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The Anti-Coercion Instrument

An Analysis of the EU's Broad Trade Defence Instrument in a Changing Geopolitical Landscape

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Contents

Abstract

In the context of increasing geopolitical tensions and the growing use of economic coercion in international relations, the European Union adopted (EU) Regulation 2023/2675 better known as the Anti-Coercion Instrument (ACI). This study analyses the political and legal developments that led to the adoption of the regulation, alongside its objectives, and its operational structure. It further examines the compatibility of the instrument with World Trade Organisation provisions, and international law. The recent events surrounding the Greenland crisis involving Denmark and the United States are discussed to illustrate the legal and practical difficulties associated with the identification of economic coercion and the activation ACI.

This research concludes that while Anti Coercion Instrument was never enforced since its adoption, because of the complexities associated with the definition of economic coercion, it still meets Europe's need for a defensive mechanism to address such instances.

Keywords: Economic coercion, EU, WTO

Abbreviations

AB	Appellate Body of the WTO dispute settlement mechanism
ACI	Anti Coercion Instrument
ARSIWA	Articles on Responsibility of States for Internationally Wrongful Acts
CCP	Common Commercial Policy
CJEU	Court of Justice of the European Union
DG Trade	Directorate-General for Trade
DSB	Dispute Settlement Body
DSU	Dispute Settlement Understanding
EU	European Union
FDI	Foreign Direct Investment
GATS	General Agreement on Trade in Services
GATT	General Agreement on Tariffs and Trade
ICL	International Customary Law
JPCOA	Joint Comprehensive Plan of Action
QMV	Qualified Majority Voting
TEU	Treaty on the European Union
TFEU	Treaty on the Functioning of the European Union
US	United States of America
WTO	World Trade Organization

1 Introduction

1.1 Background

The European Union (EU) and the United States of America (US) represent almost 30 % of global trade in goods and services and together maintain the largest bilateral trade and investment relationship, accounting for 43% of the global gross domestic product (GDP).[1]

However, relations between major trading partners within the international trading system have increasingly been strained by geopolitical tensions following the COVID-19 pandemic, the outbreak of the war in Ukraine, and growing rivalries between the US and China.[2]

More recently, the US president has attempted to pressure Denmark into selling Greenland and threatened to impose tariffs. In addition, the US administration refused to rule out military intervention, thereby raised concerns regarding the sovereignty of an EU Member State. The aggressive rhetoric used by the US President is a troubling development in transatlantic relations as it got to the point where the US Congress introduced a bill to authorise the President to initiate negotiations to secure the acquisition of Greenland. The political interest of Greenland is largely attributable to its mineral resources, the strategic importance for defence and security policy and its relevance to Arctic shipping routes. Furthermore, the US has seen Greenland as a national security asset due to increasing concerns with Russian and Chinese influences in the region.[3]

The World Trade Organization (WTO), a central organisation governing trade between countries, is founded upon the principles of promoting the multilateral trading system. In international trade relations, there has been an increasing shift towards unilateral trade measures, thereby undermining one of its core principles. Within the EU, these developments have contributed to a shift in policymaking towards the increased use of defensive trade instruments.[4] One example of this development is the adoption of Regulation 2023/2675 on the protection of the Union and its Member States from economic coercion by third countries, hereinafter the Anti-Coercion Instrument (ACI). [5]

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[1] Council of the European Union, “EU-US trade: facts and figures” < https://www.consilium.europa.eu/en/infographics/eu-us-trade/ > Accessed 15th of May 2026

[2] Rene W.H. van der Linden, Piotr Lasak “Sino-EU Economic Relations, Balancing De-risking Strategy with Global Cooperation and Competition” (Palgrave Macmillian 2024) p.5-10

[3] Gabija Leclerc, Greenland: Caught in the Arctic geopolitical contest (European Parliamentary Research Service, PE 769.527, October 2025) 6-9

[4] Sophie Bohnert, ´Toxic Unilateralism: How the EU´s unilateral trade-related measures drive polarization in Global trade relations´(2025) 9(2) Univeristy of Vienna Law Review 50. 50-55

[5] European Parliament and Council Regulation (EU) 2023/2675 of 22 November 2023 on the protection of the union and its Member States from economic coercion by third countries (2023) OJ L.

In response to the rising tensions with the US regarding the Greenland crisis, the French President, Emmanuel Macron, urged the EU to activate its own "trade bazooka"[6], The instrument is intended to protect the interest of the EU and act in situations where in which third countries interfere with the EU or Member State policy choices by threatening or applying economic coercion which in turn affects trade and investments.[7] When the ACI was adopted, it was stated that "it allows us to be more assertive in defending our legitimate rights and interests".[8] Even though discussions on activating the ACI arose during the Greenland crisis, uncertainties remain on the effectiveness and the legality of the trade instrument. In particular, the ACI compatibility with the WTO-regime, public international law and customary international law.

1.2 Purpose and research questions

The purpose of this study is to analyse the role of the Anti-Coercion Instrument in addressing economic coercion by third countries within its legal and geopolitical context. The study aims to provide a comprehensive understanding of the legal challenges surrounding the ACI, and to evaluate the potential consequences it could have on the European trade policy and external relations, should it be enforced. The following research question(s) will be answered:

I. Under which conditions do the Anti-Coercion instrument function as a trade measure?

II. What is the procedure for activating the Anti-Coercion instrument?

III. Does the EU Anti- Coercion Instrument represent a lawful justification of trade defence under WTO law?

IV. How does the threshold for establishing coercion constrain the application of the ACI?

1.3 Delimitations

The Anti Coercion Instrument, at the time of this writing, has not yet been formally enforced by the EU against a third country, meaning that no precedent exists regarding its practical application. The legal scope of the ACI intersects with several

[6] Yuka Royer, ´ France´s Macron calls on EU to be ready to activate its "trade bazooka" (France24, 20 January 2026) > https://www.france24.com/en/tv-shows/business/20260120-france-s-macron-calls-on-eu-to-be-ready-to-activate-its-trade-bazooka < Accessed 20 May 2026

[7] European Commission, ´Anti-Coercion Instrument´ > https://trade.ec.europa.eu/access-to-markets/en/content/anti-coercion-instrument < Accessed 04 April 2026

[8] European Commission, Political Agreement on new Anti-Coercion instrument to better defend EU interests on global stage (Press Release IP/23/3046) > https://ec.europa.eu/commission/presscorner/detail/en/ip_23_3046 < Accessed 04 April 2026

branches of international and EU law, most notably WTO law, customary international law (CIL), and the law of state responsibility.

CIL is particularly relevant to this analysis as it constituted a core legal justification for the EU when developing the Instrument. Specifically, the EU relies on these binding unwritten rules arising from consistent practice followed under a sense of legal obligation, to defend its trade defence framework. [9]

Given the breadth of these law fields, this analysis primarily focuses on the compatibility of the ACI with WTO law, alongside the relevant principles of CIL that justify the instrument's compliance with the covered agreements. The analysis will rely on the International Law Commission's Articles on Responsibility of States for Internationally Wrongful Acts (ARSIWA) among other principles. Consequently, this study will not comprehensively explore all the areas of CIL. While other areas of law may be referenced where necessary to address specific legal tensions or competing interpretations they will not be further developed.

The recent events surrounding the dispute between the US and Denmark regarding Greenland, constituted the first instance in which the potential activation of the ACI was publicly debated. Due to the novelty of these events, limited academic literature, legal coverage and institutional analysis are currently available. Therefore, the analysis will also rely on non-legal sources, including official statements, policy communications, and geopolitical observation.

Furthermore, as the Anti Coercion Instrument contains an indicative list of potential countermeasures, this study focuses on its macro impact on trade.[10] Consequently, a detailed assessment of each individual countermeasure and its specific economic implication fall outside the scope of this analysis, though select measures may be referenced for context.

1.4 Method and materials

This research is conducted through the legal doctrinal analysis methodology, involving systematic examination of primary legal sources, including EU law and WTO agreements alongside secondary sources. [11] Given the lack of established case law for the ACI, this thesis places significant emphasis on both academic literature and "soft law" instruments, such as official institutional documents, policy communications, reports from European think tanks. These non-binding materials are highly relevant to the doctrinal analysis, as they clarify the underlying intent and authoritative interpretations of the texts.

[9] "Customary International Law' (Legal Information Institute, Cornell Law School, Last reviewed July 2022) < https://www.law.cornell.edu/wex/customary_international_law> Accessed 1st April 2026
[10] Ibid 5 Annex I
[11] P.Ishwara Bhat "Idea and methods of legal research" (1st edn, Oxford University Press 2020) 143-144

Through critical analysis of the doctrine and relevant case law, this methodology ensures a rigorous and structured development of the research questions. Which are addressed across three distinct stages.

First, the research will examine the adoption and development of the ACI alongside the provisions contained in it, and the procedure for activating the instrument. Thereby situating it within the broader architecture of EU law. This provides the reader with both a factual and contextual analysis of the Anti-coercion instrument in its design and objectives. Furthermore, relevant case law from the Court of Justice of the European Union (CJEU) will be used to critically assess the ACI in its broader context.

Second, given the legal tensions that arise between the ACI and the WTO as relevant international agreement. This research evaluates whether the adopted instrument aligns with WTO commitments and examines its articulation with CIL specifically, how the EU utilizes customary principles to justify the ACI's compliance with WTO obligations. Furthermore, relevant case law from the WTO courts will be used to illustrate the legal friction between the ACI and WTO law, and potential remediation paths.

Third, the research examines the recent geopolitical events surrounding the Greenland crisis, where the potential activation of the ACI was publicly debated. This discussion is particularly relevant as it provides a concrete illustration of the complexities that surround the identification of economic coercion. Given the novelty of this topic, this study remains attentive to recent developments.

1.5 Outline

The outline of this research paper will provide the legal and political background that led to the adoption of the ACI, alongside its purpose and legal framework. A particular focus will be on WTO compliance with regards to CIL. An emphasis will be placed on the legal procedure of the ACI and its core provisions and how the regulation might function as a deterrent in a changing geopolitical landscape. This aims to provide the reader with an understanding of the ACI´s legal framework and its potential use.

2 The development and adoption of the Anti-coercion Instrument

Foreign countries trying to influence decisions and pressure behaviour to obtain a certain policy direction, either by threat or imposing measures towards the EU and its Member States, is what led the EU to adopt the ACI instrument.[12] The EU has other tools it could use in parallel with the ACI in order to respond to foreign policy decisions that affect the EU and its Member States. In 1996, the EU developed a legal instrument to counteract the extra-territorial application of sanctions imposed by third countries through the so-called Blocking Statute.[13] This was a response to the US decision to impose primary sanctions at the state level on Iran and Cuba. The main trigger for an EU reaction was the US decision to impose secondary sanctions on individuals and companies that maintained commercial activities with the above-mentioned countries, including EU companies. [14]

The legal instrument was used as a unified response measure to protect natural and legal persons who were lawfully engaged in international trade with third countries from indirect sanctions. The Blocking Statute prohibited natural and legal persons from complying with foreign laws listed in its Annex. The main aim of the Blocking Statute was to nullify the effects of the extraterritorial application of US sanctions within the EU.[15] This meant that judgments issued by US courts based on such sanctions were not enforceable within the EU. It further allowed affected companies to recover damages in the EU resulting from foreign judgments. Affected companies were also required to inform the EU Commission when their financial and economic interests were affected by the indirect sanctions. In certain circumstances, companies could also be granted authorisation to comply with foreign laws if non-compliance would seriously damage their interests or the interests of the EU. [16]

The Blocking Statute was amended in 2018 following the US decision to withdraw from the Joint Comprehensive Plan of Action (JCPOA). The reimposition of the secondary sanctions once again exposed EU companies to fines and criminal charges in the US. There have also been initiatives to strengthen the Blocking Statute to deter the unlawful extra-territorial application of sanctions and to effectively protect EU companies. It has been argued to have a weak practical effect due to the complexities that arise for EU companies when either complying with US law or breaching EU

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[12] Marcin Szczepanski, “EU anti-coercion instrument” (European Parliamentary Research Service (EPRS), March 2024), 1-3

[13] Beatrix Immenkamp “Updating the Blocking Regulation, the EU´s answer to US extraterritorial sanctions” European Parliamentary Research Service (EPRS June 2018) p 1-8

[14] Tom Ruys, Cedric Ryngaert and Felipe Rodriguez Silvestre (eds), The Cambridge Handbook of Secondary Sanctions and International Law (Cambridge Univerity Press 2024) 16-21

[15] Ibid 31-32

[16] European Commission, “Extraterritoriality (Blocking Statue)” (European Commission) <https://finance.ec.europa.eu/eu-and-world/open-strategic-autonomy/extraterritoriality-blocking-statute_en> Accessed 09th May 2026

law.[17] The Blocking Statute further does not address the issue of coercion from third countries. In the future, both the ACI and the Blocking Statute could be simultaneously used to respond to extra-territorial sanctions and coercion.[18]

Under the leadership of Ursula von der Leyen, the Commission has pursued a geopolitical ambition aimed at strengthening the EU´s position in areas of trade, security and defence policies. In recent years, it has become evident that the Commission has played a major role in managing multiple crises, such as the COVID-19 pandemic and Russia´s full-scale invasion of Ukraine.[19] Rising geopolitical tensions contributed to the Directorate-General for Trade (DG Trade) adopting a Strategic Plan for the years 2020-2024 to develop the Commission´s objectives for "A stronger Europe in the world".[20] The EU´s trade policy agenda has increasingly been focused on protecting the Union´s interests through strategic autonomy and economic security. Growing rivalries between major economies, such as the US and China has created uncertainties for the EU in its relations with key trading partners. Additionally, the current crisis in the multilateral trading system and the paralysis of the WTO Appellate Body (AB) since 2019 have weakened the effectiveness of the WTO dispute settlement system. This has led to negative effects on international trade, contributing to uncertainties in trade relations between major economies.[21]

The concept of Open Strategic Autonomy has been developed and could be briefly summarised as the EU being able to make independent decisions while remaining open to trade and investment. The concept further includes the protection of the EU against unfair and abusive practices by third countries, rules-based cooperation with international partners, and the strengthening of the EU´s geopolitical influence, among others.[22] Besides the adopted ACI, the Commission has adopted several regulatory and trade-related instruments such as the Foreign Direct Investment (FDI) regulation[23], the EU´s Carbon Border Adjustment Mechanism (CBAM)[24] and the Corporate Sustainability Due Diligence Directive (CSDDD)[25], among others. These developments demonstrate a more protective policymaking towards its citizens and beyond its borders. [26]

Already in 2020, the EU Commission issued a communication, where it included an initiative to adopt a legislative proposal to tackle the emerging issue of political and

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[17] Ibid 14 pages 4 to 8

[18] European Commission, Staff Working Document: Impact Assessment report Accompanying the Document Proposal for a Regulation of the European Parliament and of the Council on the protection of the Union and its Member States from Economic Coercion by Third Countries SWD (2021) final 371 (8 December)

[19] Calle Håkansson, Von der Leyen´s geopolitical commission: Vindicated by events? SIEPS European Policy Analysis 2024:7EPA, Swedish institute for European Policy Studies) 4-9

[20] European Commission," Strategic Plan 2020-2024: Directorate-General for Trade"(European Commission 2020) p.3-6

[21] Ibid 21

[22] European Commission, Trade Policy Review – An Open, Sustainable and Assertive Policy COM (2021) 66 final, 18th February 2021, 3-7

[23] Regulation (EU) 2019/452 of the European Parliament and of the Council of 19 March 2019 establishing a framework for the screening of foreign direct investments into the union [2019] OJ L79 I/1.

[24] Regulation (EU) 2023/956 of the European Parliament and of the Council of 10 May 2023 establishing a carbon border adjustment mechanism [2023] OJ L130/52

[25] Directive (EU) 2024/1760 of the European Parliament and of the Council of 13 June 2024 on corporate sustainability due diligence and amending Directive (EU) 2019/1937 [2024] OJ L1790

[26] Ibid 20, (6)

economic pressure of coercive actions by third countries. In the adopted Trade Policy Review in 2021, for an open, sustainable and assertive trade policy, it acknowledged the rising issue of geopolitical tensions between global actors and the issue of potential coercive actions of third countries. It was stated that the EU will need to “develop its tools to confront new challenges” [27] related to unfair trading practices and, a proposal from the commission on a legal instrument for the issue of economic coercion was on the horizon.[28] A public consultation with stakeholders was launched in March 2021, where the insights of the participants were important to determine the types of coercive practices that exist.[29]

A proposal for a legislative framework was further accelerated by diplomatic tensions and an economic pressure campaign from China against Lithuania, which resulted in a trade embargo. This incident prompted the EU to request the WTO to establish a panel to adjudicate a case involving discriminatory measures against an EU Member State, following China´s decision to ban goods from entering the Chinese market.[30] The economic coercion from the Chinese authorities was evident, negatively affecting companies solely because of Lithuania´s foreign policy actions. Opening a Taiwanese representative office was against Chinese policy goals, and Lithuania´s governmental ties with Taiwan and public statements of supporting the Uyghur people led to coercive actions. Even though neither country is close to being the other’s main trading partners, Chinese authorities threatened European multinational companies during this period with sanctions if they worked closely with Lithuanian companies, which was considered by the EU to be a disturbing development. [31]

2.1 The adoption of the ACI

On 12th February 2021, the Commission, the Council and the European Parliament reached a political agreement through a joint declaration to create a legislative framework to deter and counteract coercive actions by third countries.[32] The proposal was negotiated under the ordinary legislative procedure, and a public consultation was launched with stakeholders thereafter. Participants´ insights were important in determining the types of coercive practices governments and businesses had encountered. The stakeholders seemed to favour a broad definition of economic

[27] Ibid 23, p 20-21

[28] ibid

[29] European Commission, “ Trade mechanism to deter and counteract coercive actions by non-EU countries” (European Commission) <https://ec.europa.eu/info/law/better-regulation/have-your-say/initiatives/12803-Trade-mechanism-to-deter-&-counteract-coercive-action-by-non-EU-countries/public-consultation_en> Accessed 29th of April 2026

[30] European Commission, “ WT/DS610:China- Measures Concering Trade in Goods and Services (European Commission) <https://policy.trade.ec.europa.eu/enforcement-and-protection/dispute-settlement/wto-dispute-settlement/wto-disputes-cases-involving-eu/wtds610-china-measures-concerning-trade-goods-and-services_en> Accessed 12th April 2026

[31] Ljlijana Biukovic “The Lithuania-China Row: The European Union’s Search for a Strategy and Instruments to Deal With China” (2023) 50(4) Legal issues of Economic Integration, 391-397

[32] European Commission, Council of the European Union and European Parliament” Joint Declaration on an Instrument to Deter and Counteract Coercive Actions by Third Countries [2021] OJ C 49/1

coercion. Business associations and companies argued that coercion could occur in multiple ways and practices.[33]

In the Commission´s impact assessment, explicit coercion refers to formal measures that are direct and obvious. For example, this occurs when a third country threatens the EU or its Member States with trade-restrictive measures. Disguised coercion is a third-country practice in which governments misuse their domestic legislative instruments to achieve illegal coercion. Silent coercion is a form of action by natural or legal persons who, under the unofficial direction of a foreign government, take actions against a Member State in a boycott of goods or services from a certain origin.[34] This contributed to the institutions adopting a broad definition of economic coercion in the final regulation.[35] Another key discussion of the legislative framework has been the tensions between the ACI and WTO provisions. The rationale from the EU is that the instrument itself does not intend to interfere with the WTO provisions, Free Trade Agreements (FTA), Bilateral Trade Agreements (BIT), or other EU commitments.[36]

On the 8th of December 2021, the Commission adopted a legislative proposal and inter institutional dialogue between the institutions began.[37] The first response to the proposal focused on the importance of the ACI being a last-resort instrument. The main purpose of the ACI is not to use it, but rather to serve as a legal instrument that functions as a mechanism to deter coercion from third countries.[38] The first response of the national governments to the proposal was the importance of keeping the Member States involved in the decision-making process. The national governments limiting role of involvement was raised as a legitimate concern due to the impact the ACI can have though its countermeasures on the Union and its Member States. In the final adopted regulation, it seemed more balanced with the Council approving implementing powers through a qualified majority voting (QMV) to the Commission before any countermeasures can occur.[39] On the 6th of June 2023, the Council and the European Parliament reached political agreement on the ACI, and the Regulation entered into force on the 8th of December 2023.[40]

2.2 The legal framework of the ACI

The legal basis for the ACI is Article 207 (2) on the Treaty on the Functioning of the European Union (TFEU)[41], which falls under the EU´s trade policy and under the scope of the Common Commercial Policy (CCP). CCP is an exclusive competence of the EU, which allows the EU to adopt legislation on matters that are related to

[33] Ibid 29

[34] Ibid 18, 8-9

[35] Viktor Szép "The legislative history of the EU´s Anti-Coersion Instrument" (2024) ERA forum, 135

[36] Ibid 18

[37] European Commission, Proposal for a Regulation of the European Parliament and of the Council on the protection of the Union and its Member States from economic coercion by third countries COM (2021) 775 final

[38] Luigi Lonardo and Viktor Szép, "The use of sanctions to achieve EU Strategic Autonomy: Restrictive Measures, the Blocking Statute and the Anti-Coercion Instrument" (2023) 28(4) European Foreign Affairs Review 368-369 May 2026

[39] Ibid 36

[40] Ibid 8

[41] Consolidate Version of the Treaty on the Functioning of the European Union [2012] OJ C326/47

trade in goods and services, FDI, intellectual property, export policy, and measures that protect trade. In accordance with Article 3(e) TFEU, the Union has exclusive competence in areas of the CCP.[42] This can be briefly explained as the union acting as a bloc has a greater negotiating power when conducting agreements with non-EU countries. Exclusive competence is a key feature of the EU, in which the Member States confer their powers to the institutions to adopt, negotiate, and conclude trade agreements.[43]

It must be noted that the ACI encompasses elements that go beyond a regulation focused solely on achieving trade objectives. The new reality is that trade and foreign policies are becoming more intertwined, which raises questions about competence and if the legal basis should have included another provision from the treaties. There are blurred lines between the CCP and Common Foreign and Security Policy (CFSP).[44] The broad legislative framework of the ACI addresses foreign and geopolitical aims besides being only a trade instrument under the CCP. There could be arguments that the adopted ACI has changed the opportunities for the EU institutions to exercise economic sanctions under the CCP, which is an interesting development. This shifts foreign policy issues from unanimity voting to qualified majority voting instead. The capacity for the EU institutions to act more effectively through the legal basis of Article 207 TFEU is a shift in policymaking for the EU. [45]

Notably, recent developments in EU policymaking arguably indicate that we are moving from the traditional openness to trade within a functioning multilateral legal order towards a more unilateral approach in the EU´s external actions. The strategic autonomy and foreign policy developments challenge the EU´s constitutional openness to trade, as enshrined in Articles 3(5) and 21 TEU.[46] Article 21 TEU, states that "The Union shall seek to develop relations and build partnerships with third countries, and international, regional or global organisations".[47] Furthermore, according to Article 3 (5) TEU, it is expected that the EU "uphold and promote its values and interests and contribute to the protection of its citizens".[48] Significantly, these articles are listed in the recital of the ACI, and it is interesting on how the ACI aligns with the EU´s commitment under international law through its potential response measures it can undertake.[49]

Article 216 (2) TFEU states that agreements that the EU concludes with third countries and international organisations are binding upon the institutions of the Union and its Member States.[50] Barriers to trade resulting from potential response

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[42]Ibid 18 page 19 -20

[43] European Commission, "making trade policy" <https://policy.trade.ec.europa.eu/eu-trade-relationships-country-and-region/making-trade-policy> Accessed 12th of April 2026

[44] Christian Freudlsperger and Sophie Meunier,"When Foreign Policy Becomes Trade Policy: The EU's Anti-Coercion Instrument" (2024) 62(4) Journal of Common Market Studies 1064-1067

[45] Viktor Szép 'The Geopoliticization of EU Trade Policy: Exploring the Growing Links Between the Common Foreign and Security Policy and the Common Commercial Policy' (2024) 29(4) European Foreign Affairs, Page 433

[46] Gesa Kubek & Isabella Mancini "EU Trade Policy between Constitutional Openness and Strategic Autonomy" European Constitutional Review, 518-526

[47] Consolidated Version of the Treaty on European Union [2012] OJ C326/13, Art 21

[48] Ibid 47 Article 3 (5)

[49] Ibid 5 Recitals 1 and 2

[50] Ibid 42 Article 216

measures could be seen as undermining the values upon which the EU was created. Throughout the EU's history, it must be emphasised that the EU has been an economic project, open to trade and economic cooperation. It is expected that, even with the adopted ACI and rising geo-political tensions, the EU will act in accordance with its commitments under international law.[51]

The meaning of economic coercion is broad and defined in Article 2 (1) of the ACI, and it states that "a third country applies or threatens to apply a third-country measure affecting trade or investment in order to prevent or obtain the cessation, modification or adoption of a particular act by the Union or a Member State".[52] The broad definition of economic coercion means that the EU institutions have a wide discretion on defining economic coercion. It might be sufficient for the third country to only threaten the EU for an act to constitute coercion. However, the coercion itself must interfere with the interests of the EU or the Member States legitimate sovereign choices. According to Article 4 of the ACI, the Commission acts on its own initiative to examine a third-country measure, or upon request from the EU institutions or a Member State. [53] To determine if a coercion of a third country measure exists, the Commission or the Council must keep in mind different parameters that are listed in Article 2(2) of the ACI. These criteria can be summarised as follows:

I. The scope of the economic coercion and the third country´s measures, such as intensity, severity, frequency, duration, and the impact it has on trade and investment of the Union and its Member States.

II. The pattern of behaviour of the third country and how the third country measures infringe the sovereignty of the Union or its Member States.

III. Whether the third country is acting on an internationally recognized legitimate reason, and whether the third country made efforts to resolve the issue through international forums or bilaterally before using the coercive action towards the Union or its Member States. [54]

Article 8 of the ACI sets out the framework of Union response measures by implementing acts, and the Commission shall select appropriate measures in accordance with the available toolkit in Annex I. Notably, the listed possibilities for the EU to act against a third country might make it difficult to determine what constitutes an appropriate measure. The Annex I lists various measures that are not only broad but also recognised as extensive. The Union´s response measures may vary and could include the imposition of new or increased customs duties, introduction of restrictions on imports or exports of goods, and measures affecting trade in services. Other measures the union could take are access to public procurement, limitations on FDI, or restrictions on intellectual property rights. Beyond these limitations and restrictions, there are also possibilities to impose restrictions on banking, insurance, and access to the EU´s capital market and other

[51] Ibid 47 page 526 to 529
[52] Ibid 5 Article 2(1) ACI
[53] Nina M Hart ''European sovereignty and development of the international legal order: the EU's economic security and Anti-Coercion Instrument" (2024) 13(1) Cambridge International Law Journal vol 13, 89-100
[54] Ibid 5 Article 2(2) ACI

financial services. Significantly, these measures can also go beyond the most-favoured-nation levels established under the WTO. The response measures in the Annex allow the EU to commit to a non-performance of applicable international obligations.[55]

Response measures under the Annex I could produce economic and political implications for the Union. Restricting trade in goods and services with a third country is likely to negatively affect the EU's economy, particularly considering the Union´s reliance on international trade. The EU internal market could potentially experience higher prices, affecting companies and consumers. Restrictions on intellectual property rights may also impact investment and innovation within the EU market, prompting the Union to adopt responsive measures. Any response measures also risk escalating tensions with third countries, which in turn could encourage other countries to adopt similar instruments or retaliatory measures. [56]

Any measure the EU undertakes needs to be proportionate, which is underlined in Recital 11 and in Article 11 of the ACI.[57] The principle of proportionality is a general legal principle of EU law, and in accordance with Article 5(4) TEU, the "Union action shall not exceed what is necessary to achieve the objectives of the Treaties".[58] Any measures the EU undertake under the ACI regulation will be subject to the proportionality test established by the Court of Justice of the European Union (CJEU).[59]

Through earlier established Case C-331/88, known as the Fedesa case, the Court famously established the four elements of the proportionality test. The case was referred to the CJEU concerning the validity of a Council Directive prohibiting certain uses of hormonal substances for animals. The CJEU ruled that any Union measure must be appropriate to achieve a legitimate objective, the measure must not go beyond on what is necessary to achieve its objective, and between several appropriate measures the EU must choose the least onerous. As a final step, the court applies the proportionality in a strict sense and balances whether the measure is disproportionate to the aims pursued. The CJEU has ruled that the EU institutions have broad discretion, and the legality of a measure can be affected only if it is "manifestly inappropriate". This arguably implies that any countermeasures under the ACI must be balanced and proportionate and not go beyond on what is necessary to achieve their intended objectives.[60]

[55] Ibid 5

[56] National Board of trade Sweden, The EU Proposal for an Anti-Coercion Instrument (2022) National Board of Trade Sweden Report page 5(28)

[57] Ibid 5 Recital 11 ACI & Article 11 ACI

[58] Ibid 48 Article 5(4)

[59] Wolf Sauter "Proportionality in EU Law : A Balancing Act?" (2015) 15 Cambridge Yearbook of European legal Studies Page 447 to 449

[60] Case C-331/88 R v Minister of Agriculture, Fisheries and Food, ex p Fedesa EU:C:1990:391 para 12 to 18

2.3 The procedure of activating the ACI

There are multiple steps that must be followed before any union response measures can be adopted in accordance with Article 8 of the ACI and its Annex I. The Commission must conduct an examination pursuant to Article 4 of the ACI to determine whether the conditions of economic coercion are met. The examination process from the Commission shall normally not exceed 6 months before submitting a proposal to the Council for an implementing act in accordance with Article 5 of the ACI.[61] The Council, together with the Member States are the institutions that determines if they adopt an implementing act by QMV, which requires at least 55 % of the Member States votes. These votes must represent at least 65% of the total population of the EU.[62] The Council shall act expeditiously within an eight-week period but has the possibility to delay an implementing act. Although such delay shall not exceed a ten-week period. [63]

When the Council adopts an implementing act and determines that the conditions for economic coercion are fulfilled, the Commission enters into an engagement phase with the third country. According to Article 6 of the ACI, the Commission is responsible for entering into consultations with the third country in order to cooperate and seek solutions to end the coercion by diplomatic means. This means that where consultations are conducted in good faith by the third party concerned, the Commission has several options to resolve the matter. During this phase, the dispute could be resolved through direct negotiations, mediation, or third-party conciliation. The Commission could also submit the matter to international adjudication to achieve the objective of obtaining cessation of the third country measure. Furthermore, Article 7 of the ACI emphasises on the importance of international cooperation with third countries that are affected in the same or similar way.[64] The engagement and determination procedure of the ACI demonstrates the value of keeping potential countermeasures as a last resort solution.

[61] Ibid 45

[62] Council of the European Union, "Qualified majority" <https://www.consilium.europa.eu/en/council-eu/how-does-the-council-vote/qualified-majority/> Accessed 5th May 2026

[63] Ibid 5 Article 5(6) ACI

[64] Ibid 5 Article 7 ACI

3 Tensions between the Anti-Coercion Instrument and WTO

The General Agreement on Tariffs and Trade of 1947 constituted the foundational framework for international trade relations in the post-World War II era. It served as the primary multilateral instrument regulating trade in goods. Its core principle, laid down in Article 1 of the agreement called the Most Favoured Nation Treatment (MFN), ensures non-discriminatory treatment among international trading partners.[65] Upon creation of the WTO, the non-discriminatory principle was extended through the General Agreement on Trade in Services, whose Article II replicates the MFN principle in the service sector. [66]

Other provisions within the GATT and GATS further reinforce multilateralism by prohibiting trade measures contrary to the multilateral aim of the WTO. For instance, Article XI of the GATT provides the general elimination of quantitative restrictions, and Article XIII of the GATT requires the non-discriminatory administration of quantitative restrictions. These principles continue to form the foundation of the multilateral trading system today.[67]

The preamble of the Treaty of Marrakesh of 1994 establishing the World Trade Organization states that parties to the agreement should resolve "to develop an integrated, more viable and durable multilateral trading system".

This overarching objective was subsequently reinforced in the treaty through Annex II of the WTO treaty, namely via the understanding on rules and procedures governing the settlement of disputes. [68]

Article 3(2) of the Dispute Settlement Understanding (DSU) establishes the dispute settlement system as a central element of the WTO, as it ensures enforcement of obligations and rights under the covered agreements[69].

The recent adoption of the Anti-Coercion Instrument by the European Union illustrates the legal tension between national/regional interests, and international commitments made under the WTO. The ACI aims to provide the EU with unilateral retaliatory measures against acts of economic coercion, thereby departing from the multilateral goal of the WTO. Annex I of the Instrument sets out a broad range of retaliatory measures, including custom duties, quantitative restrictions on imports, and restrictions on trade and services directed against third countries identified as

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[65] General Agreement on Tariffs and Trade (adopted 30 October 1947, entered into force 1 January 1948) 55 UNTS 194 GATT 1947 Text Article 1

[66] General Agreement on Trade in Services, (adopted 15 April 1994, entered into force 1 January 1995) 1869 UNTS 183 (GATS) Article 2 Accessed 15 st April

[67] Ibid 65

[68] Understanding on Rules and Procedures Governing the Settlement of Disputes (adopted 15 April 1994, entered into force 1 January 1995) Marrakesh Agreement Establishing the World Trade Organization, Annex 2, 1869 UNTS 401.

[69] Ibid 68 Article 3

engaging in economic coercion. Such measures could inter alia, constitute substantive breaches of WTO obligations. [70]

3.1 WTO's failure to address coercion in dispute settlement

i) Legal scope of WTO dispute settlement

The European Union defines economic coercion as: "a situation whereby a third country seeks to pressure the European Union or an EU Member State into making a particular choice by applying or threatening to apply measures affecting trade or investment".[71] The European Commission in its impact assessment, identifies two forms of economic coercion.

The first form is defined as "formal economic coercion", which is quantifiable, often explicit and might result in a substantive breach of WTO obligations. Consequently, this form of coercion is covered by the WTO dispute settlement mechanism and can be brought before its panels. [72] As provided by Article 23(1) of the DSU: "When Members seek the redress of a violation of obligations or other nullification or impairment of benefits under the covered agreement or an impediment to the attainment of any objective of the covered agreements, they shall have recourse to, and abide by, the rules and procedures of this Understanding". [73]

The second form is defined as "informal economic coercion"; which is qualitative in nature, implied rather than explicit, and therefore difficult to identify and assess.[74] This form of coercion would fall within the categories described by the Commission as "disguised" or "silent" coercion. [75] Since these measures might not constitute an outright breach of WTO obligations, they are often considered beyond the scope of the WTO dispute settlement mechanism.

Meanwhile, depending on its form informal economic coercion, may still infringe upon the legitimate sovereign choices of the European Union or its Member States amounting to a breach of the principle of non-intervention and the right to sovereignty under international customary law.[76]

The European Commission further explains why certain forms of economic coercion, might fall outside the scope of the WTO dispute settlement mechanism. According to the Commission the jurisdiction of the Dispute Settlement system is limited to obligations contained within the WTO agreements. The dispute settlement mechanism therefore provides a forum for resolving violations of the obligations

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[70] Ibid 5 Annex I

[71] European Commission, "Protecting against Coercion" (European Commission) < https://policy.trade.ec.europa.eu/enforcement-and-protection/protecting-against-coercion_en >
Accessed 20 April 2026

[72] Ibid 18 p8,to p74

[73] Ibid 68 Article 23(1)

[74] Ibid 72

[75] Ibid 18

[76] Military and Paramilitary Activities in and against Nicaragua (Nicaragua V United States of America) (Merits) 1986 ICJ Rep 14, para 202

covered by the agreement; but it might fail to address acts or measures that breach international customary law, without simultaneously violating WTO law.[77]

Informal coercion by its nature, might fall within this legal gap, as it can engage state responsibility under international customary law, without necessarily constituting a nullification or impairment of WTO obligations. [78]

Article 3(2) of the DSU provides that "[..], Recommendations and rulings of the DSB cannot add to or diminish the rights and obligations provided in the covered agreements". [79]

Therefore, under article 3(2) the WTO refers to CIL as a tool of interpretation and limits its scope of jurisdiction. As a direct application of CIL could be regarded as "adding or diminishing the rights and obligations under the covered agreement" should CIL be conflicting with WTO provisions. This Approach was illustrated by the Appellate Body's practice in ensuring that the reliance on CIL was subject to predominance of WTO norms. [80]

The case European Communities – Measures Concerning Meat and Meat Products (Hormones) WT/DS26/AB/R 1998, illustrates the subordination of CIL to WTO treaty within the dispute settlement mechanism. As part of its defence in the case, the European Communities argued that the precautionary principle had become "a general customary rule of international law", thereby justifying their import bans on hormonally treated meat, and meat products, as precautionary measure consistent with the Application of Sanitary and Phytosanitary Measures (SPS). The AB declined to rule on whether the precautionary principle had crystallised into a rule of customary international law, finding that the question remained unsettled. Rather than applying the precautionary principle, the AB held that the principle could not override the specific obligations contained in Articles 5.1 and Article 5.2 of the agreement, as the principle was reflected within the SPS itself through Article 5.7. [81]

Thereby the AB confirmed that CIL does not operate as a totally independent source of rights and obligations within the WTO dispute settlement but rather functions primarily as an interpretative tool subordinate to the agreement.

This case therefore illustrates the jurisdictional gap that the ACI is designed to address. Where a form of economic coercion engages a state responsibility under customary law, without simultaneously constituting a violation of WTO obligations, the dispute settlement cannot address standalone breaches of CIL, leaving informal coercion beyond the scope of WTO dispute settlement mechanism.

Moreover, this jurisdictional boundary does not merely operate through a legal containment but also through a specific procedural filter: the requirement that a

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[77] Ibid 18 page 23

[78] Ibid 65 Article XXIII

[79] Ibid 68 Article 3(2)

[80] Mariana Clara de Andrade "Identification of and Resort to Customary international Law by the WTO Appellate Body" in Panos Merkouris, Jörg Kammerhofer and Noora Arajärvi (eds), The Theory, Practice, and interpretation of Customary International Law (Cambridge University Press 2022) page 289 to 296

[81] European Communities – Measures Concerning Meat and Meat Products (Hormones), Appellate Body Report, WT/DS26/AB/R and WT/DS48/AB/R (16 January 1998) para 121 to 125

complainant identifies a “measure” attributable to the respondent Member. It is at this stage that the structural limitations of the WTO dispute settlement become the most apparent in the context of economic coercion.

ii) Procedural challenge

Article XXIII of the GATT provides the legal basis of nullification or impairment of obligations. Under this article a Member can have legitimate grounds to resort to dispute settlement if its rights under the WTO agreement are being impaired or nullified by another Member.[82]

Article 4 of the DSU sets out the consultation procedure, which constitutes the first phase of dispute settlement within the WTO system. Under Article 4.4 of the DSU, a request for consultation must be submitted in writing and must provide the reason for the request, including the identification of the “measure” at issue. [83]

However, the DSU does not provide a precise definition of the term “measure”, the AB addressed this issue in the case law: “US-Corrosion Resistant Steel Sunset Review” [84] as: “Any act or omission attributable to a WTO member can be a measure of that Member for purposes of dispute settlement”. [85]

In Japan-Film WT/DS44/5 1998 the Panel ruled that “the term measure in Article XXIII: 1(b) and Article 26.1 of the DSU as elsewhere in the WTO Agreement, refers only to policies or actions of governments.[86]

Consequently, a unilaterally imposed tariff increase, or quantitative restrictions on imports realized through government acts, would qualify as a “measure” given that the relevant act or omission is explicitly identifiable and attributable to the WTO Member. Thus such “measure” could be successfully brought before a WTO dispute settlement panel.

However, other forms of economic coercion, might not always satisfy all the criteria required to constitute a “measure” under WTO law, as coercive conduct can be manifested through more subtle and indirect means.

The European Commission acknowledged this legal gap in its impact assessment by categorizing coercion into distinct types. It specifically identified silent coercion and boycotts as coercive practices that fall outside the scope of formal legislative and regulatory governmental action. Precisely because they are executed by private

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[82] WTO, Analytical Index of the GATT 1994 : Article XXIII- Nullification or Impairment (WTO 1995)

[83] Ibid 68 Article 4

[84] Tania Voon and Alan Yanovich ‘What is the Measure at issue? In Andrew D Mitchell (ed) Challenges and prospects for the WTO (Cameron May 2005) page 119

[85] United States-Sunset Review of Anti-Dumping Duties on Corrosion-Resistant Carbon Steel Flat from Japan (AB Report) WT/DS244/AB/R (15 December 2003) para 81

[86] Japan-Measures Affecting Consumer Photographic Film and Paper, Panel Report, WT/DS44/R, adopted 22 April 1998:IV, para 10.52 <https://docs.wto.org/dol2fe/Pages/SS/directdoc.aspx?filename=Q:/WT/DS/44R07.pdf&Open=True> Accessed 20th May 2026

actors (often under implicit governmental guidance) rather than through formal acts.[87]

This distinction between formal and informal coercion carries significant legal consequences for the proceeds of dispute resolution. As the WTO Agreement legally binds states not private actors. Thereby silent coercion and boycotts cannot in principle constitute a "measure" subject to WTO dispute settlement.

However, the WTO panel in Japan-Film WT/DS44/5 1998 ruled that private action can be attributed to a government. [88] If a sufficient level of governmental intervention within the private sector can be demonstrated on a case-by -case basis.[89]

This reasoning stems from the Japan Semi-conductors BISD 35S/116 case, which established two essential criteria to determine whether actions taken by private actors could amount to a "measure" attributable to a Member. The first criteria require to establish if sufficient incentives or disincentives existed for the measure to take effect on private actors to behave in a particular way. Second that the operation is dependent on government action or intervention. [90]

Consequently, under Article XXIII of the GATT, and Article 4 of the DSU, the European Union, would encounter significant difficulties in establishing that silent coercion qualifies as a "measure" within the meaning of WTO. As the burden of proof rests on the EU according to the articles, to establish that silent coercion qualifies as a "measure" if confronted with silent economic coercion.

This demonstrates that certain forms of economic coercion are not entirely covered by the WTO dispute settlement mechanism and would be difficult to prove. Informal or indirect acts of coercion might not qualify as "measures" due to the difficulty of attributing the infringement of a WTO commitment to the relevant Member, regardless their potential economic impact. In fine this legal gap justifies the underlying rationale for the EU's adoption of the Anti-Coercion Instrument, as it seeks to address forms of coercive conduct that fall outside of the scope of WTO dispute settlement.

3.2 Comparison of the ACI with WTO principles

i) Textual friction between the ACI and WTO provisions

Annex I to the Regulation (EU) 2023/2675 establishes the Union response measures to economic coercion pursuant to article 8 of the regulation. These measures may be adopted where the procedures laid down in Articles 5 and 6 have failed to bring an end to the economic coercion in question. In the paragraph (8) of the chapeau to the

[87] Ibid 18 page 9

[88] Ibid 86 para 10.56

[89] Peter Van den Bossche and Werner Zdouc, The Law and Policy of the World Trade Organization (4th edn, Cambridge University Press 2017). Page 187

[90] Japan-Trade in Semi-Conductors GATT Panel Report, L/6309, adopted 4 May 1988, BSID 35S/116. Para 109

ACI, the European Union emphasizes that retaliatory measures contained within the regulation may only be adopted as means of last resort. Once all diplomatic routes aimed at resolving the dispute mentioned in the ACI regulation, have been exhausted. [91] Accordingly, the adoption of Union response measures is framed as necessary for the protection of the interests and rights of the Member State at stake.

The unilateral nature of the countermeasures contained in Annex I, might be regarded as conflicting with Article 23 of the DSU. The Article requires that WTO members must refrain from adopting unilateral measures in response to alleged violations of the treaty: "Members shall not make a determination to the effect that violation has occurred, that a violation has occurred… except through recourse to dispute settlement in accordance with the rules and procedures of this understating"[92].

In this respect, the ACI empowers the European Union, when it considers that economic coercion is characterized, to decide unilaterally and at its own discretion to adopt retaliatory measures listed in Annex I. Consequently, the ACI challenges the DSU's commitment to multilateralism, and to a greater extend, the WTO's overarching goals, by substituting collective dispute resolution with discretionary, unilateral means.

Notably, the recitals of Annex I, all refers to the following formulation: "which may amount as necessary to the non-performance of applicable international obligations"[93]. Which illustrates the EU's willingness to adopt measures beyond its WTO commitments to protect its interests and those of its Member States.

ii) Potential justification under WTO law

However, article XXI of the GATT concerning security exceptions, may nuance the conflict between the ACI and Article 23 of the DSU as it could provide a legal basis for the European Union's argumentation should the ACI come under WTO scrutiny. The most relevant provision in that matter, being Article XXI (b) (iii) of the GATT which provides that: "Nothing in this Agreement shall be construed to prevent any contracting party from taking any action which it considers necessary for the protection of its essential security interests taken in time of war or other emergency in international relations" [94].

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[91] Regulation (EU) 2023/2675 of the European Parliament and of the Council of 22 November 2023 on the protection of the Union and its Member States from economic coercion by third countries

[92] WTO, Analytical Index of the DSU: Article 23-Jurisprudence (WTO 1995) < https://www.wto.org/english/res_e/publications_e/ai17_e/dsu_art23_jur.pdf > Accessed 10 May 2026

[93] Ibid 18 Annex I recitals 1 to 10

[94] WTO, Analytical Index : Guide to GATT Law and Practice – Article XXI (6th edn,WTO 1995)

This provision was previously examined by the WTO Panel, in the case Russia-Measures concerning Traffic in transit (DS512). Following the deterioration of the relations between Russia and Ukraine after 2014. Russia imposed various restrictions on the traffic of Ukrainian goods destined to Kazakhstan and the Kyrgyz Republic through Russian territory. While only permitting Ukrainian transit through Belarus/Russia Border. Ukraine argued that these restrictions violated Russia's obligation under the GATT. In response, Russia invoked the national security exception, under article XXI (b)(iii), arguing that the political tensions between the two countries constituted an "emergency" in international relations[95].

The Panel concluded that Russia could invoke article XXI of the GATT for national security reasons. However, it also held that the use of article XXI was not entirely discretionary as an unrestricted interpretation and abuse could undermine the functioning of WTO dispute settlement system. The Panel held that the existence of an emergency in international relations had to be objectively verifiable. Thereby this jurisprudence established that a limited judicial review by WTO bodies remained possible.[96] On the facts of case, the Panel found that Russia acted consistently with its claims under article XXI of the GATT.

Therefore, the Russia Measures concerning Traffic in transit case, may provide supporting argumentation for the European Union, should the legality of the ACI be challenged before the WTO. Moreover, the case illustrates the extent to which WTO law may accommodate measures adopted in response to broader security concerns related to principles of international customary law.

The Panel however, in Russia Measures concerning Traffic in transit (DS512), adopted a nuanced interpretation of "emergency" in international relations. It first referred to "The dictionary definition of "emergency" includes a "situation esp. of danger or conflict that arises unexpectedly and requires urgent action", and a "pressing need…. a condition or danger or disaster throughout a region"[97]. But in a later paragraph the Panel mentions " Political or economic differences between Members are not sufficient, of themselves to constitute an emergency in international relations [..] Indeed it is normal to expect that Members will, from time to time, encounter political or economic conflicts with other Member states, while such conflicts could sometimes be considered urgent or serious in a political sense, they will not be "emergencies in international relations" within the meaning of subparagraph (iii) unless they give rise to defence and military interest or maintenance of law and public order interests." [98]

The relative vague language employed by the panel in defining the notion of emergency, might provide the EU with interpretative flexibility to argue that measures adopted under the ACI fall within the scope of Article XXI (b) (iii) of the GATT. However, as Kornel Olsthoorn argues although the EU reliance on Article XXI (b)(iii) may strengthen the EU's position should the ACI come under WTO

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[95] Russia-Measures Concerning Traffic in Transit (Panel Report) WT/DS512/R (adopted 26 April 2019) page 22 to 24 Accessed 15th May

[96] Tania Voon "Russia-Measures Concerning Traffic in Transit" (2020) 114(1) American Journal of International law pages 96 to 102.

[97] Ibid 95 paragraph 7.72

[98] Ibid 95 paragraph 7.75

scrutiny. The European Union would still need to demonstrate convincingly that the economic coercion it faces amounts to an emergency under international law. [99]

Consequently, in instances where the alleged economic coercion is ambiguous or indirect in nature, the European Union might encounter significant difficulties in establishing the existence of a sufficiently clear and serious emergency capable of justifying recourse to Article XXI of the GATT. [100]

3.3 Critical assessment of the EU's justifications on compliance with WTO

i) The European Union's reliance on international law

In its impact assessment the European Commission does not adopt a direct compatibility analysis of the ACI with WTO obligations. Instead, it addresses the issue through the relationship between WTO as lex specialis WTO and international customary law to assess the ACI's compliance. The Commission argues that: "Whether the WTO Agreement and bilateral trade agreements can be invoked to oppose such countermeasures remains unsettled, but it can be reasonably argued that they cannot, in so far as the countermeasures are compatible with customary international law".[101]

The European Union's reasoning may therefore be understood as follows: Where the measures adopted under the ACI constitute lawful countermeasures under international customary law, they should not be regarded as incompatible WTO obligations.

This line of reasoning is supported by the principle of Jus Cogens: "norm of general international law is a norm accepted and recognized by the international community of States as a whole as a norm from which no derogation is permitted".[102] Using the International Law Commission, on Responsibility of States for Internationally wrongful acts of 2001 (ARSIWA).[103] The EU relies on several articles to defend its reasoning.

First under article 18 of the ARSIWA: "A state which coerces another State to commit an act is internationally responsible for the act if : a) the act would, but for

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99 Kornel Olsthoorn, " The EU's Anti-Coercion Instrument : A Return of Unlawful Unilateral Trade Countermeasures in Disguise ? (2024) 51(1) Legal Issues of Economic Integration pages 75 to 76

100 Ibid 99

101 Ibid 18

102 Vienna Convention on the Law of Treaties (adopted 23 May 1969,entered into force 27 January 1980) 1155 UNTS 331, Article 53

103 International Law Commission, Draft Articles on Responsibility of States for internationally Wrongful Acts (2001) UN Doc A/56/10.

the coercion be an internationally wrongful act of the coerced State; and b) the coercing state does so with knowledge of the circumstances of the act."[104]

Second article 22 states: "The wrongfulness of an act of a State not in conformity with an international obligation towards another State is precluded if and to the extent that the act constitutes a countermeasure taken against the latter state in accordance with chapter II of part three". [105]

In Chapter II of part III of the ARSIWA, countermeasures are directly being addressed, as article 51 establishes that "countermeasures must be commensurate with the injury suffered, taking into account the gravity of the internationally wrongful act and the rights in question" while article 52 extends the reasoning in providing the conditions relating to resort to countermeasures. [106]These requirements are reflected in article 5 and 6 of the ACI. It may therefore be observed that the ACI was carefully crafted in order to be lawfully justified under the ARSIWA.

Article 55 of ARSIWA addresses the principle Lex Specialis derogate lex generali as it states: "these articles do not apply where and to the extent that the conditions for the existence of an internationally wrongful act or the content or implementation of the international responsibility of a State are governed by Special rules of international law".[107]

At first glance, this provision could appear to weaken the EU's argumentation for the ACI legality. However, in its impact assessment the Commission argues that coercive measures that represent a substantial breach of WTO commitments are subject to review under the WTO dispute settlement mechanism.

However, the reliance on customary international law and the ARSIWA, raises a fundamental interrogation: Whether the WTO regime operates as a self-contained regime, insulating its obligations from international customary law.

ii) WTO's articulation with international customary law

The notion of Self-contained regime was elaborated by the International Law Commission, "Fragmentation of international Law : Difficulties Arising from the Diversification and Expansion of International law" the report defines self-contained regimes as : " a special set of secondary rules that determine the consequences of a breach of certain primary rules (including the procedures of such determination) and (ii) any interrelated cluster (set, regime, subsystem) of rules on a limited problem,

[104] Ibid 103 article 18
[105] Ibid 103 article 22
[106] Ibid 103 article 51
[107] Ibid 103 article 55

together with rules for the creation, interpretation, application, modification or termination in a word, administration of those rules”. [108]

Michael Runersten in, Defining “Self-contained regime”: A Case Study of the International Covenant on Civil and Political Rights. argues that Self-contained regimes are entirely closed and autonomous legal systems from international law. Which functions in total isolation from general international law. Runersten argues first that under the principle Pacta sunt servanda it is not possible for states to create new legal systems outside of international law due to the previous binding contractual obligations. Second that under Jus Cogens international customary norms cannot be derogated from.[109]

Joost Pauwelyn in Conflict of Norms in Public International Law: How WTO law relates to Other Rules of International law. critically examines the nature of WTO and its relationship with international law, Pauwelyn concludes that WTO treaty and dispute settlement are not “self-contained” regimes, but rather an incorporated part of international law. He further argues that although the jurisdiction of WTO panels is confined to claims made under the agreement, parties can nonetheless invoke non-WTO rules as justification for conduct that would breach WTO obligations. Accordingly, WTO law should be interpreted considering other rules of international law.[110].

These doctrinal conclusions are reinforced by WTO jurisprudence: United States Standards for reformulated and conventional Gasoline, AB Report, WT DS2/AB/R adopted May 20th, 1996. The Appellate body expressly mentioned: “That direction reflects a measure of recognition that the General Agreement is not to be read in clinical isolation from public international law”. [111] The Appellate Body’s reasoning in this decision supports the EU’s reliance on Customary International law and rules out the argument of the WTO being a self-contained regime.

Consequently, the European Union has constructed a defendable framework to address economic coercion, across its formal and informal dimensions. Where coercion constitutes an explicit breach of WTO obligations, it remains subject to the Dispute Settlement mechanism under the lex specialis principle. Where coercion falls outside of the jurisdictional reach of WTO dispute settlement, the ACI’s countermeasures find justification in international customary law according to the Jus Cogens principle, under the ARSIWA framework, and where conditions of article XXI (b) (iii) of the GATT are met, the ACI although judicially untested, represents a lawful instrument of trade defence under WTO law.

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[108] Fragmentation of international Law : Difficulties Arising from the Diversification and Expansion of International law” (Report of the Study Group of the International Law Commission, finalized by Martti Koskenniemi) UN Doc A/CN.4/L.682

[109] Michael Runersten, Defining “Self-Contained Regime” : A case Study of the International Covenant on Civil and Political Rights (Lund University 2008). page 13

[110] Joost Pauwelyn,” The Role of Public International Law in the WTO: How far Can We Go?’ (2001) 95 AJL 535. Page 577

[111] United States-Standards for Reformulated and conventional Gasoline WTO Appellate Body Report WT/DS2/9/AB/R (adopted 20 May 1996). Article 31 Page 17

4 Discussion: Greenland/Denmark US case

4.1 Challenges in defining coercion in the Greenland crisis

There are multiple challenges associated with defining economic coercion under the provisions of the ACI. As of today, there is currently no precedent cases involving economic coercion from third countries that resulted in the use of the ACI. The potential use of the ACI was only debated in the context of the Greenland crisis. The Commission did not formally assess whether the conditions of economic coercion were fulfilled under the regulation. As established earlier, the Commission may act on its own initiative or upon receipt of a substantiated request to determine whether a conduct falls within the definition of economic coercion set out in Article 2 of the ACI. [112] However, in the case of the Greenland crisis neither Denmark nor the Commission launched an examination under the ACI procedure.

Although, it is evident that the US raised cumulative political and economic threats towards the EU and one of its Member State, it remains unclear whether such conduct fulfilled the conditions to constitute economic coercion. The pressure applied by the US, can be broadly summarized as an attempt to pressure Denmark into entering negotiations for the sale of the Greenland through tariff increases, while simultaneously not ruling out military intervention.[113]It may therefore be arguable that such conduct could fall within the definition of economic coercion under Article 2 (1) of the ACI.[114]

However, Article 2 (2) of the ACI, introduces several determining factors that must be considered before qualifying a conduct as economic coercion. In this context, the most relevant criteria would likely be provision (c) of Article 2 of the ACI, “The extent to which the third-country measure encroaches upon an area of the Union’s or a Member State’s sovereignty”. [115]

From a factual perspective, it is arguable that this criterion was not entirely satisfied in the context of the Greenland crisis. As the proposed 10% Tariff increase was never implemented, and the threats directed at Greenlandic sovereignty, largely remained statements rather than concrete measures. [116]

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[112] Ibid 5 Article 2

[113] John Curtis and Stefano Fella, President Trump and Greenland : Frequently Asked Questions (House of Commons Library Research Briefing CBP-10472,23 January 2026) https://commonslibrary.parliament.uk/research-briefings/cbp-10472/ Accessed 17 May 2026

[114] Ibid 5 Article 2(1)

[115] Ibid 5 Article 2(1) c

[116] Aleksandra Brezar ‘Trump suspends European Tariffs after ’Framework’ Greenland deal agreed’ *euronews* https://www.euronews.com/2026/01/21/trump-suspends-european-tariffs-after-framework-greenland-deal-agreed accessed 18 May 2026

Nevertheless, the potential increase of tariffs by 10% on targeted European States would likely have constituted a prima facie violation of Article 1 of the GATT 1994 which prohibits differential tariff treatment between WTO Members.[117] And therefore would have likely been addressed by the WTO dispute settlement mechanism instead of the ACI. Furthermore, Denmark consistently maintained its position on its territorial sovereignty and did not deviate from its stand despite potential economic threats. [118]

Consequently, the extent of the encroachment on Danish sovereignty may not have been sufficiently established to be qualified as economic coercion. This ambiguity illustrates the challenges associated with the identification and qualification of economic coercion, and to a greater extend the threshold for activating the ACI.

Moreover, the political willingness of the EU to use the ACI remains uncertain. Given the significant implications associated with initiating the process of a unified response measure under the extensive Annex I of the ACI. In the context of the geo-political tensions between the EU and US regarding Greenland. The EU still favoured diplomatic means as a way of de-escalation, over the activation of the ACI.

In the context of the Greenland crisis, the European Parliament reaffirmed its support for multilateralism and rules-based international order, as the appropriate basis for resolving the dispute.[119] This position adopted by the European Union during the crisis is consistent with the approach previously developed by the Commission in its impact assessment. [120]

[117] Ibid 65

[118] ‘ Joint Statement on Greenland’ (The Prime Minister’s Office of Denmark 6 January 2026) https://english.stm.dk/press/press-releases/joint-statement-on-greenland/ Accessed 18th May 2026

[119] European Parliament, ‘EP Group leaders Express Unequivocal Support to Greenland and Denmark’ (Press Release, 14 January 2026) https://www.europarl.europa.eu/news/en/press-room/20260113IPR32390/ep-group-leaders-unequivocally-support-greenland-and-denmark Accessed 17th May 2026

[120] Ibid 5

4.2 ACI as a last resort instrument

The WTO dispute settlement forum could have nuanced a potential use of the ACI considering the European position on multilateralism. The potentially impacted European Countries by the tariff measures could have initiated proceedings before WTO dispute settlement courts, to remediate the measures taken by the United States; had such measures entered into force.

Consistent with the position adopted by the Commission and the Parliament on multilateralism, the WTO dispute settlement would have therefore constituted the primary and appropriate forum. Nevertheless, the structural limitation of WTO remedies particularly their dependence on voluntary implementation by the respondent Member and the absence of punitive enforcement mechanism under Article 22 of the DSU might have not resolved the dispute in practice. [121]

In such scenario, if the WTO dispute had failed to bring the economic coercion to an end. And if diplomatic efforts had been exhausted, the conditions laid down in Articles 5 and 6 of the ACI regulation might arguably have been satisfied. Therefore, the EU could have potentially resorted to Article 8 of the ACI. [122]

However, in the factual context of the Greenland crisis as demonstrated in 4.1 , none of these scenarios materialized. Although the use of the ACI was publicly debated notably by the French president Emanuel Macron.[123] The European Commission did not formally examine the Greenland situation within the framework of the ACI, probably because of the ambiguity of the situation. This ultimately illustrates that the ACI remains an instrument of last resort, as diplomacy tends to dominate conflict resolution instead of unilateral measures.

[121] Ibid 68 articles Article 22

[122] Ibid 3, article 8

[123] Nathan Joubioux "Face aux menaces tarifaires de Trump, Macron apelle a activer le ‘’ Bazooka commercial’’ *euronews* https://fr.euronews.com/my-europe/2026/05/05/escalade-tarifaire-face-aux-menaces-de-trump-macron-appelle-a-activer-le-bazooka-commercia Accessed 17th May 2026

Concluding remarks

This research establishes the legal and practical difficulties that arise when the EU adopts unilateral trade instruments influenced by geopolitical tensions. The ACI functions as a trade measure when third countries apply or threaten measures, affecting trade and investment in order to influence the sovereign choices of the EU or its Member States. The broad definition and the ambiguity of Article 2 of the ACI create difficulties in establishing economic coercion and will require future evaluation by the CJEU. It is in the EU´s interest not to activate the ACI in the future and to keep potential response measures as a last resort. Furthermore, determining countermeasures against a third country that serves the EU's interests is not straightforward. Maintaining multilateral and diplomatic solutions is a far more important approach than resorting to unilateral trade measures, which could risk further escalation with third countries. The procedure for determining coercion begins with the Commission examining a third-country measure, and the Council vote, by QMV, on whether to proceed with potential counter measures.

The study concludes that the legality of the ACI under WTO remains legally defensible by the EU. On one hand the unilateral countermeasures contained within Annex I of the regulation might constitute a conflict with WTO obligations, particularly under Article 23 of the DSU and GATT provisions prohibiting discriminatory tariffs and quantitative restrictions. On the other hand, the European Union has built a coherent legal justification by relying on international customary law. The EU could use the ARSIWA and the security exception contained in Article XXI(b)(iii) of the GATT to justify a potential use of the ACI should it come under WTO scrutiny. Jurisprudence confirmed that WTO law does not operate in complete isolation from public international law. Therefore, where economic coercion would fall outside of the WTO scope, particularly in cases of informal coercion, the ACI constitutes a lawful mechanism of trade defence under international law.

Finally, the study demonstrated that the threshold for establishing coercion remains a significant constrain in the practical application of the ACI. Article 2 of the regulation not only requires the existence of economic pressure but adds several criterions that need to be satisfied to justify the use of the ACI. The Greenland crisis represents a significant illustration of the legal ambiguity that surround this threshold. Although the US employed political and economic pressure through threats, the absence of implementation, and interreference with Danish sovereignty made it difficult to establish economic coercion within the meaning of the regulation. This illustrates the ambiguous threshold under which the ACI can realistically be activated.

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