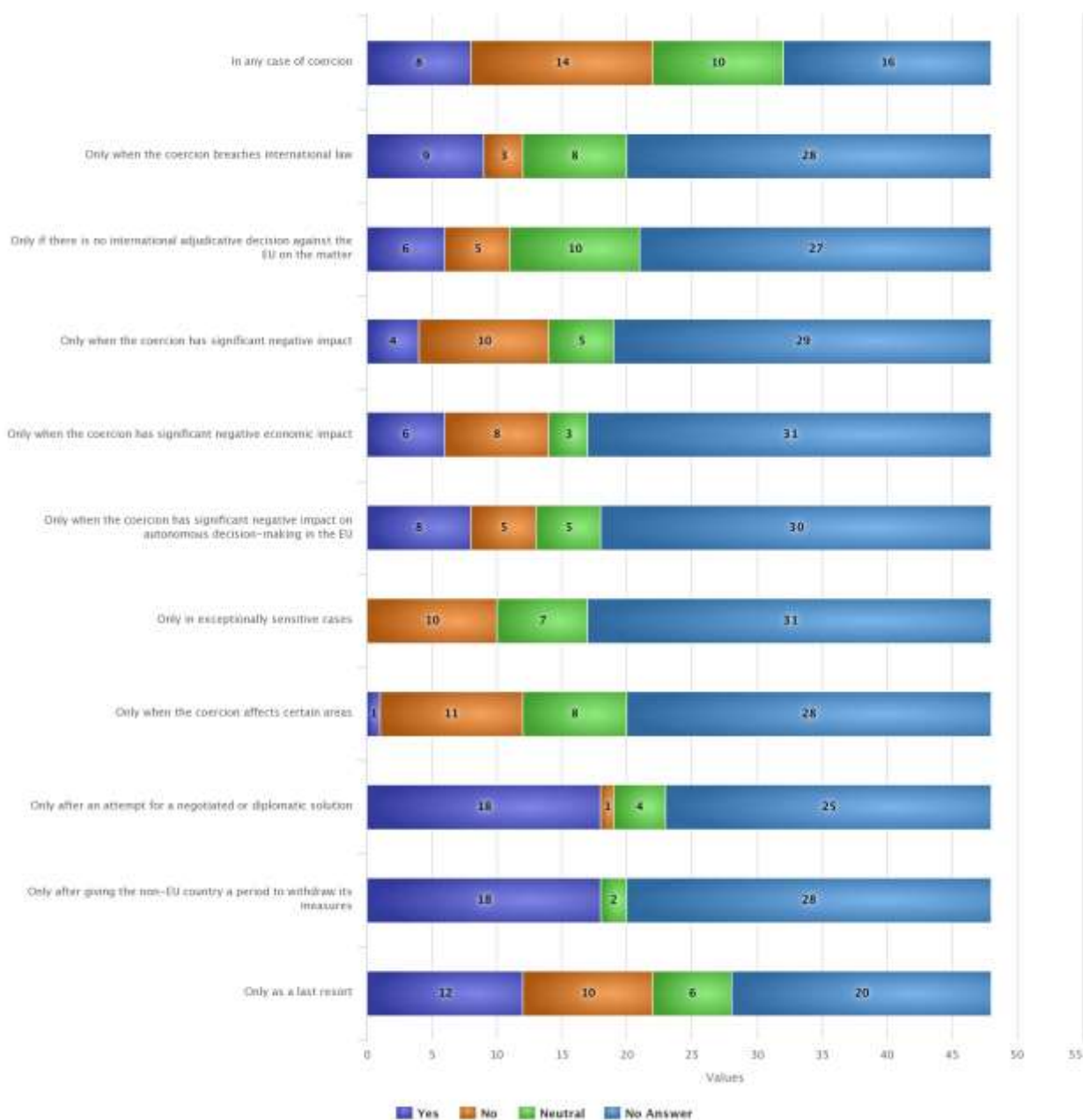


All stakeholder groups generally agreed with the options. Business associations' further remarks included the following: the instrument should provide a space for a dialogue, serve as a deterrent and be used only as last resort in order to prevent damage to legitimate economic interests and avoid triggering a bigger dispute or escalation. Companies agreed with the proposed general objectives, except for one that remained neutral vis-à-vis the first objective.

Public authorities stressed in their remarks that the scope of the instrument must be defined precisely, be used primarily as a deterrent, its use should aim at withdrawing the coercive measures and any costs must be proportionate, the EU should avoid self-serving punishment in order to prevent escalation. A NGO commented that the EU policy framework should be coherent and should support international cooperation, multilateralism and the rules-based order.

Q18 Use of an EU policy instrument – possible circumstances.

18. Assuming an EU policy instrument is necessary, in which circumstances should the EU use it to take countermeasures?



Almost all the business associations rejected the idea of the EU using a policy instrument to take countermeasures in any case of coercion. Most agreed with the idea of using the instrument only when the coercion breaches international law, after an attempt at a negotiated or diplomatic solution, leaving countermeasures as last resort. These stakeholders were also supportive of the option of using such instrument only when the coercion has significant negative economic impact or other significantly negative effects. Most remained neutral as regards the remaining suggestions.

In their remarks, most of the business associations stressed the need to avoid an unwanted escalation of trade conflicts that could harm EU commercial interests. One stakeholder in particular suggested proceeding on a case-by-case basis, as the use of the instrument must be based on a needs assessment and should not exclude certain sectors from the

outset. The stakeholder believes that the Council should be the one to determine the legitimacy of its use because the instrument is likely to produce foreign policy effects despite its commercial nature. Another cautioned against efforts to reach a diplomatic solution delaying the procedure leading to the use of the instrument. Many argued that the trigger for the instrument must be broad to cover a non-exhaustive list of situations.

One company argued for the use of the instrument only in the case of coercive measures with significantly negative effects, while another cautioned against limiting in advance the circumstances in which to use the instrument. They stressed the need to ensure that the use and application of the policy instrument is timely, effective and proportionate, and that its design facilitates deterrence.

Public authorities did not fill in the table but shared in their remarks that a good balance between swiftly addressing coercive practices and curbing escalation of coercive practices should be struck by developing an objective framework for the application of the instrument. Another public authority suggested that it will be crucial that the EU continues seeking to address challenges in bilateral trade relations first and foremost through political dialogue. It is especially important now with a new US administration that the EU focuses on seizing the current opportunity to improve transatlantic relations and trade relations and working with the US to restore a well-functioning rule-based international trade order. Another public authority suggested a careful assessment of the effectiveness of countermeasures and possible implications (potential spiral of trade tensions which could endanger the rules-based trading order and harm the EU economy) before adopting them.

EU citizens agreed with the use of an EU policy instrument only when the coercion breaches international law and rejected its use only as last resort.

NGOs supported the use of the instrument only as last resort, disagreed with its use in any case of coercion and remained neutral vis-à-vis the rest of the options. They pointed to the importance of considering the long-term consequences of the policy instrument for international cooperation, multilateralism and relations with partners.

Q19 Possible threshold for the use of the instrument, e.g. only if the seriousness of the coercion surpasses a certain level.

Respondents were divided between those who see the need for a threshold (20%), and those who do not see the need for a threshold (25%), and the rest who are neutral or did not respond to this question. Those who see the need, expressed preference for a more flexible, case-by-case approach, based on qualitative measurements (fundamental democratic values, significant effect on sectors, economic impact, vital interests, and the like). Those that did not favour the threshold had the following remarks: any coercive measures against the EU is a threat to all Euro zone countries with consequent economic/employment damage for the EU and must be deterred or counteracted; matter of principle because any tolerance will trigger more coercion from the predator and imitation by other countries; a threshold is not an objective criterion; a threshold limits the use and this can be counterproductive for the instrument's usefulness, timeliness and

or/effectiveness – it is expected in any event that the political considerations will affect the decision to use the tool and the choice of the exact countermeasures to be taken; seriousness of the coercion will be subjective; if only numerical economic impact is considered, only large countries/markets could be targeted, with smaller ones getting the message that they can proceed without fear of retaliation; a threshold could not adequately cover the situation that can significantly change from one economic sector to another; defining a certain threshold is not feasible, any decision regarding usage of the instrument should not be taken automatically, but it should be preceded by an in-depth analysis that would include both short-term and long-term consequences of possible conflict escalation.

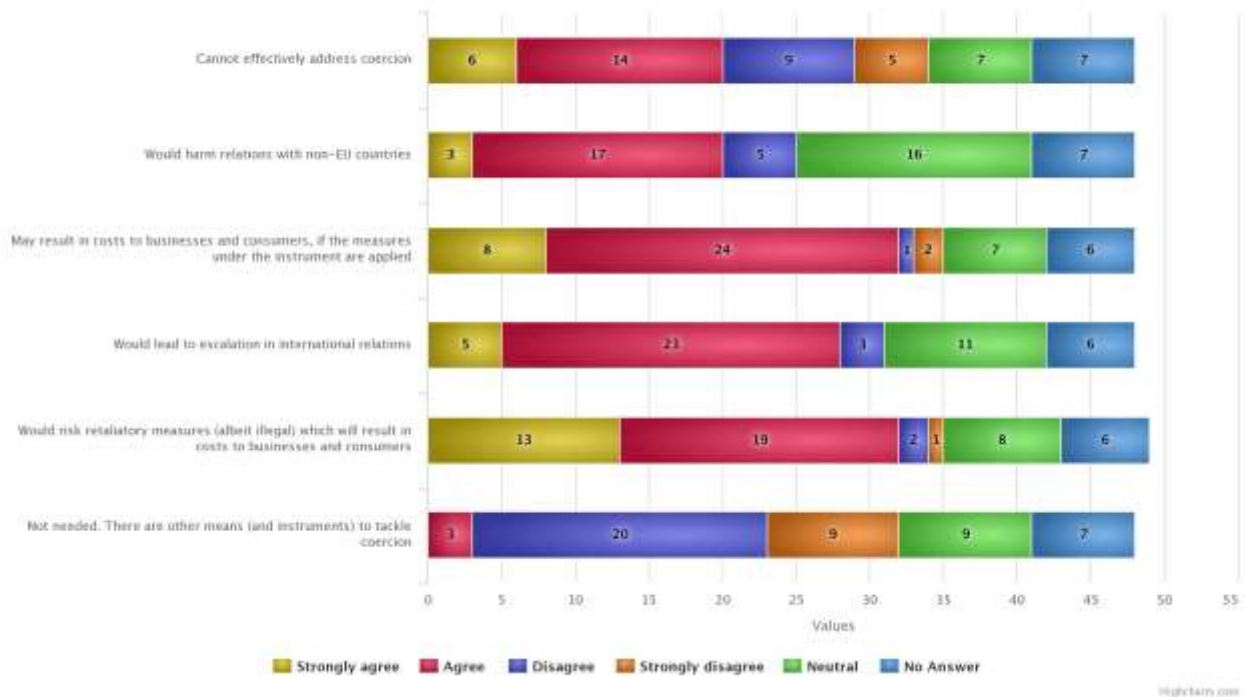
Q20 Circumstances in which the EU should not act (or exceptions to using the instrument).

Business associations and companies had various remarks. One stakeholder argued for a flexible approach: a case-by-case assessment on the need for limitations of the use of the instrument, whilst others argued against any exception from action. Most stated that its use should not harm the EU's legitimacy as a trading partner by triggering unwanted escalation of trade conflicts and harming the commercial interests of businesses and consumers. Hence, it should be used in complementarity with diplomatic efforts and should not override the scope of other existing EU instruments. One company advised against establishing limitations on the use of the instrument in advance as it would risk limiting its usefulness, timeliness and/or effectiveness and expressed doubts on whether attempts at reaching diplomatic solutions would be successful in breaking patterns of coercive behaviour. Alternatively, others argued that the instrument should be applied only in exceptional cases. A business association suggested that given the close trade relationships between the EU and EFTA members, those countries should be excluded from the scope of the instrument, and more broadly, all countries with which the EU has free trade agreements.

For public authorities, it is important that the instrument is coherent with any diplomatic processes. Furthermore, the instrument should not be used when the possible negative consequences of EU countermeasures outweigh the impacts of possible further escalation of the situation (possibility to use EU interest test). Exceptionally, sensitive cases should be approached on case-by-case basis.

Q21 Concerns about an EU policy instrument and its application.

21. ♦ Indicate in the table below any concerns you might have about an EU policy instrument and its application. Note that this question seeks general information only. Specific effects in relation to the scenarios of policy intervention or no intervention are discussed in separate questions below.



Most business associations strongly disagreed with the concerns that the instrument cannot effectively address coercion and that it is not needed due to the existence of other means (and instruments) to tackle coercion, while they strongly agreed or agreed with the concerns that the instrument may result in costs to businesses and consumers and risks triggering retaliatory measures (albeit illegal) which will result in costs to businesses and consumers. Some business associations indicated that they are concerned with the EU policy instrument and its use harming relations with non-EU countries and with it leading to escalation in international relations. Business associations representing small businesses added that the latter may be affected disproportionately either by adding administrative burdens to them or by stifling their business, especially if their trading flows depend on the countries the instrument is acting against.

Companies' views differed in terms of the instrument's ability to effectively address coercion and whether it would lead to escalation in international relations, but they all disagreed with the concern that the instrument is not needed.

Public authorities agreed with the concerns that the instrument may result in an adverse economic impact on businesses and consumers as well as in an escalation in international relations or perceptions of protectionism. They commented that there is insufficient knowledge on the topic to take strong views on the matter. At the same time, they pointed to concerns whether the benefits of the instrument can outweigh the possible negative consequences though further retaliatory measures (and escalation of protectionism in general) against benefits of countermeasures, in advance of activation of the instrument, in order not to harm EU businesses more than by inaction; it may be complicated to prove illegality of the third country's action and its connection to breach of the EU's or EU

Member State's sovereignty and thus breach of international public law; about circumvention of WTO rules and tools.

An NGO commented that the instrument should cover a wide array of sectors and display a large spectrum of trade and investment countermeasures to allow for flexible, swift and effective responses to coercive practices. Another stakeholder noted that the effectiveness of such an instrument is conditioned by its flexibility and adaptability. This implies in particular that the measures will have to be chosen on a case-by-case basis. Such flexibility will also limit certain negative effects, in particular their costs for European businesses and consumers.

Across the groups, stakeholders underlined the need for ensuring compliance with EU's international commitments and obligations, and for not undermining the efforts to reform the WTO. Protectionism must be avoided.

Q22 The EU's other options to tackle coercive practices (if there is a need to tackle them and if an EU policy instrument is not necessary or appropriate).

Business associations agreed that an EU policy instrument is not the universal solution to coercive practices (but maintained it was necessary), and that the EU can take other important steps in that direction by increasing its economic and (security) political power and independence and by developing a certain degree of strength in strategic sectors. They referred to diplomacy as well, the revision of the Blocking Statute, support measures such as export credits or financial support to companies affected by coercive measures by third countries. They noted that strengthening the international role of the Euro remains an important objective and complementary to this initiative.

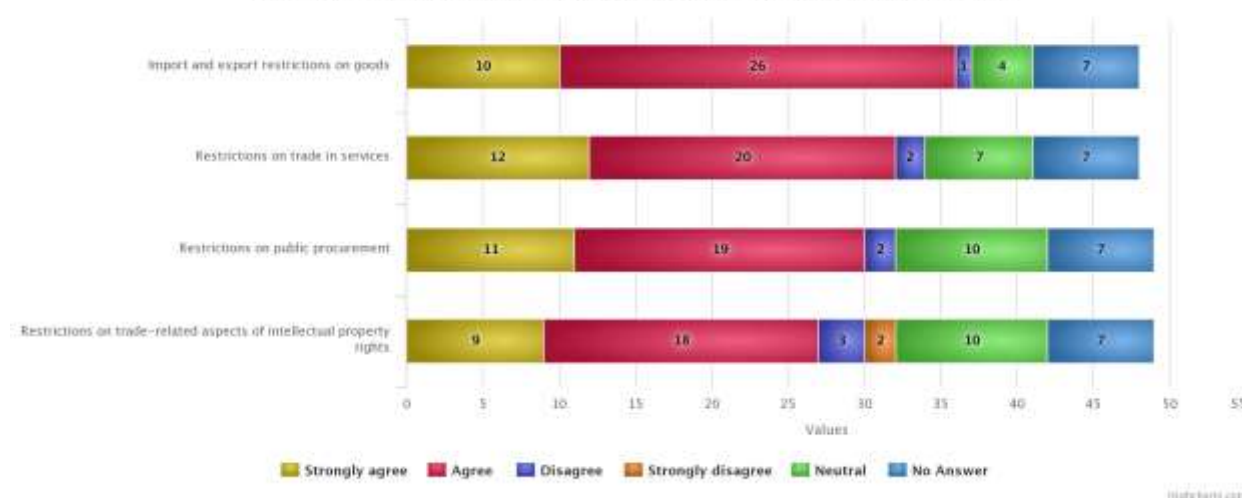
Public authorities commented that, in the absence of the instrument, the EU will fall back on existing diplomatic/political processes and instruments already available. More specifically, they pointed to: the Enforcement Regulation, IPI regulation (currently in the legislative process), trade defence instruments, FDI screening tool, the Blocking Statute, CFSP measures by the Council, recourse to the WTO dispute settlement mechanism.

Others suggested several avenues such as: strengthening the resources allocated to intelligence and economic intelligence; establishing cooperation between the Member States, the EU and businesses; improving and promoting support for businesses in managing this risk, in particular by means of awareness-raising and training measures to prevent risks from materialising; promoting multilateralism; promoting the involvement of lawyers in all companies irrespective of their size.

Q23.1 Appropriateness and effectiveness of the types of countermeasure of the EU Trade Enforcement Regulation in an anti-coercion instrument. Priority

areas.

23.1 Would the types of countermeasure of the EU Trade Enforcement Regulation be appropriate and effective in an anti-coercion instrument? Which areas should be prioritised in the selection?



Most respondents either agreed or strongly agreed with the propositions.

Those in favour of all commented that the instrument should cover a wide array of sectors and display a large spectrum of trade and investment countermeasures to allow for a flexible, swift and effective response to coercive practices. Another stakeholder suggested that the instrument's scope could resemble that of the EU Enforcement Regulation. Another business association urged that countermeasures should not focus exclusively on trade in goods (goods have continuously been taken hostage of trade disputes in the past years, bearing a disproportionate burden while often being entirely unrelated to the core nature of the disputes). At the same time, the EU should refrain from targeting essential services, such as logistics, on which the entire range of EU sectors would rely, and where EU action could have a detrimental effect on the sector it was meant to protect in the first place. Furthermore, restrictions on IPRs should be handled carefully, with the need to avoid countermeasures on EU GIs. As a rule, it was argued that the EU should refrain from targeting sectors in which it has a trade surplus.

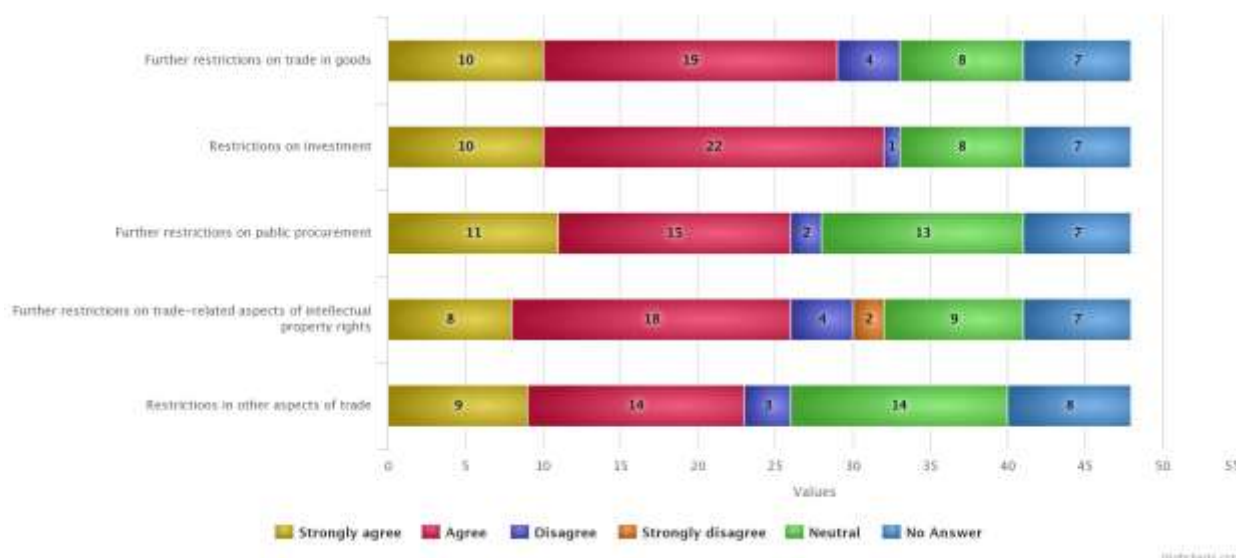
Public authorities stressed in their comments the notion of proportionality in the use and scope of the EU policy instrument, as to ensure minimal disruption of global value chains and reduce the risk of escalation. They further noted that the EU should prioritize countermeasures that cannot be challenged in any of the established dispute settlement systems. They expressed concerns about administrative cost of restrictions on trade in services (uniform implementation in non-harmonized area would be extremely complicated in particular) and public procurement; also concerns regarding the efficiency of countermeasures relating to trade in services as the EU is one of the largest beneficiaries of free trade in services. Moreover, it was argued that no countermeasure in the area of digital trade should be applied. Others said that more important than defining the areas of action is their effectiveness and proportionality, which should always be assessed on a case-by-case basis.

NGOs disagreed with all four options and commented that any decision to launch countermeasures should take into consideration possible negative impacts on the EU's

relations with strategic partners, international cooperation and the rules-based multilateral order.

Q23.2 Additional types of countermeasures in an EU anti-coercion instrument.

23.2. Bearing in mind the countermeasures available under the EU Trade Enforcement Regulation, what additional types of countermeasures should feature in an EU anti-coercion instrument? Note that the Commission will be reviewing the EU Trade Enforcement Regulation, in line with its Article 10, and your reply may also be of use in that review.



Business associations mostly either agreed or strongly agreed with all suggestions. One that was neutral argued countermeasures should be evaluated and targeted on a case-by-case basis. Some commented further that it could be appropriate to envisage countermeasures in the field of public procurement, non-tariff barriers (for instance suspension of mutual recognition agreements or denial of licensing/certification) or digital trade, given the growing number of coercive measures affecting digital trade flows, starting with data flow restrictions or mandatory access to companies' sensitive data. Others suggested personal sanctions. Priority should be given to measures which will penalise EU economic operators and consumers as little as possible. Most importantly, a broad scope is linked to the deterrence effect of the instrument. At the same time, others noted that the tools available under an anti-coercion instrument should be well defined from the outset; this would entail transparency vis-a-vis EU economic operators and Member States, and hopefully enhance the deterrence effect as well.

Companies agreed with all the proposed options. One commented that there should be no limit in advance to the type of EU countermeasure available to address third country coercive actions.

Public authorities expressed concerns about the increasing number of tools using restrictions on public procurement (Enforcement Regulation, IPI, Instrument against distortions caused by foreign subsidies, Anti-coercion) as further restrictions might put a burden on companies as well as contracting authorities.

NGOs disagreed with the first four options of countermeasures but made no comments.

Q23.3 Type of countermeasure, field or sector that should be excluded from an EU anti-coercion instrument, and why. Exclusion's effect on the effectiveness of the instrument.

All business associations agreed that the scope of the use of the instrument should remain compatible with international law and avoid as much as possible creating potential undesirable adverse effects on European commercial interests. However, they differed in their opinion on whether there should be clear limits and exclusions on the use of the instrument from the start. One stakeholder advocated a case-by-case approach that reflects the different shapes and various effects of coercive measures, whilst another championed well defined, transparent listing of applicable countermeasures and areas based on careful and fact-based assessment from the get-go. Specific exclusions suggested were: critical infrastructure, health sector, humanitarian sector, basic measures of public services or related to certain fundamental values, essential services, such as logistics, on which the entire range of EU sectors would rely. It was argued that restrictions on IPRs should be handled carefully and countermeasures on EU GIs avoided. It was pointed out that the guidance provided by Article 50 of the ILC Articles on State Responsibility in the context of countermeasures should be applied.

One company echoed the view that there should be no limit in advance to the type of EU countermeasure available to address third country coercive actions.

A public authority noted (concerning another question) that no countermeasures should be applied in the area of digital trade. Additionally, a public authority suggested exclusion of IPR restrictions and restrictions in data flows. In these areas, they argued that the EU might risk serious damage to its own companies both as an undesirable side effect and in case of retaliation in the same area. Exclusion of trade in non-harmonized services should also be considered due to alleged complicated implementation and the questionable efficiency of countermeasures in this area. Another authority argued that it is not necessary to have specific exclusions in the instrument, as it may unreasonably limit the use of the instrument and reduce its efficiency.

Q23.4 Choice of fields or sectors for the most effective in deterring coercion EU countermeasures towards specific non-EU countries.

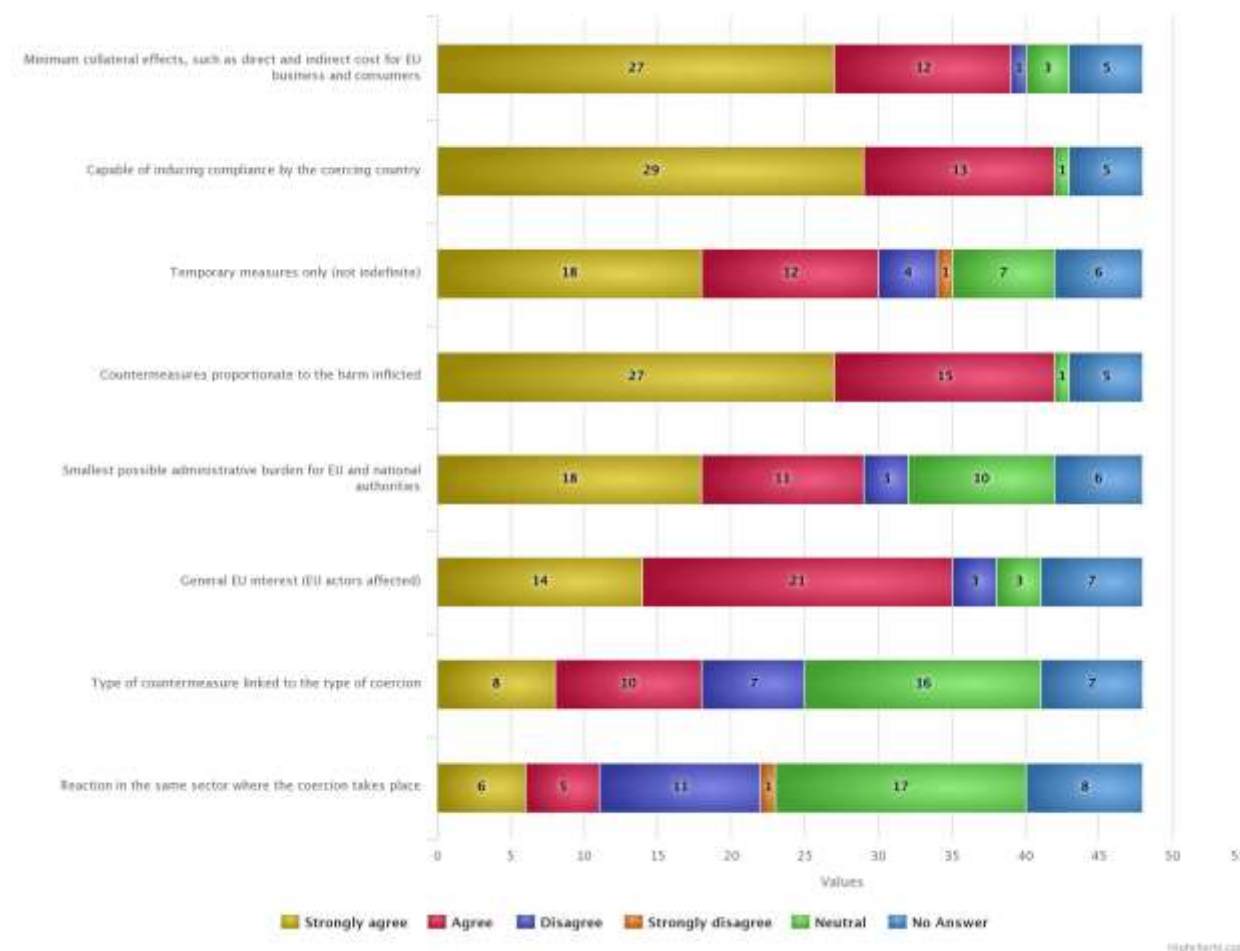
Most replies pointed out that an effective deterrence and action is a matter of a case-by-case assessment in a real situation, factoring in the coercing country and the collateral damage, amongst other elements. Some argued that the fields and sectors targeted by the countermeasures should be the same as those EU fields and sectors subject to the coercive measures of the foreign actors.

Concrete suggestions included: energy, financial sector (including banks), transport, telecommunications, information and communication technologies, prohibition of investments above a certain threshold for people with permanent residence in these countries, specific investment prohibitions for real-estate property or acquisitions of companies for people with permanent residence in such countries, including any legal entities owned or controlled by them, regardless of the place of incorporation; restriction of

key patents for transfer/ use in targeted non-EU countries; or sectors that are politically sensitive for the coercing country.

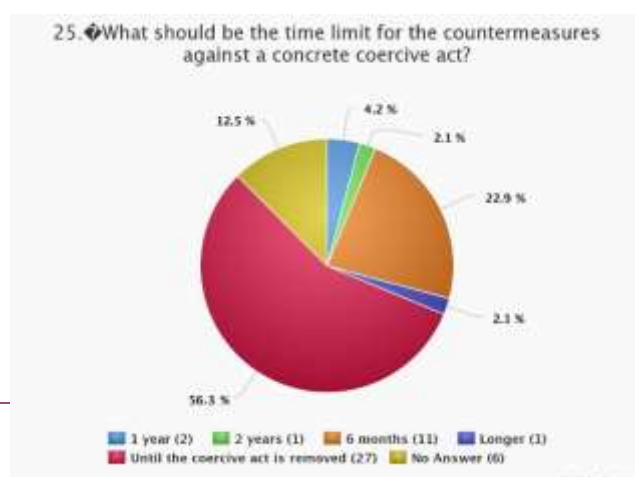
Q24 An EU anti-coercion instrument should provide for clear, objective criteria for designing and applying countermeasures. Choice.

24. An EU anti-coercion instrument should provide for clear, objective criteria for designing and applying countermeasures. Which ones?



Stakeholders across the groups predominantly favour the options, while the majority remained neutral regarding the type of countermeasure being linked to the type of coercion and neutral about reacting in the same sector as the coercion.

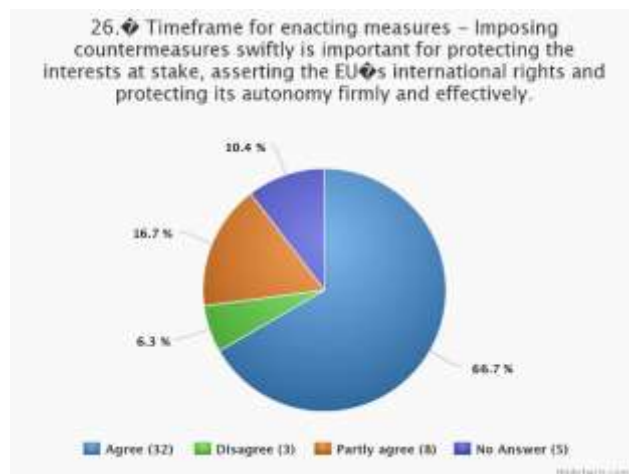
Q25 Time limit for the countermeasures against a concrete coercive act.



There were varying replies across the groups. Most business associations and companies stated that the time limit for countermeasures should be the moment when coercion is removed. Their reasoning was that this would ensure their effectiveness. Some argued that there should be a specific time limit (e.g. 6 months); various responses referred to

a method for renewing or amending measures before the renewal, and that measures must be reversible. A business association added that there is no time limit for the imposition of countermeasures, only specific conditions in which countermeasures should be lifted (Article 52 ARSIWA). Some public bodies emphasised the importance of short term measures (e.g. 3-6 months) that can be extended where needed. Another public authority suggested that a very specific time limit to the instrument could undermine its effectiveness; a business association echoed that. Flexibility, proportionality and purpose are important when defining the duration of countermeasures. Other stakeholders also supported countermeasures until the coercion halts. They mentioned the need for monitoring the measure closely.

Q26 Timeframe for enacting measures - Imposing countermeasures swiftly is important for protecting the interests at stake, asserting the EU's international rights and protecting its autonomy firmly and effectively.



Business associations agreed with the statement. They elaborated that speed is important for protecting the interests at stake, asserting the EU's international rights, and protecting its autonomy firmly and effectively, and for the deterrence effect, but at the same time it is crucial to provide for meaningful consultations with relevant stakeholders. Some added that coercive measures are often designed to put maximum pressure immediately or

within a relatively short period. Accordingly, the Commission must be able to act ex officio and to impose countermeasures (including interim measures) quickly in order to be effective.

Public authorities partly agreed, clarifying that swiftness should not be at the expense of proper argumentation and justification or proper analyses of the political consequences and the impact on the EU and Member States. Another public authority suggested the possibility for swift measures is important for the credibility and deterrence effect.

NGOs partly agreed and emphasised the need to consider the impact on relations with third countries, as well as the need for full involvement of the EU Member States in decision-making process regarding individual countermeasures. Other stakeholders, trade unions, academics/think tanks and EU citizens agreed with the statement.

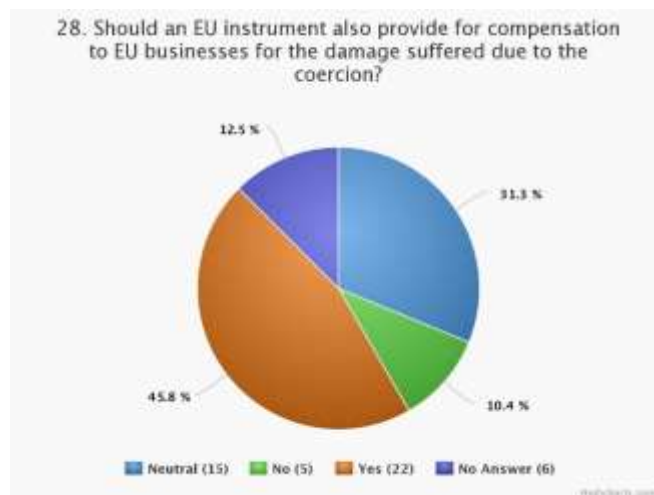
Q27 Involving stakeholders in the use of the instrument. Should the Commission consult relevant stakeholders on their respective interests before taking countermeasures?

Business associations replied affirmatively. The range of days referred to was a minimum of 7 days, or 10 days to 1 or 2 months, for some to 3 months. Various responses referred

to 20 days as a middle ground and that the period should depend on the complexity of the coercive measure. Some commented that as there needs to be quick action to take countermeasures, the period for consultation could vary in accordance with the gravity/type of coercion. A business association mentioned the need to factor in the time to collect input by its members. Stakeholder consultation would help in the process of mitigating the potential negative impact of measures.

Companies replied positively and suggested that the period of consultation should range from 10 to 20 days. Public bodies answered positively and suggested a minimum of 10 days for consulting relevant stakeholders. NGOs and Academics/think tanks answered positively and commented that the period of days depends on the coercion itself. Trade unions and EU citizens answered positively too. Trade unions stated that a minimum of 5 days was needed and EU citizens said that 14 days was the minimum period.

Q28 Possible compensation to EU businesses for the damage suffered due to the coercion.

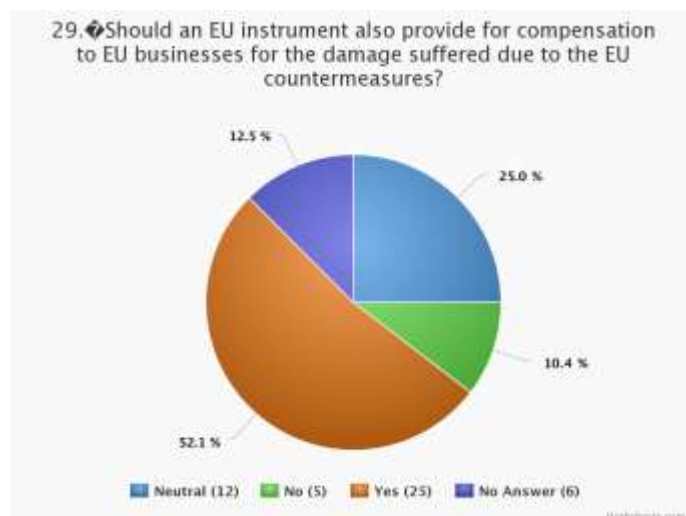


Stakeholders were split also on this question, with a bit less than the half agreeing, and the others disagreeing or being neutral or giving no answer. Business associations and companies generally agreed. They stated that this was important to combat job losses, loss of market, to reassure EU market actors, to provide a relief in the short-term. More specifically, it would provide welcome reassurance and support to

companies who are otherwise being encouraged by the EU and Member States alike to seize the opportunities offered by international trade. Some argued that tariff-based EU countermeasures could fund the specific compensating mechanism under the anti-coercion instrument. Nevertheless, some mentioned the challenge of calculating these losses precisely; it might be more realistic for such a scheme to be tackled in a separate instrument due to its complexity, and pointed out that compensation should not become a substitute for the EU's and Member States' continued efforts to restore stable trade and political relations with third countries concerned.

Public bodies were neutral on this question. They elaborated that compensation may serve as a temporary relief for EU companies, nevertheless considering the fact that third country measures can be in place for longer periods of time, there was a question from which sources and how long such compensation would be paid. It is also important to keep in mind how it would be distributed. Uneven distribution of such compensation can also lead to intra-EU tensions. Others noted that it would be necessary to consider the risk of infringement of EU competition rules. EU citizens, Academics/think tanks and trade unions answered positively. NGOs did not answer the question. Other stakeholders were neutral.

Q29 Possible compensation to EU businesses for the damage suffered due to the EU countermeasures.

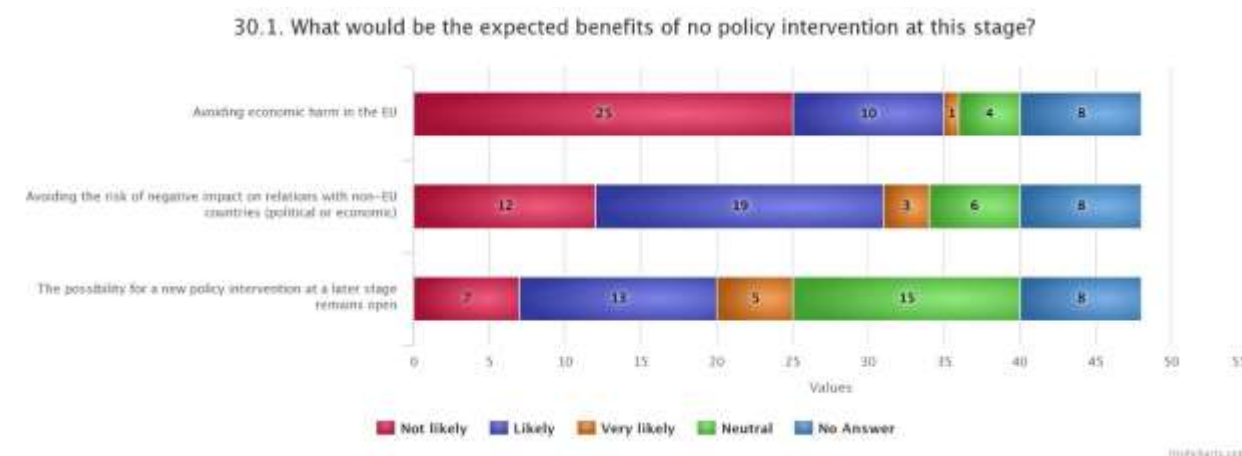


Stakeholders were split also on this question, with slightly more than the half agreeing, and the other half, disagreeing, being neutral or not answering. Business associations and companies were mostly in favour. They elaborated that compensation was important to nullify the negative effects of coercion, but also raised issues that calculating damages might be complicated and insecure and that compensation was not

decisive to the anti-coercion instrument (whereas it is to the Blocking Statute).

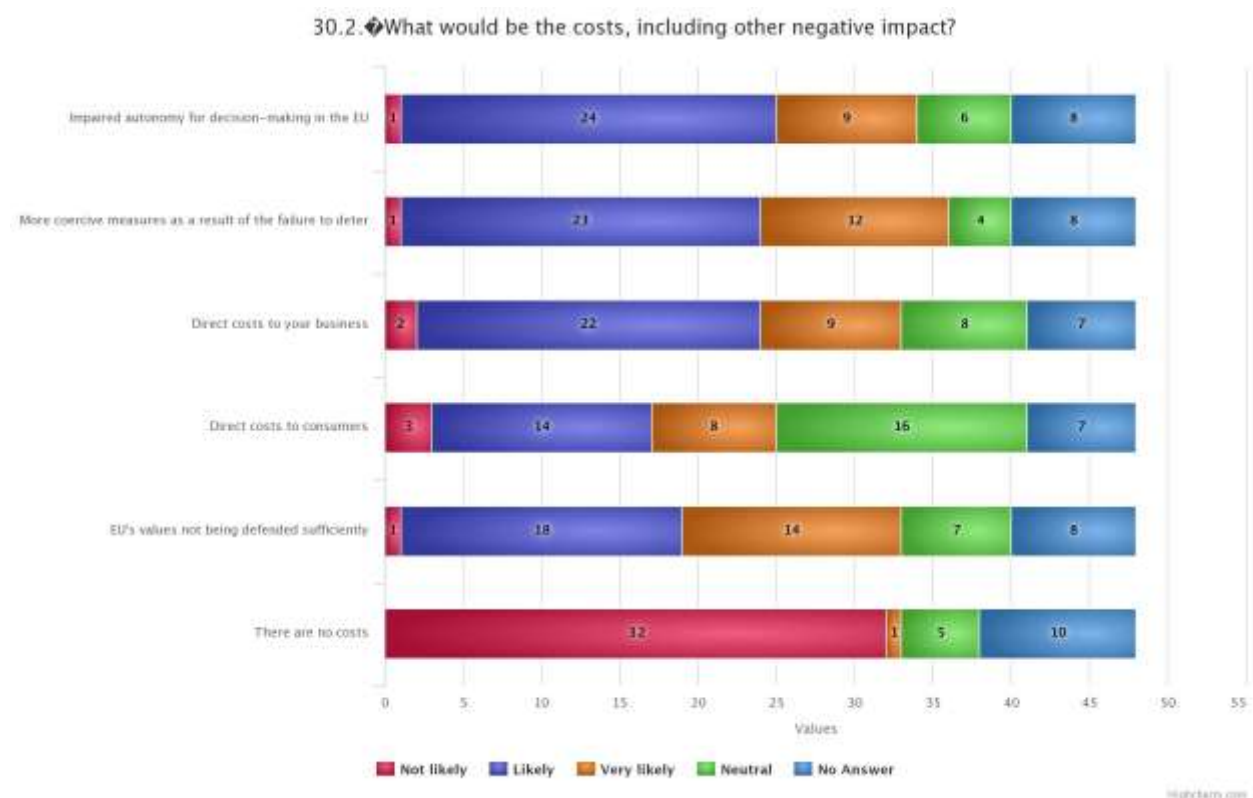
Public bodies responded positively but raised the issue that compensation brings budgetary issues and questions of how the compensation would be distributed. EU citizens and NGOs responded positively. Other stakeholders and Academics/think tanks were neutral. Trade unions had mixed answers.

Q30.1 Expected benefits of no policy intervention at this stage.



The majority of respondents did not agree with the suggested benefits of not intervening. In their further remarks, an EU citizen strongly opposed a non-intervention scenario; a public authority referred to existing tools that could address coercive measures already, arguing that this diminishes the need for a new legal instrument. Other stakeholders noted that while in the short term a non-intervention approach could preserve the status quo, a lack of policy intervention may be damaging in the long term.

Q30.2 Costs, including other negative impact of no-intervention at this stage.



Overall, most stakeholders agreed with the suggested costs and negative impact, also consistently disagreed with the last suggestion (i.e. that there are no costs). Business associations argued that non-intervention has costs in terms of market share (referring to Iran, Cuba, Russia), and the costs could be long-term and would go beyond commercial costs; that non-intervention will lead to a loss of EU credibility on the international scene and will invite further coercive measures. It will have a large impact on EU firms (direct losses, long-term eviction from foreign markets, strategic takeovers) and collateral effects for employees and consumers (restricted competition, overreliance on certain suppliers and connected risk of shortage used to put further pressure on the EU, Member States, and its citizens). An EU citizen strongly opposed non-intervention. Another EU citizen argued that the last 20 years (with reference to the Libyan, Syrian, Ukrainian crisis) have demonstrated that European diplomacy has not been successful. Other stakeholders noted that while in the short term non-intervention could preserve the status quo, it may be damaging in the long term. Another pointed out that, in any case, coercive measures are already causing economic damage in the EU and a lack of intervention will not allow them to be countered.

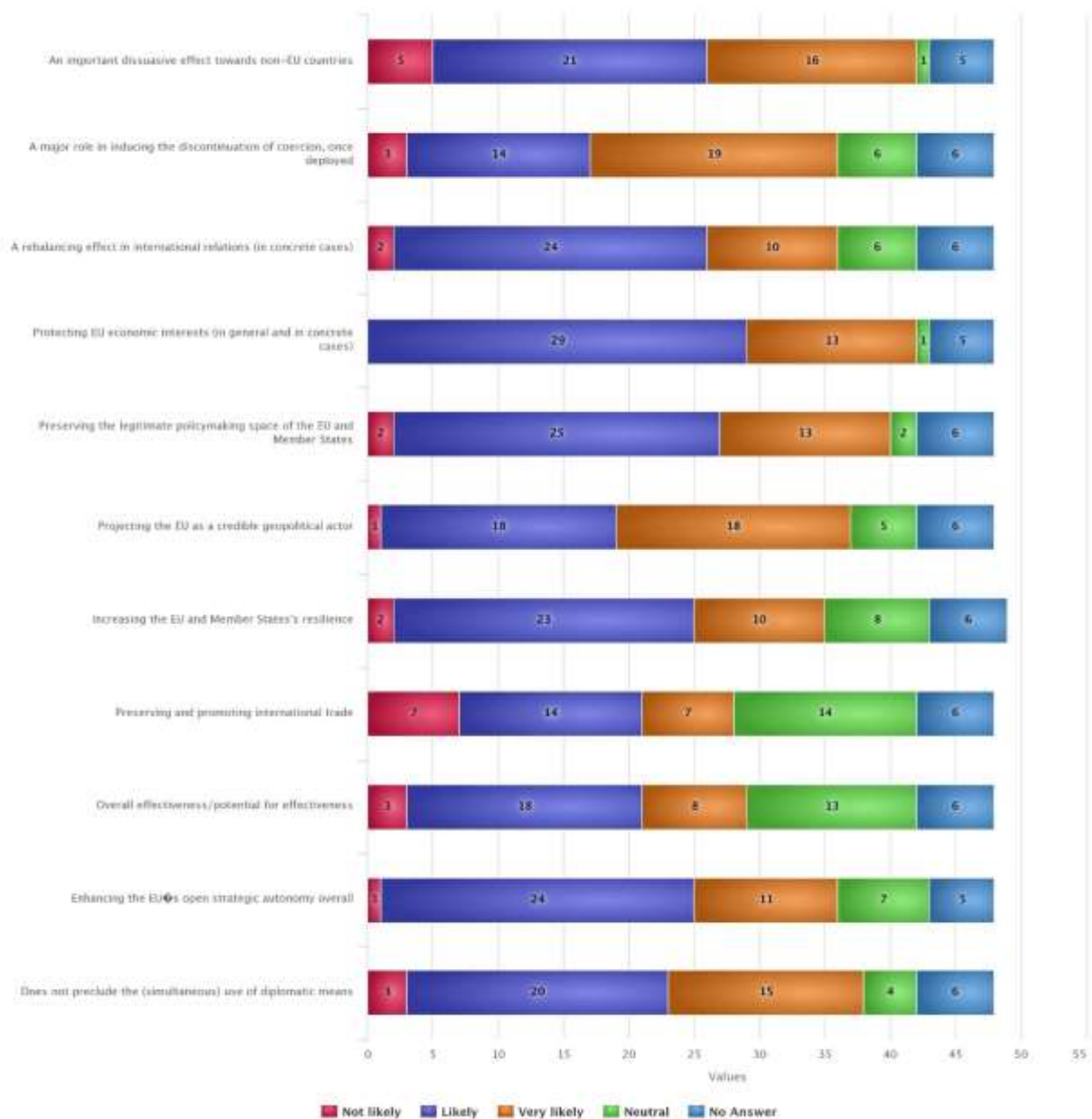
Q30.3 No-intervention scenario, likely impact - social, environmental, affecting fundamental rights, administrative simplification or burden, etc.

Business associations felt that the no-intervention scenario could lead to the weakening of the EU on the international scene as well as have negative impacts on EU businesses because of coercive measures adopted by third countries. It was also observed that it could result in diminished geopolitical influence by the EU in the setting of international social

and environmental standards. Companies added that non-intervention may act as a disincentive for companies, and in particular SMEs, to operate abroad if they do not have means to defend themselves against coercive practices. Public authorities mentioned economic and social impacts and a weakening of the EU's position in global policy in the longer term. Trade unions explained that without a proper EU response, coercive practices could lead to a significant impact on employment, increase in CO2 emissions, worsening of the greenhouse effect and raising inflation with reduced purchasing power. Other stakeholders explained that non-intervention could have an impact on the workforce as a consequence of the loss of market opportunities in third countries and on the competitiveness of EU SMEs globally.

Q31.1 Expected benefits of an EU anti-coercion instrument (its existence or use).

31.1. What would be the expected benefits of an EU anti-coercion instrument (its existence or use)?



Overall, most of the stakeholders across the groups agreed that the suggested benefits are very likely to likely. A very small number found that all suggested benefits (with one exception) are not likely.

Business associations elaborated that the deterrence effect would be the highest value of an EU anti-coercion instrument as well as that it should help EU businesses tackle the legal uncertainty deriving from the different coercive measures that can be adopted. It was also observed that it is not sufficient to adopt an anti-coercion instrument but that the EU must also adopt a global and common strategy to address coercive practices. Business associations also emphasised that the risk of escalation must be taken into account in relation to actual interventions in the short- and long-term and such an instrument must be used carefully.

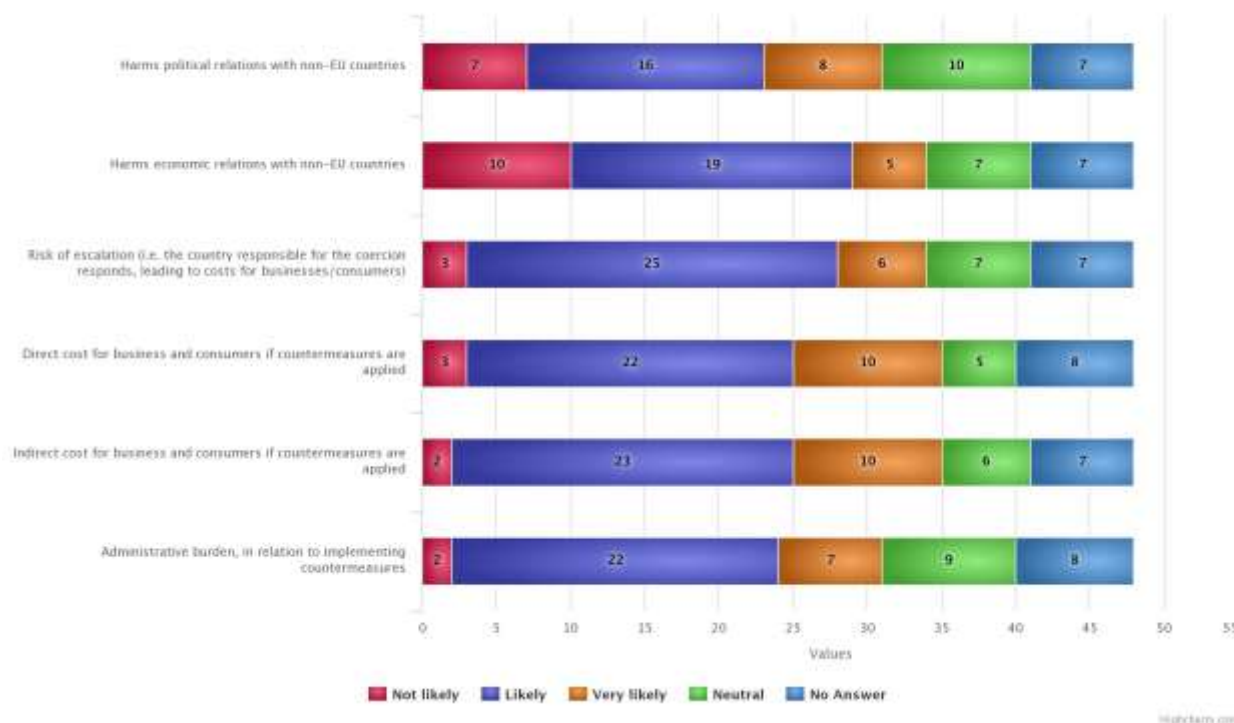
Companies noted that in light of the fact that EU trading partners have engaged in instances of coercion, the EU should be in a position to adopt timely and effective countermeasures.

Public authorities noted that the priority should be to strengthen the rules-based order and to clarify whether diplomatic channels should be used first.

Trade unions observed that one of the benefits would be to develop the EU's sovereignty to make it less vulnerable to coercive practices from third countries (e.g.) in the agri-food sector.

Q31.2 Cost or other negative impact of the EU anti-coercion instrument.

31.2. What would be the cost or other negative impact of the EU anti-coercion instrument (its existence or use, as relevant)?



Stakeholders across the groups broadly find that the suggested costs/negative impact are very likely to likely. A small number do not agree that these costs/negative impacts may arise.

In their further remarks, business associations observed that direct and indirect costs as well as the administrative burden should be reduced to a minimum for EU businesses. In this regard, it was noted that compensation for the impact of EU measures would help reduce indirect costs for businesses. Businesses also noted that should the instrument be applied on a routine basis, the risk of retaliation and escalation should not be neglected. It was also noted that it is difficult to assess such costs independently from the nature or form of the coercion at issue. More specifically, it is difficult to estimate the costs and the potential harm at political and economic level that action or inaction in a specific case of coercion would imply. The costs would depend on specific factors such as the measure taken, the relations between the EU and the country imposing coercion and on the potential ways to balance the measure or its effects.

Another business association argued that by resorting to coercion, the coercing country 'took the first step' in harming political and economic relations, and the EU in responding could not be held responsible. A public authority observed that the EU already has tools to protect its interests and that a unilateral anti-coercion instrument could cause negative impacts by undermining the multilateral trading system and escalate protectionism. Other stakeholders noted that the cost of non-intervention could be more damaging for the EU and its economic operators in the long term than intervention.

Q31.3 EU policy intervention, likely impact - social, environmental, affecting fundamental rights, administrative simplification or burden, etc.

Business associations noted that because countermeasures are eclectic, all areas will be affected, either directly or indirectly, and such impacts should be considered. It was also observed that a robust anti-coercion instrument would have important impacts on the international scene by discouraging third countries from adopting coercive measures and this, in turn, could result in the EU being able to have more weight when setting ambitious international social and environmental standards.

Public authorities noted that the use of the anti-coercion instrument could have a negative impact on EU businesses, including uncertainty in doing businesses, additional costs in long-term contracts, enhanced administrative burdens in complying with new rules, compromised conditions of cooperation or affect the fundamental right of doing business. Member States could also suffer from the burden that countermeasures entail, including their cost which could have, in extreme cases, a social impact on businesses and consumers which could lead to reduced support for the EU. If the instrument only acts as an effective deterrent, however, it would have positive impacts for the EU. It was also noted that the instrument could have far reaching and long-term impacts on the EU's trade policy and the global rules-based trading system.

Q32 Any EU policy intervention must be compatible with EU and international law.

Business associations expressed broad agreement with this statement. The need to ensure compatibility with the Enforcement Regulation and its recent update as well as WTO law, human rights law, international humanitarian law and refugee law was also raised. It was

also noted that in case of conflict, international law should prevail. The need to ensure compatibility with EU primary law was also expressed.

Companies generally agreed with that statement and the position adopted by business associations but it was also mentioned that priority should be given to defend EU businesses and strategic interests against coercive actions.

EU citizens agreed with that statement but it was also observed that there would be no reason why the EU needs to respect international law if other states openly violate it.

NGOs noted the difficulty to assess the legality of instruments based on international law and that it is thus critical to guarantee that a legal impact assessment will be undertaken by the EU institutions and presented for scrutiny to the Member States before any EU action is taken.

Public authorities also highlighted the importance of ensuring compliance with EU and international law, and especially with WTO law. It was added that diplomatic communications should remain the first option to solve a conflict and that the EU should continue to aim at reforming the WTO and restoring a functioning multilateral dispute settlement mechanism.

Trade unions agreed with the statement and supported the idea that it should be part of the reform of the WTO and the pursuit of multilateralism.

Other stakeholders explained that the instrument and its use should be compatible with international law and WTO law. Stakeholders also highlighted that beside general international law, the countermeasures should also be consistent with obligations provided under bilateral or regional free trade agreements.

Respondents

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1. Conseil national des barreaux	France
2. AFEF (Association of large French companies)	France
3. Bundesverband der Deutschen Industrie e.V. (BDI) Federation of German Industries	Germany
4. Fédération nationale des Travaux Publics (FNTP)	France
5. Fondation pour le droit continental	France
6. Federale Overheidsdienst Economie, KMO, Middenstand en Energie – Belgium	Belgium
7. France Industrie	France
8. European Confederation of the Footwear Industry	Belgium
9. European Semiconductor Industry Association (ESIA)	Belgium
10. Swedish Confederation of Enterprise	Sweden
11. BMW Group	Germany
12. spiritsEUROPE	Belgium
13. CPME	France
14. Bundesverband deutscher Banken e.V.	Germany
15. CEEP-Central Europe Energy Partners	Belgium
16. Huawei Technologies	China
17. EURATEX	Belgium
18. economiesuisse	Switzerland
19. BusinessEurope	Belgium
20. AEGIS Europe	Belgium

21. European Association of Trade + Investment Controls and Compliance Attorneys	Belgium
22. Gesamtverband der Deutschen Textil- und Modeindustrie e.V.	Germany
23. Cerame-Unie (European Ceramic Industry Association)	Belgium
24. Mouvement des Entreprises de France (MEDEF) French Business Confederation	France
25. Associazione Bancaria Italiana	Italy
26. Svaz průmyslu a dopravy ČR	Czechia
27. Eesti Välisministeerium	Estonia
28. AVE International	Germany
29. Eurometaux	Belgium
30. Confindustria Ceramica	Italy
31. Ministry of Industry and Trade of the Czech Republic	Czechia
32. SPECTARIS Deutscher Industrieverband für Optik, Photonik, Analysen- und Medizintechnik e.V.	Germany
33. Confederation of Danish Industry	Denmark
34. EU citizen	France
35. Generalitat Valenciana, Direccion General de internacionalización	Spain
36. La Coopération Agricole	France
37. SEMAE (ex GNIS) - French Interprofessional Organisation for Seeds and Plants	France
38. Infineon Technologies AG	Germany
39. European Economic Chamber, Nepal	Nepal
40. Malta Business Bureau	Malta
41. EU citizen	Italy
42. bioMérieux	France
43. EU citizen	France
44. EU citizen	Hungary
45. Federimpreseitalia	Italy
46. National Cheng-chi University	Taiwan
47. EU citizen	Germany
48. EU citizen	Germany

Outside EUSurvey

49. Orgalim	Belgium
50. UNIFE - The European Rail Supply Industry Association	Belgium
51. GIFAS - French Aerospace Industries Association	France
52. ASD - Aerospace and Defence Industries Association	Belgium
53. FoodDrinkEurope	Belgium
54. DigitalEurope	Belgium
55. Government of the Federal Republic of Germany	Germany
56. Government of the Republic of France	France
57. Government of Denmark	Denmark
58. Austrian Federal Economic Chamber	Austria
59. VDMA - Mechanical Engineering Industry Association	Germany
60. Government of Sweden	Sweden