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The consequences of using the Anti-Coercion instrument as a defensive measure in a looming EU-US trade war

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Tijn Bosma

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Contents

List of Abbreviations

AB	Appellate Body
ACI	Anti-Coercion Instrument
CCP	Common Commercial Policy
CFSP	Common Foreign and Security Policy
DSA	Digital Services Act
DSU	Dispute Settlement Understanding
EU	European Union
ICJ	International Court of Justice
MPIA	Multi-Party Interim Appeal Arbitration Agreement
PTM	Politically-motivated trade measures
URM	Union Response Measures
U.S.	United States
USTR	United States Trade Representative
VLOP	Very large online platform
WTO	World Trade Organization

1. Introduction

The world is changing. Political changes have undermined the multilateral international order, which has resulted in a more hostile trade environment. Trade is nowadays not merely used as a tool to achieve an increase of welfare, but is increasingly used as a measure to meddle in policy chances of other countries. Implementing economic acts or trade policy changes with the aim to steer the policy of sovereign foreign countries is also known as economic coercion. For the purposes of this thesis, economic coercion will therefore be defined as the act of one country (the coercing state) threatening to impact or actually impacting the economy of another country (the coerced state) with the goal to persuade this other country to make certain policy changes.[1] Examples are widespread, with major economies engaging in economic coercion being China, Saudi Arabia and the United States (U.S.).[2]

For the European Union, economic coercion poses a large risk. Economic coercion is capable of having negative consequences for the economy, as well as for diplomatic relations. This has become painfully apparent since the instatement of Donald Trump as president of the United States, already in his first term in 2016. A country that used to be a reliable partner, suddenly became capable of turning towards its closest allies, including in trade relationships. Donald Trump has infamously deemed the term 'tariffs' to be his favourite word. He sees them as a way of boosting domestic industry, for example by bringing manufacturing back to the United States and to force trade concessions by other countries. But the tariffs of Donald Trump go even further, since he also seems to deploy them as a way of forcing other countries to make policy changes more favourable to the United States, a classic example of economic coercion.[3] Initially, this premise shocked the EU, and it did not have a proper answer during the first term of Trump.[4]

In the aftermath of Trump's first term, the European Commission started drafting a package of measures to be able to counter any economic coercion, in the form of a regulation aimed at

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[1] Elena V. McLean, 'Economic Coercion', in Jon C. W. Pevehouse and Leonard Seabrooke (eds), *The Oxford Handbook of International Political Economy*, Oxford Handbooks (online edn, Oxford Academic, 12 May 2021) https://doi-org.uaccess.univie.ac.at/10.1093/oxfordhb/9780198793519.013.2 accessed 3 May 2025 254.

[2] Jessica Whyte, 'Economic coercion and financial war' *Journal of Australian Political Economy* no. 90 (2022) 7.

[3] Rachel Treisman, 'Word of the Week: Trump calls tariffs 'the most beautiful word.' Here's its history' (National Public Radio 9 April 2025) https://www.npr.org/2025/04/09/nx-s1-5355661/tariffs-history-meaning accessed 8 June 2025.

[4] Constanze Stelzenmüller, 'NORMAL IS OVER; Europeans hope that the Trump era is an anomaly But the transatlantic divide has never been so stark' (Brookings – Robert Bosch Foundation Transatlantic Initiative (BBTI) February 2018) https://www.brookings.edu/wp-content/uploads/2018/02/fp_20180201_normal_is_over1.pdf accessed 8 June 2025 2.

providing the Commission with a toolbox to effectively combat economic coercion, regardless of the source. The resulting regulation, the Anti-Coercion Instrument (ACI), was finally enacted in 2023 and will be the central subject of this thesis. The aim of this instrument is to act as a deterrence, discouraging any trading partners from taking coercive measures that meddle in the internal affairs of the European Union. The strongest benefit the ACI poses is the ability to impose a variety of retaliatory measures in a timely manner.[5]

This thesis will initially provide an overview of the changing situations on the world stage that have functioned as drivers to implement a defensive toolbox against economic coercion. Then, a broad analysis of the new ACI will be incorporated, as well as the discussions preceding the enactment of the instrument, which highlighted the competence issues that have arisen during the enactment process. Afterwards, an assessment will be made of the deployment of the instrument in light of the tariff threat coming from the U.S. and a comparison with another regulation on which the current defence of the European Union is based. Lastly, the potential economic and legal consequences of implementation of the ACI will be measured, determining the necessity of using this comprehensive toolbox vis-à-vis the United States. By doing so, light will be shed on the consequences of ACI deployment for the EU itself as a credible trading actor and on the potential consequences for the multilateral system under the WTO legal framework.

2. The need for a defence against economic coercion

In the last decade, the world of trade has become a more hostile one, a development that was also noticed by the then newly instated European Commission ("the Commission") in 2019. In its Trade Policy Review, published in 2021, the Commission referred to times of global uncertainty due to political and geo-economic tensions, as well as the movement of growing unilateralism.[6] In reaction to this, the Commission expressed the desire to improve its toolbox to defend against unfair trade practices or hostile acts.[7] Eventually, this desire has contributed to the enactment of the ACI. The aim of the tool has been incorporated into the recital of the

[5] Art. 8(1) 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 (2023) OJ L (ACI).

[6] European Commission, *Trade Policy Review – An Open, Sustainable and Assertive Trade Policy* COM(2021) 66 final (18 February 2021) https://eur-lex.europa.eu/resource.html?uri=cellar:5bf4e9d0-71d2-11eb-9ac9-01aa75ed71a1.0001.02/DOC_1&format=PDF accessed 26 April 2025, 1.

[7] Ibid., 10.

regulation, where it states that the Union should possess an instrument to deter and counteract acts of economic coercion by third countries.[8]

2.1. Defining economic coercion

Economic coercion is to be understood as an action by one country threatening to impact or actually impacting the economy of another country with the goal of persuading this other country to make certain policy changes.[9] It is seen in the form of imposing economic sanctions, a term that has become a synonym for economic coercion.[10] The reasons for countries to engage in economic coercion are various. For instance, acts of economic coercion could be a popular measure with the public of a certain country and thus be deployed for political aspirations, gathering more voters by imposing sanctions on third countries and contracting concessions. Interestingly, the popularity of these measures does not necessarily depend on the success of the economic coercion imposed. Just the act of engaging in economic coercion and addressing trade disputes seems to be enough to boost voter confidence, although a democratic government benefits less from this effect than an authoritarian one.[11]

In another example, economic coercion could not be used as a popular measure for domestic means, but rather have a more punitive character. Imposing strong sanctions on an adversarial country has the ability to decrease the quality of life in such a country.[12] The goal of the coercer here is to either persuade the government of the adversarial country to change policy, and thus improve the quality of life for the population again, or to send a message to the population to vote for a certain policy change, an approach that would be most effective in democratic countries.

Conducting economic coercion is done through various means. It typically includes the withdrawal (or threat thereof) of customary trade and financial relations. More specifically, economic coercion may come in the form of restrictions on important economic components, such as goods, services, capital and people. The degree of intensity of the sanctions may also vary, ranging from light restrictions to a complete ban on economic relations with the coercing country.[13] Additionally, countries often cooperate in imposing sanctions, to both increase the

[8] Recital 7 ACI.
[9] McLean, 12 May 2021.
[10] Ibid., 255.
[11] Ibid., 259.
[12] Ibid., 260.
[13] Ibid., 260.

effectivity upon the coerced country, as well as trying to diminish the amount of partners the coerced country can cooperate with in bypassing the sanctions.[14]

2.2. Economic coercion towards the EU

When applied to the Union, the question that arises is exactly where the desire of the Commission to battle economic coercion at this time originates from. The reference to general political and geo-economic tensions in its Trade Policy Review does not provide a lot of insight into the specifics of the modern day threat of economic coercion by third countries. Therefore, a quick overview of recent events is necessary to understand the context in which the ACI was enacted.

The last decades have seen relative peace in international trade, partly due to the functioning of the World Trade Organization (WTO), a development that has brought loads of prosperity throughout all parts of the world. However, this functioning is now being undermined through the means of politically-motivated trade measures (PTMs).[15] These are measures that countries implement to persuade other countries to implement or remove policy decisions and thus the kind of measures countries take to engage in economic coercion. Characteristic for these kinds of measures is that they are generally not WTO compatible and that countries will often deny the political motivation behind them. The implementation of PTMs is often referred to as the "weaponization of trade".[16] It is this type of economic coercion that the ACI aims to protect against.

In recent years, there have been a few major drivers behind the implementation of the ACI, consisting of both developments within the EU as well as external factors. Next to that, there have been multiple events that have highlighted the necessity for the instrument and that have sped up the enactment procedure of it. The next section aims to give a comprehensive overview of events within the last few years that have contributed to both the founding of the Anti-Coercion Instrument as well as the implementation thereof in a timely manner.

2.2.1. The establishment of a "Geopolitical Commission"

In 2019, the then freshly elected chair of the European Commission, Ursula von der Leyen, declared the start of a new era: the era of the "Geopolitical Commission".[17] "Geopolitical"

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[14] Ibid., 261.

[15] Yong-Shik Lee, 'Weaponizing International Trade in Political Disputes: Issues Under International Economic Law and Systemic Risks' *Journal of World Trade* 56, no. 3 (2022) 406.

[16] Ibid., 407.

[17] Ursula von der Leyen, 'Speech by President-elect von der Leyen in the European Parliament Plenary on the occasion of the presentation of her College of Commissioners and their programme' (European Commission, 27

refers here to the interaction between geographic factors and the foreign policy of states. In her speech, Von der Leyen expressed the intention to make the Commission an active body on the world stage, and thus, as the representative of the European Union, with executive powers on multiple fields. She also vowed, amongst other things, to make the EU an actor that would champion multilateralism, promote open and fair trade and that would become more autonomous in defence matters.[18] This concept departed from aims of the earlier Commission, considering the more inward-looking push for a "Political Commission" in the 5-year period preceding Ursula von der Leyen under commissioner Jean-Claude Juncker, who aimed mostly to restore the EU after the economic crisis.[19] In line with the concept of a geopolitical Commission, the institution presented its aim on "Open Strategic Autonomy", which is a political direction to "emphasise the EU's ability to make its own choices and shape the world around it through leadership and engagement, reflecting its strategic interests and values."[20] It is a policy decision referring to the way the EU interacts with third countries when conducting trade.

The strategy of "Open Strategic Autonomy" is based on three pillars. First, the EU focuses on "resilience and competitiveness" to strengthen the economy. This pillar is mostly a reaction to COVID-19, during which it became apparent that it proved to be challenging to set up worldwide supply chains for the delivery of medical supplies needed to combat the virus. The goal here is to cooperate with other countries effectively to be able to ramp up production quickly and to distribute goods timely by boosting domestic industries. In doing so, the EU aims to market itself as a "connectivity hub" for other countries worldwide.[21] The second pillar is the pillar of "sustainability and fairness", with which the EU wants to tackle climate change and other environmental issues through the means of cooperation worldwide.[22] The last pillar of the "Open Strategic Autonomy" strategy is "assertiveness and rules-based cooperation". The message of the Commission here is twofold. One the one hand, it wants to continue reaping the benefits of multilateralism, and thus engage in open trade, a signal to third countries that the Union wants to depart from protectionism. On the other hand, it expresses a warning to other

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November 2019) https://ec.europa.eu/commission/presscorner/detail/en/speech_19_6408 accessed 27 April 2025 2.

[18] Nicole Koenig, 'The 'geopolitical' European Commission and its pitfalls' *Policy Brief* (Hertie School Jacques Delors Centre, 2 December 2019) https://www.hertie-school.org/fileadmin/user_upload/Policy_Brief_Nicole_geopolitical_commission.pdf accessed 27 April 2025 1.

[19] Hussein Kassim & Brigid Laffan, 'The Juncker Presidency: The Political Commission in Practice' *Journal of Common Market Studies* 57 (2019) 51.

[20] European Commission, *Trade Policy Review* 4.

[21] Ibid., 7.

[22] Ibid., 6.

countries worldwide that it will be assertive in defending its interests and the economy against unfair trade practices, in this way ensuring a level playing field. In other words, the EU puts its foot down and states it will react if other countries engage in trade practices the EU considers unfair and that try to persuade the Union to changing its policy.[23] The ACI is built on the same two-step approach, and is thus an exact embodiment of the third pillar of this "Open Strategic Autonomy" that the Commission aims to pursue. It functions as an indispensable part of the policies arising out of the desire to establish a "Geopolitical Commission", which makes it a strong internal driver in the enactment process of the ACI.

2.2.2. China as an economic actor

The first of two major external drivers of the Commission's push towards a comprehensive trade toolbox is the rise of China. China is considered the second-best economy in the world, next to the United States, and bound to overtake the US as supreme economic power.[24] But this position as significant economic actor is relatively newfound. China has seen one of the most dramatic increases in growth over the last three decades. The GDP per capita, a common indicator of economic growth, hovered under $1,000 for decades up until 2002 and has now reached a height of almost $13,000, a 13-time increase.[25] For reference, the EU already had a GDP per capita of $13,000 in 1990, but it took almost 10 years longer to achieve a similar increase.[26] To put it another way, when the European Union was founded, China was considered a country in development and did not play a role of significant influence on the world stage. The EU, or other more influential economic powers, had not much to fear of it. Nowadays, however, China is using its newfound wealth and power to conduct a major "catch-up race" to the top. The goal has been clear for a while. Xi Jinping, the leader of China, envisions China being the most influential power in the world by 2050, surpassing the United States both economically as well as militarily.[27] The implications of this race to the top for the European Union are increasingly more seen in the form of economic coercion, since China seems to be willing to use any means to assert its economic dominance and to achieve its goals and it does not shy away from imposing sanctions upon its trading partners for political means.

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[23] Ibid., 4.
[24] Jinhui Li, Gwang-Nam Rim & Chol-Ju An, 'Comparative Study of Knowledge-Based Economic Strength Between China and the USA' *Journal of the Knowledge Economy* 14 (2023) 4257.
[25] William A. Joseph (ed), *Politics in China: an Introduction* (4th edition, Oxford University Press 2024) 4.
[26] World Bank, 'GDP per capita (current US$) – European Union' (World Bank Data 2025) https://data.worldbank.org/indicator/NY.GDP.PCAP.CD?locations=EU accessed 4 May 2025.
[27] C. Fred Bergsten, *The United States vs. China: The Quest for Global Economic Leadership* (Polity Press 2022) 1.

A well-documented example regarding China concerns the use of economic coercion towards EU-Member State Lithuania in 2021. This move was a reaction to a few actions of Lithuania, including the opening of a Taiwanese "representative office" in Vilnius.[28] The opening of the representative office was considered controversial by the Chinese government, since it contradicts its One China principle, in which the Beijing regime regards Taiwan as an inalienable part of China.[29] The retaliation consisted of a rigorous ban of Lithuania from China's customs system, resulting in the disappearance of all trade between the two countries. The ban itself impacted only about 1% of total trade that Lithuania engages in[30], but the sanctions from China went even further by threatening to cut of companies in certain sectors completely if they were still operating in Lithuania, so-called secondary sanctions.[31] There was no warning to any of these measures taken by China.[32]

In reaction to the deployment of these PTMs by China, the EU conducted consultations with China, but these proved to be unfruitful. As a result, the EU requested adjudication by a panel at the WTO, which is generally the way for countries to resolve trade disputes. However, China was unwilling to engage in the process of adjudication and the first meeting of the Dispute Settlement Body to establish a panel was therefore unsuccessful. Eventually, in January 2023 only, a panel was established, with all panellists finally being selected in April 2023.[33] However, no report was made in any timely fashion afterwards, and the EU eventually suspended the proceedings with the following statement: "This is a procedural step taken for technical reasons related to the need to assess certain elements arising from the preparation of written submissions".[34]

In the meantime, the export of Lithuanian goods worth around 26.5 Million Euro to China remained blocked, resulting in the need to find other markets for these goods. It also prompted

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[28] Matthew Reynolds & Matthew P. Goodman, 'China's Economic Coercion: Lessons from Lithuania' (Center for Strategic and International Studies 17 February 2023) https://www.csis.org/analysis/chinas-economic-coercion-lessons-lithuania accessed 4 May 2025.
[29] Amrita Jash, 'The "One-China Principle": China's "Norm" versus Global Realities' (Global Taiwan Institute 21 February 2024) https://globaltaiwan.org/2024/02/the-one-china-principle-chinas-norm-versus-global-realities/ accessed 4 May 2025.
[30] Ljiljana Biukovic, 'The Lithuania-China Row: The European Union's Search for a Strategy and Instruments to Deal With China' *Legal Issues of Economic Integration* 50, no. 4 (2023) 396.
[31] Steven Blockmans, 'Lithuania, China and EU lawfare to counter economic coercion; Breaking bad?' *CEPS Policy Insights*, no. 20 (December 2021) https://cdn.ceps.eu/wp-content/uploads/2021/12/PI2021-20_Lithuania-China-and-EU-lawfare.pdf accessed 4 May 2025 2.
[32] Biukovic, 397.
[33] Ibid., 398.
[34] Camille Gijs, 'EU suspends WTO dispute against China's trade restrictions on Lithuania' (Politico 27 January 2024) https://www.politico.eu/article/european-union-china-world-trade-organization-dispute-lithuania/ accessed 4 May 2025.

Lithuania to ask the EU for funds to compensate companies affected.[35] The issue for the EU is apparent. China deploys a measure that is almost never used[36], thus conducting a strong unconventional form of economic coercion towards both Lithuania and the EU with far-reaching consequences for companies involved in trade with both Lithuania and China. The WTO does have a way to possibly solve the problem, but the process is lengthy and additionally vulnerable to further frustration if one of the parties does not want to cooperate. Moreover, if any report would have been brought out by the panel, it is far from certain that enforcement would have been effective due to the Appellate Body (AB) crisis within the WTO, an issue that will be addressed later. It sets a precedent for any country that the Union is unable to effectively battle economic coercion, with the possibility of other countries engaging in similar activities as China.

In summary, due to the nature of the measures taken by China and the current status at the WTO, there was no quick resolution the Union could deploy to solve matters with China, and no legal basis to take effective countermeasures. If this situation were to persist, it would have been a real danger that China, or others, would have deployed similar measures towards bigger economies or the EU as a whole with far more devastating consequences for the European economy, without the EU having the opportunity to do anything quickly against it to mitigate the damages. Considering this, the Lithuanian-China crisis has highlighted the threats of PTMs once more, prompting the Commission to make haste with the Anti-Coercion Instrument to diminish the effects of the increasing amounts of economic coercion.[37]

2.2.3. The position of the United States

The second external driver relates to the United States, which may be considered as the other biggest economic power next to China. For example, the U.S. dominates the financial system. The U.S. dollar is the most-used currency in worldwide trade and its treasury markets are considered the most liquid and thus the most attractive for central banks to invest in.[38] For decades, it has granted the United States with one of the most powerful positions on the world stage.

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[35] Biukovic, 398-399.
[36] Blockmans, 2.
[37] Lukas Schaupp, 'Decoding the Intersection of Trade and Security in the EU's Anti-Coercion Instrument' *European Foreign Affairs Review* 29, no. 2 (2024) 134.
[38] Kalim Siddiqui, 'The U.S. dollar and the world economy : a critical review' *Athens journal of business & economics* 6, no. 1 (2020), 22.

During these decades, the European Union and the U.S. were mostly considered close partners, often presenting themselves as a united front. Since the end of World War II, the transatlantic bond has been one of the most important ones in establishing the world order, which has generally been regarded as a strong bond. No other regions in the world are as closely connected as the U.S. and the EU. However, the presidential election of Donald Trump in 2016, who focused on his "America first" policies, seems to have undermined the strength of this bond. In 2018 already, the transatlantic bond was regarded as being under strong pressure.[39]

During the first presidency of Donald Trump, various ways of economic coercion towards the Union became apparent. First, there was the threat of sanctions towards the French government in reaction to a digital services act. Second, the U.S. decided to leave an international agreement with Iran and imposed extraterritorial sanctions on the country. The result was that any corporation conducting business with Iran would be sanctioned, including EU-businesses. Lastly, there was the case of sanctions imposed on companies that were involved in building the Nord Stream 2 pipeline.[40] These are all textbook examples of economic coercion. The United States was unsatisfied with the policy choices of sovereign Member States, and thus threatened to, or actually imposed sanctions, either directly or indirectly. It certainly came as a shock at that time that a friendly state and long-time ally would even consider imposing sanctions towards the European Union. This resulted in an awakening of the sense of urgency that the U.S. would not always stand behind the Union anymore, and could even go as far as imposing economic sanctions towards the EU itself. With the knowledge of today, it is clear that this is not merely a fictional fear anymore.

2.3. The role of the WTO and the Appellate Body crisis

Although it is not necessarily a direct driver, it is worth mentioning that the ACI was partly also enacted to fill a hole the WTO was unable to fill anymore. As mentioned before, the WTO provides a forum for the resolution of trade disputes on the multilateral level. But this process can be lengthy and is vulnerable to frustration if one of the parties is unwilling to cooperate.

However, there is another problem with adjudication through the means of the WTO. In the past, the WTO stood out as an innovative forum and as the benchmark for state-to-state dispute settlement, with many benefits, such as obligatory consultations upfront, strict deadlines and a

[39] Marianne Riddervold & Akasemi Newsome, 'Introduction: Out With the Old, In With the New? Explaining Changing EU–US Relations' *Politics and Governance* 10, no. 2 (2022) 129.
[40] Christian Freudlsperger & Sophie Meunier, 'When Foreign Policy Becomes Trade Policy: The EU's Anti-Coercion Instrument' *Journal of Common Market Studies* 62 no. 4 (2024) 1072.

body for appellate review. The WTO is the most used forum for state-to-state dispute settlement and has been used by a wide range of countries.[41] This usage also extends beyond the traditional economic powers, considering the large amount of Members, which adds up to 166.[42]

But the broad consensus nowadays is that the WTO dispute settlement mechanism is in decline. The core of the problem is found in the Appellate Body, once considered the "Jewel in the Crown" within the WTO legal framework. For two decades, the Appellate Body has performed as a trustworthy body with extensive expertise on trade issues and the interpretation of WTO trade law.[43] Additionally, the AB has been granted the power to authorize retaliatory measures, for example when there are cases of trade barriers that do not align with WTO trade law. These decisions have a binding effect. Such rulings are hard to overrule, since the only way to do so is by consensus. Every single Member of the WTO will then have to express the wish to overrule the decision, which rarely happens.[44] These mechanisms have constituted the AB as a strong institute for adjudication within international trade law.

The AB consisted of 7 members, with 3 members being active on the adjudication of appeals, exchanging on a rotating principle. The members are appointed for a period of 4 years. The appointment itself is a tedious process, since it requires consensus by every member of the WTO. One vote against the appointment proposal leads to the blockage of the appointment of a member.[45] Up until the 2010s, this system functioned well. Members of the AB were brought forward after extensive screening and the WTO Members confirmed the appointment. However, this started to change when the stance of the United States regarding the status of the AB during the Obama administration altered. For the first time, a member was blocked from (re)appointment in 2011.[46] The blocking of candidates endured in 2013 and 2016. Initially, the U.S. argued that the members themselves were problematic, with the accusation being made that there was a deviation from the appropriate role as member by restricting or expanding obligations from WTO Members. But not long after, it became clear that the U.S. deemed the

[41] Peter Van den Bossche, 'The Demise of the WTO Appellate Body: Lessons for Governance of International Adjudication?' *WTI Working Paper* no. 2 (World Trade Institute 2021) 1-2.
[42] World Trade Organization, 'Members and Observers' (30 August 2024) https://www.wto.org/english/thewto_e/whatis_e/tif_e/org6_e.htm accessed 11 May 2025.
[43] Chang-fa Lo, Junji Nakagawa & Tsai-fang Chen (eds), 'Introduction: let the Jewel in the Crown Shine Again' *The Appellate Body of the WTO and Its Reform* (Springer 2024) 4.
[44] Manfred Elsig & Mark A. Pollack, 'Agents, trustees, and international courts: The politics of judicial appointment at the World Trade Organization' *European Journal of International Relations* 20, no. 2 (June 2014) 401.
[45] Ibid., 398.
[46] Lo, Nakagawa & Chen, 4.

Appellate Body in its entirety, as an institution with far-reaching executive powers, to be problematic.[47]

After the appointment of Donald Trump as president of the U.S. in 2017, the appointment process of any member was permanently frustrated, mainly due to the new United States Trade Representative (USTR), Robert Lighthizer, who displayed a hawkish stance on trade issues.[48] Eventually, multiple grievances were brought forward by the USTR in a report that was floated in 2020. For example, the U.S. was unsatisfied that members stayed on after expiration of their 4-year term to finish the adjudication of cases that had started before this expiration.[49] Additionally, it was found to be problematic that the AB reviewed factual findings[50] and issued advisory opinions, both procedures for which there is no basis under the Dispute Settlement Understanding (DSU) according to the United States.[51] Whether these grievances have merit or not, it may be concluded that the U.S. felt (and still feels) that the Appellate Body conducted judicial overreach.

The crisis caused by the blockage of the United States endures to this day and is unlikely to be resolved anytime soon, considering the recent appointment of Donald Trump as president of the United States for a second term.[52] In the meantime, the EU and a few other countries founded a substitution for the Appellate Body, namely the Multi-Party Interim Appeal Arbitration Agreement (MPIA). This institution is meant as an interim solution as to ensure that appeals made by parties in response to panel findings do not disappear “into the void”.[53] The MPIA replaces the AB as appellate authority by constituting binding rulings upon its members through the means of arbitration, something that is explicitly allowed under the DSU.[54]

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[47] Henry Gao, ‘Finding a Rule-based Solution to the Appellate Body Crisis: Looking Beyond the Multiparty Interim Appeal Arbitration Arrangement’ *Journal of International Economic Law* 24, no. 3 (2021) 535.
[48] Ibid., 535.
[49] United States Trade Representative, ‘Report on the Appellate Body of the World Trade Organization’, (Office of the United States Trade Representative Ambassador Robert E. Lightizer February 2020) https://ustr.gov/sites/default/files/Report_on_the_Appellate_Body_of_the_World_Trade_Organization.pdf accessed 11 May 2025, 32.
[50] Ibid., 37.
[51] Ibid., 47.
[52] The Geneva Trade Platform, 'Multi-Party Interim Appeal Arbitration Arrangement (MPIA)' https://wtoplurilaterals.info/plural_initiative/the-mpia/ accessed 11 May 2025.
[53] Joost Pauwelyn, ‘The WTO’s Multi-Party Interim Appeal Arbitration Arrangement (MPIA): What’s New?’ *World Trade Review* 22 (2023) 694.
[54] Art. 25 Understanding on Rules and Procedures Governing the Settlement of Disputes (15 April 1994) Marrakesh Agreement Establishing the World Trade Organization, Annex 2, 1869 UNTS 401 (DSU).

The MPIA poses an adequate solution to the Appellate Body crisis, but has a limited reach. Just a fraction of WTO Members is also part of the MPIA, with one major economic power being absent, that Member being the United States.[55] Appeals made against the U.S. in any case, will therefore disappear "into the void" and retaliation against unwarranted trade barriers will have no final court ruling to support the necessity and legality of countermeasures.

2.4. Exploring the circumstances under which the ACI emerged

The last decade has seen impactful changes on the economic world stage. A trend of the "weaponization of trade" is observeable, leading to the need for the European Commission to shift its view towards the rest of the world and arm itself with a legal basis for retaliatory measures in any case of economic coercion. Especially China has shown to not shy away from economic coercion to punish other countries for a certain stance, as was the case with Lithuania. However, traditional allies like the United States have also shown to be vulnerable to political shifts, leading to the use of direct and indirect sanctions against the European Union.

The current system under the WTO is insufficient to grant the ability upon a coerced country to adequately act, with lengthy procedures that are vulnerable to frustration by parties. On top of that, the current Appellate Body crisis poses the risk of appeals disappearing "into the void". Although an interim solution has been constituted in the form of the MPIA, major countries like the U.S. lack, making it impossible to effectively engage in dispute settlement with them and consequently the enforcement thereof. Eventually, all these drivers and factors have contributed towards the need and sense of urgency to enact the ACI as soon as possible, finally granting the EU with effective countermeasures towards any form of economic coercion.

3. The legislative history of the Anti-Coercion Instrument

In comparison to sovereign countries, the EU has a certain disadvantage in enacting regulations. Sovereign states have the ability to centralize policies and can do this in a relatively easy manner, considering that they have the exclusive power to do so. This is not the case within the legal system of the Union. The EU is built upon the principle of conferral. As a result, the EU only has the right to legislate those areas where the Member States have conferred the legislative power on the Union. This makes it difficult for the "geopolitical commission" to act swiftly on policies where it does not have exclusive power.[56] The

[55] The Geneva Trade Platform.
[56] Freudlsperger & Meunier, 1066-1067.

competence of the Commission to act as a stronger power towards the rest of the world is therefore not so self-evident.

3.1. Legislative competence allocation between the EU and the Member States

The European Union does not always have the sole power to establish legislation. When it comes to the relation between the Member States and the EU on legislative power, it depends on the specific legal field where this power lies. First, there are the fields where the Treaties confer exclusive competence on the EU, granting the Union the sole power to act in these fields.[57] Examples include the monetary policy in Member States whose currency is the Euro[58] and the Common Commercial Policy (CCP).[59] Second, there are areas where both the Union and the Member States have legislative power, examples being the internal market[60] and environmental legislation.[61] According to the principal of subsidiarity, the Union may only act in these areas if the objectives of the legislation cannot be sufficiently reached by the Member States themselves, but better be achieved by the Union as a whole.[62] Lastly, there are the areas where there is no competence conferred upon the Union as an institution. Legislation in these areas is therefore not harmonised and the Member States have retained their power to enact legislation as they see fit on the national level.

3.2. Institutional division of legislative competences

In fields where exclusive or shared competence conferred upon the Union exists, another allocation of competences is found, this time on the institutional level. Within the legal system of the EU, three bodies form the legislative authorities. These bodies are the Commission, the Council of the European Union (the Council) and the European Parliament (the Parliament). Each of these institutions has a different role in the process of legislative decision-making and the parties that they represent. The Commission represents the Union itself as one power and has the authority to propose legislation.[63] Arguably, this is the most influential position of the three bodies, since it enables the Commission to establish direction in legislation. Furthermore, the Commission acts as the executive body of the EU and implements the decisions of the Council and the Parliament given on its own proposals, forming the daily work of the

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[57] Art. 2(1) Treaty on the Functioning of the European Union (2012) OJ C 326/49 (TFEU).
[58] Art. 3(1)(c) TFEU.
[59] Art. 3(1)(e) TFEU.
[60] Art. 4(2)(a) TFEU.
[61] Art. 4(2)(e) TFEU.
[62] Art. 5(3) Treaty on European Union (2012) OJ C 326/15 (TEU).
[63] Robert Thomson & Madeleine Hosli, 'Who Has Power in the EU? The Commission,Council and Parliament in Legislative Decision-making' *Journal of Common Market Studies* 44, no. 2 (2006) 2.

Commission.[64] The Council is the embodiment of the (governments of) Member States and has been granted the ability to amend and/or approve legislation proposals of the Commission. The Parliament, which has been granted the same ability but in fewer instances, represents the populations of the individual Member States. The exact authority of each body to act on legislation proposals depends on the competence granted to them in primary law of the European Union.[65]

This allocation of competences between the Commission, the Council and the Parliament is well-established within the Treaties. For example, the Council has the ability to lay down provisions on the composition of the Economic and Financial Committee with merely the obligation to inform the Parliament[66], whereas the Council and the Parliament have the joined authority to act when it comes to laying down rules as regards data protection of EU-citizens.[67] In most instances, the right of amendment is conferred upon the Parliament and the Council together, in a procedure that has been called the ordinary legislative procedure. In short, the Commission sends a proposal for a piece of legislation to the Parliament and Council, which institutions get the opportunity to suggest amendments and to either adopt or not adopt the act. The act is then adopted in a maximum of three different readings, in which readings the Council and the Parliament both have to approve of the proposal sent by the Commission, but also both have to approve amendments adopted by one another. Eventually, if the Parliament and the Council agree on the act and its amendments, the act is adopted. The Commission does still have a way of influencing this process too, by (threatening to) withdrawing the proposal if certain elements are not kept in or added.[68] Due to its complexity, the entire legislative procedure in these cases is best shown in figurative form below.[69]

[64] European Union, 'European Commission' https://european-union.europa.eu/institutions-law-budget/institutions-and-bodies/search-all-eu-institutions-and-bodies/european-commission_en accessed 13 April 2025.
[65] Thomson & Hosli, 2.
[66] Art. 134(3) TFEU.
[67] Art. 16(2) TFEU.
[68] Thomas Laloux & Tom Delreux, 'The origins of EU legislation: agenda-setting,intra-institutional decision-making orinterinstitutional negotiations?' *West European Politics* 44, no. 7 (2021) 1560.
[69] European Parliament, 'Ordinary Legislative Procedure' https://www.europarl.europa.eu/olp/en/ordinary-legislative-procedure/overview accessed 13 April 2025.

The ordinary legislative procedure. Source: Website of the European Parliament.[70]

To come to a joint conclusion and thus to be able to adopt the proposed legislative piece, the three legislative bodies will hold interinstitutional negotiations. The process starts with the Parliament and the Council both establishing their position after receiving the proposal from the Commission. This position will have a strong basis in their place as representative of different parties. Since they represent different parties, concessions will have to be made to get closer to each other's position.[71] In practice, these negotiations are conducted in the background in informal rounds, which often results in agreement already during the first reading, thus enabling adopting the act already during the first part of the legislative process.[72]

[70] Ibid.
[71] Laloux & Delreux, 1561.
[72] Ibid., 1558.

3.3. The enactment process of the ACI

The Commission aimed, in line with the push coming from Ursula von der Leyen towards a "geopolitical commission", at granting itself far-reaching powers in every decision-making process involved with the ACI. The ACI is based on Art. 207 TFEU, which is also known as the Common Commercial Policy. Any legislation based on the CCP has to follow the ordinary legislative procedure, with both the Council and the Parliament being involved.[73]

In its initial proposal, the Commission wished to constitute an extensive toolset to implement the ACI, in a two-step way. First, an assessment would be made of whether an action by a third country qualifies as "economic coercion". Second, an extensive list of countermeasures, the so-called "Union Response Measures" (URMs), was proposed which could be deployed as a last resort if any country engages in an act of economic coercion and was unwilling to change its behaviour or to enter into negotiations. Additionally, the Commission wished to grant itself the power to both receive the discretion to decide what defines as "economic coercion" and to receive the ability to implement and thus deploy the countermeasures. The first wish was largely accepted by the Parliament and the Council in the legislative process, keeping these URMs within the ACI intact and granting the Commission the ability to deploy these countermeasures, making the ACI a very comprehensive tool in trade issues.[74] The approval from the Parliament and the Council here originated in a wide consensus regarding the necessity to defend the EU against all possible forms of economic coercion.[75] However, the second wish proved to be unacceptable to the Council, leading to disagreement within the legislative procedure, especially since the Parliament agreed to the original proposal as pushed forward by the Commission, pinning the Parliament and Council against each other.[76]

3.4. Competence issues

The origin of this disagreement is found in the aforementioned competence allocation. Two issues are identified, and both are vested in the Council acting as representative of the individual Member States. The first issue lies within the limitations of the competence of the Commission when implementing the CCP. The CCP confers the exclusive competence to implement acts when it comes to trade matters upon the Commission.[77] But this exclusive

[73] Art. 207(2) TFEU.
[74] Lukas Schaupp, 'The EU's Anti Coercion Instrument between EU Strategic Autonomy and Member State Sovereignty' *Working Paper* (EUI Department of Law August 2023) 6.
[75] Ibid., 7.
[76] Ibid.
[77] Art. 3(1)(e) TEU.

competence comes with a few limitations, decreasing the supranationalization of the Commission within the Common Commercial Policy. A few safeguards were installed in the TFEU, to disperse more power to the Member States themselves. Examples are the obligation for the Commission to only engage in negotiations for agreements with third countries in consultation with a committee appointed by the Council[78] and the inability of the Commission to conclude these agreements, which is done by qualified majority by the Council.[79] One example that shows the extensive consequences of these provisions is the Council blocking the entering of the Commission into accession negotiations with Albania and North Macedonia.[80] These safeguards portray the inside battle between the institutions of the Union, with the Commission wishing to achieve a higher level of supranationalization and the Council, acting on behalf of the Member States, aiming to retain a large influence and sovereignty for the Member States when it comes to actions towards the outside world. It is seen as evidence that unionization is not complete as regards the Common Commercial Policy.[81]

In addition to the already limited position of the Commission in implementing the CCP, the second issue originates from the nature of the ACI itself, which does not merely touch upon the CCP as an area, but extends beyond that. The ACI is namely not only an economic instrument, but also a political one. Nowadays, economic coercion is widely applied as political pressure on other countries in different forms, ranging from sanctions to tariffs, either in reaction to coercion from these countries themselves or for other reasons. This phenomenon is very visible in 2025 coming from the United States with Donald Trump openly using tariffs towards almost any country as a negotiation tactic[82], but the trend of imposing a large number of sanctions as a political instrument was already seen during the presidency of Barack Obama.[83] Other countries use means of economic coercion too, with China as one of the most

[78] Art. 207(3) TFEU.
[79] Art. 207(4) TFEU.
[80] Koenig, 3.
[81] Plarent Ruka, 'The Limitations of the Common Commercial Policy as an Exclusive Competence of the European Union' *Hungarian Yearbook of International Law and European Law* (2016) 642.
[82] The White House, 'Fact Sheet: President Donald J. Trump Declares National Emergency to Increase Our Competitive Edge, Protect Our Sovereignty, and Strengthen Our National and Economic Security' (10 April 2025) https://www.whitehouse.gov/fact-sheets/2025/04/fact-sheet-president-donald-j-trump-declares-national-emergency-to-increase-our-competitive-edge-protect-our-sovereignty-and-strengthen-our-national-and-economic-security/ accessed 13 April 2025.
[83] Daniel W. Drezner, 'The United States of Sanctions: The Use and Abuse of Economic Coercion' *Foreign Affairs* 100, no. 5 (2021) 142.

notable countries deploying a range of different forms of economic coercion in recent years, for example against Japan, Norway and the Philippines.[84]

As a result, the defence against coercive trade measures does not solely fall within the domain of the CCP, but is increasingly a matter of Common Foreign and Security Policy (CFSP)[85]. This is an area where the competence to act is conferred upon the Council, and thus where the discretion to implement the CFSP is left to the Member States.[86] It is therefore not unimaginable that the Council was opposed to the idea of bringing part of the CFSP into the CCP by enactment of the ACI. This would namely have resulted in additional supranationalization of the Commission, granting the institution executive powers in both areas. Especially seen in light of the already existing limitations on the Commission within the CCP, it was no surprise that the Council opposed the initial proposal brought forward by the Commission.[87]

3.5. The ACI in its current form

Eventually, the interinstitutional negotiations during the legislative process of the ACI led to a compromise by the Commission. It would leave defining "economic coercion" up to the discretion of the Council, meaning the Member States received a greater influence in deployment of the ACI as a reaction to actions by third countries. Practically, the Council decides with a qualified majority, requiring 55% of the Council members representing at least 65% of the population of the European Union to vote in favour, whether certain actions by third countries constitute "economic coercion".[88]

Interestingly, where the Commission was unable to receive full power of implementation of the ACI and could not extend to the domain of the CFSP, the Council did receive implementation powers in the CCP, an area that originally grants exclusive implementation powers upon the Commission. Although it is possible to confer implementing powers upon the Council[89], doing so is not seen as the norm.[90] This development may be seen as the Member States balancing out the loss of a tool with potential far-reaching political consequences to an

[84] Charles Miller, 'Explaining China's strategy of implicit economic coercion. Best left unsaid?' *Australian Journal of International Affairs* 76, no. 5 (2022) 515-516.
[85] Freudlsperger & Meunier, 1064.
[86] Art. 26(2) TEU.
[87] Schaupp, 'The EU's Anti Coercion Instrument between EU Strategic Autonomy and Member State Sovereignty' 7.
[88] Ibid.
[89] Art. 219(2) TFEU.
[90] Schaupp, 'The EU's Anti Coercion Instrument between EU Strategic Autonomy and Member State Sovereignty' 8.

area where the Commission is able to act.[91] In that sense the ACI merely is a manifestation of a failed attempt towards supranationalization of the Commission, contradicting the idea of an increasingly "Geopolitical Commission".

4. The Contents of the Anti-Coercion Instrument

The Anti-Coercion Instrument aims to prevent any unwarranted meddling from third countries within the EU´s policy choices by the use of economic coercion. An important aspect of the ACI is that it is first and foremost an instrument of deterrence. At the basis of fighting economic coercion lies the principle of engaging in conversations with the coercer and attempting to solve the situation through the means of diplomatic relations. Only if these talks prove to be unfruitful, actual countermeasures may be deployed, making them a last resort.[92] Next to that, the ACI is merely a reactive piece of legislation. Only the determination of economic coercion provides a legal basis to impose countermeasures. In light of this, the ACI consists of a few important articles that provide rails to the EU as to under which conditions the Union is able to act in case of third-country economic coercion.

4.1. Article 1: Subject and Scope

The first article immediately provides the embodiment of the ACI as mostly being an instrument of deterrence. Any countermeasures are only then to be taken when other options are exhausted.[93] Next to that, the provision highlights the aim for compliance of any countermeasure with international law.[94] This aim provides for one of the strongest topics of debate when it comes to the ACI. Considering the extensive amount of countermeasures that are made possible within the framework of the ACI, as well as there not being an obligation to first use a multilateral dispute settlement platform, questions have been raised about the legality of the ACI in light of the WTO agreement.[95] This issue will be touched upon in a later section again.

4.2. Article 2: Economic Coercion

The second article provides a definition of economic coercion, this definition being any action or threat to act by a third country that would impact investment or trade in order to achieve

[91] Ibid., 17.
[92] Ferdi De Ville, Simon Happersberger & Harri Kalimo, 'The Unilateral Turn in EU Trade Policy? The Origins and Characteristics of the EU's New Trade Instruments' *European Foreign Affairs Review* 28, Special Issue (2023) 28.
[93] Art. 1(2) ACI.
[94] Art. 1(3) ACI.
[95] Kornel Olsthoorn, 'The EU's Anti-coercion Instrument: A Return of Unlawful Unilateral Trade Countermeasures in Disguise?' *Legal Issues of Economic Integration* 51, no. 1 (2024) 49.

policy changes within the targeted Member State or EU as a whole.[96] Additionally, the result of the interinstitutional discussions on the draft of the ACI is found here, since the Commission and the Council are both appointed as decision-makers when it comes to defining exactly which acts qualify as being an example of economic coercion. A few guidelines are set out, such as the intensity and duration of the act by a third country, whether there is a pattern of such acts, whether the act violates the sovereignty of the Member States and whether the third country has tried to remedy the violation.[97] Although these guidelines provide a few handrails to what should qualify as economic coercion, there is a lot of room for interpretation left up to the discretion of the Commission and the Council. What this interpretation will look like is unclear at this time, since the ACI has not been used yet. For example, relevant questions exist about the range of economic coercion and the interpretation of the terms “trade or investment”. Does the ACI only apply to economic coercion in the form of a broad attack against certain economic sectors, e.g. in the form of tariffs, thus directly attacking the sovereignty of a Member State, or does the ACI also provide tools in case the economic coercion is targeted against a specific group of companies or even just one company, which attack does not directly violate the sovereignty of a Member State? The answer to this question is fundamental in the following application of the ACI. On the one hand, if an attack in the form of economic coercion towards a single company is excluded, this may have the consequence of the ACI being too rigid and vulnerable to countries bypassing the ACI by merely targeting individual companies. On the other hand, including such attacks may lead to the granting of too far-reaching possibilities to act upon the Commission, risking protectionist consequences and non-compliance with the framework of the WTO, a concern that was already brought forward before the Commission had submitted a proposal for the implementation of the ACI.[98] Considering the difficult nature of this question, it may be regarded as an extra safeguard now that the Commission and the Council jointly have the ability to determine economic coercion. In other words, if the Member States do not wish to act, they can hold back the Commission. But only time will tell what the exact interpretation of economic coercion from the Commission and the Council will look like and whether the Member States will be inclined to hold back when faced with actions by foreign countries aimed at forcing policy changes within the European Union.

[96] Art. 2(1) ACI.
[97] Art. 2(2) ACI.
[98] Jonathan Hackenbroich & Pawel Zerka, ‘Measured Response: How to design a European Instrument against Economic Coercion’ (European Council on Foreign Relations 2021) 15-17.

4.3. Articles 3, 4 & 5: Definitions and Procedures

The following articles provide a few definitions for terms as "third-country measure" and "particular act"[99], as well as the exact procedure of division between the Commission and the Council. First, the Commission has been granted the discretion to examine third-country measures, either on its own initiative or by request.[100] Moreover, the Commission will make an assessment considering all available information, as well as the possible impact of the third-country measures.[101] Only after the Commission itself has concluded that the third-country measure constitutes economic coercion, will it inform the Council and submit a proposal, both with the assessment of why a certain third-country measure exactly constitutes economic coercion in the eyes of the Commission, as well as with a request for the third country to repair the damage.[102] The Council may adopt the implementing acts to do so, but also has the authority to amend the proposal and thus reflect the wishes of the Member States, in line with the interinstitutional negotiations.[103]

4.4. Articles 6 & 7: Consultations and other affected Countries

This provision embodies the important notice of the ACI being first an instrument of deterrence. When economic coercion has been determined by both the Commission and the Council, thus, when the implementing acts as a result thereof have been implemented, the Commission will provide the third country with the possibility of reparation. If the third country is willing to do so, the ACI mandates the Commission to provide the opportunity to settle matters in an expedite manner. This may happen in the form of direct negotiations, submittance to international dispute settlement, or through the means of mediation or other alternative forms of dispute settlement. Prerequisite is the acting in good faith by the third country.[104] Once more, the EU highlights the aim to act in accordance with international law, stating that the Commission and the Council will seek the cessation of economic coercion by the third country after consultations amongst each other by raising the topic within relevant international fora like the WTO.[105] Even after countermeasures have been implemented, the Union leaves the door open for the coercing country to enter consultations, with the possibility to suspend these countermeasures in reaction to the opening of consultations.[106] Additionally, the ACI provides

[99] Art. 3 ACI.
[100] Art. 4(1) ACI.
[101] Art. 4(2) and (4) ACI.
[102] Art. 5(1) and (2) ACI.
[103] Art. 5(5) ACI.
[104] Art. 6(1) ACI.
[105] Art. 6(2) ACI.
[106] Art. 6(3) ACI.

the possibility for the Commission to seek contact with other affected countries by the same or similar economic coercion, providing options for collaboration and coordination with the other affected countries, whether this is by means of sharing information directly or through international fora.[107]

4.5. Article 8: Countermeasures

This provision provides the legal basis for the implementation of countermeasures, under the conditions that consultations were unsuccessful, the adoption of an implementing act is necessary to protect the Union and the adoption of such act is also in the interests of the Union. It forms the heart of the Anti-Coercion Instrument, finally providing the Union with sufficient capacity to fight economic coercion in an increasingly hostile geopolitical environment. Even if the situation of economic coercion does not exist anymore, this article provides a basis to persist with countermeasures.[108] What these countermeasures may exactly entail is provided for within Annex I to the Anti-Coercion Instrument. However, this list is merely indicative and thus not exhaustive, which may be deducted from the wording in reference to the exact designing and establishment of the countermeasures in Art. 11 ACI.[109] Countermeasures may be constituted for general application, but also towards certain natural or legal persons within the third country that can be linked to the government of said country.[110] Article 8 then provides a few procedural rules for the implementation of the countermeasures such as coordination with other Union acts.[111] Notable here is also the duty for the Commission to immediately notify the coercing country upon implementation of countermeasures, although this duty may be shoved aside in case this notification is detrimental to the effectiveness of the countermeasures.[112] Furthermore, countermeasures will stay in place until the Commission has had the time and possibilities to actually verify the cessation of the economic coercion, thus not merely relying on such notification by the coercing country.[113] Only after full cessation is confirmed and full reparation of the injury has also been established, the Commission will repeal the countermeasures by means of adopting another implementing act.[114] In other words, the Commission has been granted the sole authority to examine whether the economic coercion

[107] Art. 7 ACI.
[108] Art. 8(1) ACI.
[109] Art. 8(2) ACI. *See also:* Fredrik Erixon and others, 'The new wave of defensive trade policy measures in the European Union: Design, structure, and trade effects' *ECIPE Occassional Paper*, no. 4 (European Centre for International Political Economy (ECIPE) 2022) 18.
[110] Art. 8(3) ACI.
[111] Art. 8(5) ACI.
[112] Arts 8(7) and (10) ACI.
[113] Art. 8(8) ACI.
[114] Art. 8(9) ACI.

has stopped along with reparation of the injury, and has the sole authority to act upon such findings. The only "brake" existing in this case is the advice of a committee, of which a non-action by this committee will result in the inability of the Commission to implement the repealing act.[115] Lastly, Art. 8 serves as a testimony to the reactive nature of the instrument, since it mandates that countermeasures in reaction to a threat of economic coercion may only become applicable from the date on which the coercing act by the third country becomes effective.[116]

4.6. Article 9: Determination of Union Interests

Article 9 serves as a reference to the rule that countermeasures may only be undertaken in case they are in the "interests of the Union", in accordance with Art. 8 ACI. The provision is little helpful in actually defining what these interests may be, since it is set up in a broad and vague manner. The only certainty the provision gives is the wish for the Union to be able to make policy choices without being subjected to economic coercion, stating this as an interest of the Union, only to immediately after refer to all other interests of the Union and Member States specific to the case, its economic operators, industries and consumers. The only conclusion one can draw here is that the Commission has been granted a large discretion to interpret which interests of the Union may constitute the need for countermeasures. Arguably, this definition poses great risks for overreach by the Commission, resulting in protectionist consequences, since the Commission – and any "adverse" Commission in the future – has the ability to justify countermeasures by simply labelling them as necessary in the interests of the Union, which entails almost every interest one could possibly think of.[117]

4.7. Article 10: Countermeasures towards third-country natural or legal persons

Natural or legal persons within the third country can be identified as having a link with the government of the coercing country when they (i) are for 50% or more owned by the government, (ii) benefit from special rights or privileges granted by the government, operates in a sector that is restricted by the government or is enabled or allowed to distort competition by this government or (iii) acts on the behalf of the government of the coercing country.[118] As is the case with third countries under the provisions of Art. 8, the Union has a duty to notify the legal or natural person involved of the intention to impose countermeasures.[119] Interestingly

[115] Arts 8(9) and 18(2) ACI.
[116] Art. 8(11) ACI.
[117] Art. 9 ACI.
[118] Art. 10(1)(a), (b) and (c) ACI.
[119] Art. 10(2) ACI.

enough, there does not exist a possibility for the Commission to shove this duty aside, as is the case with countermeasures imposed upon third countries, in accordance with Art. 8(10) ACI.

4.8. Article 11: Assessment of Countermeasures

This provision provides a comprehensive overview of factors to be considered by the Commission in their assessment of which countermeasures to implement. It is also the first time within the Anti-Coercion Instrument that there is an acknowledgement of potential negative effects upon Member States, economic actors and consumers as a result of the implementation of said countermeasures. For example, an important principle of these countermeasures is that they should be proportionate and not exceed the amount of the injury inflicted upon the Union.[120] Factors that should be taken into account are for example the effectiveness of the countermeasures, the avoidance or minimization of negative impact on economic actors and the investment environment, as well as the potential for renumeration to remedy the economic coercion.[121] Art. 11 also grants the ability to the Commission to impose countermeasures upon legal persons that are established within the Union, but are owned or controlled by persons of the third country. This measure has been implemented to ensure that circumvention of countermeasures by the coercing country is not possible by establishing subsidiaries or corporations within the territory of the Union.[122] The ACI is silent on whether such company or the person it is controlled by also has to have a link with the government of the coercing country, which may set an undesirable precedent for the Commission to be able to punish uninvolved companies merely for actions taking by the government of their home country.

4.9. Articles 12-20: Expansion on procedural rules

The remaining provisions within the Anti-Coercion Instrument expand on certain procedural subjects. For example, different situations are described in which countermeasures will have to be suspended or ceased, such as in the cases of similar suspension or cessation by the coercing country.[123] Furthermore, certain rules are set out about the gathering of information[124], where to submit information about possible economic coercion[125] and the duty of confidentiality when it comes to this information.[126] Lastly, the Commission will be assisted by a Committee, the

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[120] Art. 11(1) ACI.
[121] Art. 11(2) ACI.
[122] Art. 11(4) ACI.
[123] Art. 12 ACI.
[124] Art. 13 ACI.
[125] Art. 14 ACI.
[126] Art. 15 ACI.

same Committee that decides whether the Commission may repeal countermeasures by means of adopting an implementation act[127] and there is also a duty for the Commission to keep the Council and the Parliament informed in a timely manner about implementations of the ACI and developments thereof.

5. A looming US-EU trade war

Since Donald Trump has been reinstated as president of the United States, he has made it clear that he favours an approach of imposing tariffs, rather than take the multilateral route. This premise has led to an increasing risk of a worldwide trade war and even a potential trade war with its long-time ally, the European Union. From January 2025 on, developments have followed up quickly when it comes to tariffs, surrounded by great amounts of uncertainty.

To give an overview, in February a baseline tariff rate of 25% was threatened to be imposed upon the Union, without any distinction to be made in different sectors. Although the EU vowed to counter such tariffs, none were implemented by the United States and the need for the EU to implement countermeasures swindled.[128]

However, on the 12th of March, a tariff rate of 25% was imposed by the U.S. on aluminium and steel originating from any third country, including the European Union. This move prompted the Union to threaten more concrete countermeasures, targeting some 26 billion Euro in goods.[129] Specifically, the EU aimed to reinstate countermeasures targeting 8 billion Euro in goods that were originally imposed during the first term of Trump and suspended afterwards. Additionally, a new pack of countermeasures targeting 18 billion euros in goods was announced. These measures would have been effective from the 1st of April 2025.[130]

The start of April, however, was mostly marked by the announcement of additional blanket tariffs by Donald Trump, who deemed the 2nd of April infamously as "Liberation Day". In reaction, the EU delayed the imposition of the countermeasures to the aluminium and steel tariffs, so it could come up with a universal package, both targeting the tariffs on aluminium

[127] Art. 18 ACI.
[128] Dominic Rushe, 'Trump vows to slap 25% tariffs on EU and claims bloc was 'formed to screw US *The Guardian* (26 February 2025) https://www.theguardian.com/us-news/2025/feb/26/trump-european-union-tariffs accessed 24 May 2025.
[129] Katrina Bishop & Amala Balakrishner, 'Trump's 25% tariffs on steel and aluminum imports take effect, Europe retaliates' (CNBC 12 March 2025) https://www.cnbc.com/2025/03/12/trumps-25percent-tariffs-on-steel-and-aluminum-imports-take-effect.html accessed 24 May 2025.
[130] European Commission, 'EU countermeasures on US steel and aluminium tariffs explained' (12 March 2025) https://ec.europa.eu/commission/presscorner/detail/en/qanda_25_750 accessed 24 May 2025.

and steel, as well as on the newly announced blanket tariffs.[131] Eventually, it was announced by the U.S. that, amongst other tariffs directed at a large number of countries, a 20% blanket tariff would apply from the 9th of April towards the Union.[132] In a dramatic turn of events afterwards, this percentage was lowered, since the U.S. stock market and bond market had seen steep declines, undermining the security of the U.S. financial system, thus risking a meltdown of the global economy.[133]

The reaction of the European Union was swift. On the 9th of April, a package of retaliatory measures was announced and voted on by the Member States, which led to a favourable outcome of implementation of the measures. However, on that same day, Donald Trump declared a 90-day pause on the blanket tariffs. In response, the EU adopted two legal acts, effective from the 14th of April 2025. The first act consists of the countermeasures, directed towards both blanket tariffs and steel and aluminium tariffs. The second legal act suspends the implementation of the first act until the 14th of July, thus also introducing a pause to leave room for negotiations with the United States.[134]

The rest of April and May 2025 have been relatively quiet between the Union and the U.S., mostly due to an escalating trade war between China and the United States, distracting the latter from the issues with the Union.[135] But in recent events, a tariff of 50% was threatened by Donald Trump towards the EU effective as soon as the 1st of June, as a result of dissatisfaction with the direction of ongoing trade negotiations. However, 2 days later, the threat was revoked after Trump had a phone call with EU-commissioner Ursula von der Leyen[136], returning to the situation in which there will be a continuation of the 10% blanket tariffs imposed upon the

[131] Philip Blenkinsop, 'EU delays first tariffs against U.S. to mid-April' (Reuters 20 March 2025) https://www.reuters.com/markets/europe/eu-may-delay-first-set-counter-tariffs-against-us-mid-april-2025-03-20/ accessed 24 May 2025.
[132] Una Hajdari, 'Who's getting hit by Trump's tariffs? Breaking down 'Liberation Day'' (Euronews 7 April 2025) https://www.euronews.com/business/2025/04/07/whos-getting-hit-by-trumps-tariffs-breaking-down-liberation-day accessed 24 May 2025.
[133] Camille Gijs, 'EU to Trump on tariffs: We'll retaliate when we're ready, not when you tweet' (Politico April 11 2025) https://www.politico.eu/article/eu-to-trump-on-tariffs-well-retaliate-when-were-ready-not-when-you-tweet/ accessed 24 May 2025.
[134] European Commission, 'EU pauses countermeasures against US tariffs to allow space for negotiations' (14 April 2025) https://ec.europa.eu/commission/presscorner/detail/en/ip_25_1058 accessed 24 May 2025.
[135] Simone McCarthy, 'Beijing sees a 'victory' with the US tariffs truce. What's it aiming for next?' (CNN 22 May 2025) https://edition.cnn.com/2025/05/22/business/china-us-trade-negotiations-analysis-intl-hnk accessed 27 May 2025.
[136] Rachel Hagan, 'Trump agrees to extend EU trade talks after 50% tariff threat' (BBC 26 May 2025) https://www.bbc.com/news/articles/cdd2mz719yvo accessed 27 May 2025.

Union, effective from the 9th of July, with retaliatory measures being planned from the 14th of July on.

The mentioned developments are not only illustrative of the deteriorating relationship between the United States and the European Union, but also of the unpredictability of measures imposed towards the EU. It is exactly such a situation that can hardly be battled by any moves within the WTO framework, although countries still attempt to, with the EU filing a WTO-complaint in response to the 25% tariffs on aluminium and steel.[137] Unfortunately, the chances of success are slim, due to the Appellate Body crisis and the non-participation of the U.S. in the MPIA. Furthermore, the tariff saga takes so many quick and unexpected turns, that the system of the WTO is unable to facilitate adequate responses in a timely manner, since it provides barely any time to assess whether such tariffs can rest on a proper justification.

The ACI might provide an outcome. Up until this point, the countermeasures imposed do namely not find their legal basis within the ACI. Indeed, the Union has decided to base countermeasures on the so-called "Enforcement Regulation".[138] The reason for this is that the EU has initially labelled the tariffs as safeguard measures, thus merely as measures to protect domestic industries.[139] The Enforcement Regulation provides the EU with the right to suspend obligations under international trade agreements. Specifically, the regulation grants the right to the Union to impose tariffs if necessary to safeguard the Union's interests in trade disputes.[140] For the time being, using this regulation as a legal basis for countermeasures will provide an adequate response. However, considering the nature of the tariffs and possible escalation in the form of a trade war, the ACI offers a more versatile arsenal of countermeasures when used as a legal basis. The following sections will assess whether the actions taken by the U.S. thus far, as well as possible future actions, warrant the use of the ACI. Additionally, light will be shed on the advantages of using the ACI over the Enforcement Regulation. Lastly, it will be examined what the impact would be if the ACI was to be deployed in reaction to the U.S. tariffs.

[137] Jenni Reid, 'EU to launch dispute against U.S. tariffs as it sets out 95 billion euros in countermeasures' (CNBC 8 May 2025) https://www.cnbc.com/2025/05/08/european-union-dispute-against-us-tariffs-world-trade-organization.html accessed 27 May 2025.

[138] Commission Implementing Regulation (EU) 2025/778 of 14 April 2025 on commercial rebalancing measures concerning certain products originating in the United States of America and amending Implementing Regulation (EU) 2018/886

[139] European Commission, 'EU countermeasures on US steel and aluminium tariffs explained' (12 March 2025)

[140] Art. 3, 4 & 5 Regulation (EU) No 654/2014 of the European Parliament and of the Council of 15 May 2014 concerning the exercise of the Union's rights for the application and enforcement of international trade rules and amending Council Regulation (EC) No 3286/94 laying down Community procedures in the field of the common commercial policy in order to ensure the exercise of the Community's rights under international trade rules, in particular those established under the auspices of the World Trade Organization (Enforcement Regulation).

5.1. The effectiveness of the Enforcement Regulation

The Enforcement Regulation is an instrument that was enacted as the implementing tool in cases of WTO adjudication or other forms of international dispute settlement. Thus, it ensured a legal basis for the EU to pursue with enforcement measures in cases of non-compliance by a third country after adjudication within the WTO framework.[141] It is therefore merely meant as a defensive tool, with a strong desire to act fully in accordance with the WTO agreements. For instance, the notion that measures in reaction to non-compliance will neither exceed the amount agreed on in adjudication, nor exceed the level of impairment or nullification as a result of the measures by the third country is found in multiple places within the legal text.[142] In 2021, the regulation was amended to also provide an effective answer in response to the Appellate Body Crisis. If appeals were to disappear "into the void", the European Union would have a legal basis to implement defensive measures nonetheless.[143]

Under the regime of the Enforcement Regulation, three defensive measures may be undertaken by the European Union as a response to actions taken by third countries that lack compliance with the WTO agreements. First, the regulation enables the EU to suspend tariff concessions or impose duties itself.[144] Second, quantitative measures may be implemented, restricting imports or exports of certain goods.[145] Lastly, public procurement measures may be taken, for instance excluding companies from the opposing country to engage in this area within the EU.[146] All these measures have to adhere to the principle that the measure shall not exceed the amount of nullification or impairment.[147]

The Enforcement Regulation is an economic tool. Any action taken by a third country that is not in accordance with international trade agreements, including the WTO, may be countered if adjudication did not provide a solution or is not required by under specific provisions within the WTO agreements. Whether the measures implemented by a foreign country are of a coercive nature, or solely a way to protect domestic industries, is irrelevant. It makes the regulation an effective tool in battling measures taken by foreign countries that defy the rules

[141] Art. 3 Enforcement Regulation.
[142] Art. 4(2) Enforcement Regulation.
[143] Art. 1(3) REGULATION (EU) 2021/167 OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL of 10 February 2021 amending Regulation (EU) No 654/2014 concerning the exercise of the Union's rights for the application and enforcement of international trade rules.
[144] Art. 5(1)(a) Enforcement Regulation.
[145] Art. 5(1)(b) Enforcement Regulation.
[146] Art. 5(1)(c) Enforcement Regulation.
[147] Art. 5(1) Enforcement Regulation.

of international trade law, which is especially practical in a world where the appeal mechanism of the WTO is still ineffective.

The use of the Enforcement Regulation in response to the recent actions undertaken by the United States is not surprising. Labelling these actions as safeguard measures, immediately grants the Union with a legal basis to implement countermeasures, in accordance with the WTO agreement on Safeguards.[148] Economic coercion does not have to be proven, merely the non-compliance with any of the WTO agreements. The specific actions taken thus far by the United States consist of blanket tariffs. Apparently, the EU assesses that the use of the Enforcement Regulation here is warranted, since the WTO agreement on Safeguards mandates that the country imposing safeguard measures has to prove that a certain product is being imported into its territory in increased quantities.[149] With blanket tariffs, extending to every product being imported into the territory of the United States, it is almost impossible to prove for every single product that they are being imported in increased quantities. And even if such an enormous task was possible, it certainly would not be attainable in the timespan of a mere three months (the period since the inauguration of Donald Trump up until the moment that blanket tariffs were announced). The Trump administration has also not published any evidence to the contrary. Therefore, it is certainly not unthinkable that these actions are in breach of the WTO agreement on Safeguards, indeed granting the EU the ability to act based on the Enforcement Regulation.

However, considering the defensive nature of the regulation, the move of deploying this instrument may also be seen as means of appeasement towards the U.S. and specifically Donald Trump. The Enforcement Regulation limits any countermeasure, since it only provides for three types of countermeasures. Deploying this instrument may have two important functions at this stage. On the one hand, it functions as a signal towards the population of the EU and the U.S. that countermeasures will be imposed and that the Union will not simply stand by when confronted with non-compliant trade measures in light of the WTO agreements. On the other hand, it gives a signal to Donald Trump that the Union will not escalate at this stage, leaving the door open for negotiations and ways to solve matters amicably.

The question that remains is whether escalations can indeed be prevented. For now, it may be regarded as a good thing that the EU is still trying to engage with the United States in a

[148] Art. 4(2)(c) Enforcement Regulation.
[149] Art. 2 Agreement on Safeguards (15 April 1994) Marrakesh Agreement Establishing the World Trade Organization, Annex 1A (SG Agreement).

somewhat friendly manner, and it could incentivize Donald Trump to be willing to come to a solution in negotiations. However, the U.S. has already shown that it has little regard for the WTO agreements and is willing to impose unilateral measures to extraordinary levels with little warning, as was the case against China.[150] Furthermore, as stated before, the U.S. has already expressed frustration with the progress of negotiations with the Union. Although the risks of an immediate increase in tariffs were mitigated by a personal phone call from Ursula von der Leyen, it seems that the U.S. does not necessarily regard the use of the Enforcement Regulation as means of appeasement. The risk of a trade war have so far only been increased. At a certain point, the European Union might not have another option than to depart seeking a legal basis for countermeasures within the Enforcement Regulation, instead basing countermeasures on the ACI, due to the more comprehensive nature of the instrument and possible countermeasures.

5.2. Justification of the use of the ACI vis-á-vis the United States

When compared to the Enforcement Regulation, the ACI provides a much broader framework to impose retaliatory measures in reaction to the tariffs imposed by the United States. The list of possible countermeasures to be taken is much longer and non-exhaustive. For instance, the ACI gives examples of measures towards foreign direct investment, as well as restrictions to capital markets[151], two measures for which no legal basis exists under the regime of the Enforcement Regulation. Such measures may be better fitted to fight the diverse nature of economic coercive acts and the unpredictability of the U.S. trade policy. The Commission has a major discretion to implement countermeasures as they see fit, making the ACI a much more versatile instrument that is better suited to counter the unpredictable measures that may be imposed by the Trump administration.

However, there is one limitation to the ACI, when compared to the Enforcement Regulation. Where mere non-compliance with international trade agreements warrants the use of countermeasures based on the latter, economic coercion has to be established first by the Commission and the Council based on the former. In other words, labelling actions as safeguard measures with the aim of protecting domestic industries, is insufficient to justify the use of the ACI, since it is not an action that aims to interfere with sovereign policy choices of the European Union. The question that raises here is whether the recent actions taken by the United

[150] Jennifer Clarke, 'What tariffs has Trump announced and why?' (BBC 4 June 2025) https://www.bbc.com/news/articles/cn93e12rypgo accessed 5 June 2025.
[151] Annex I ACI.

States could be regarded as economic coercion, thus whether it would be possible to deploy the ACI in reaction to the tariffs instated by the U.S..

The motives of Donald Trump to establish tariffs are somewhat unclear, with the most frequent reason given being a general reference to other countries “ripping the United States off”.[152] The reasoning for such a statement is mainly found in a large amount of trade deficits the U.S. has with third countries, including the EU, which Trump regards as an unfair practice. A negative trade balance is seen by his administration as a sign of the U.S. “losing” against the rest of the world.[153] The main problem the Trump administration sees has to do with U.S. deindustrialization, where trade deficits are blamed for short-term consumption, in this way undermining the American manufacturing industry.[154] This would be an economic argument, if the goal of the tariffs is to boost domestic manufacturing. In such a situation, deployment of the ACI would be difficult to justify, merely leaving the option of countermeasures based on the Enforcement Regulation open.

5.3. American discontent with European policy

Indeed, the current line of argumentation, based on economics, would not allow the use of the ACI as a legal basis for countermeasures. However, the Trump administration and the European Union also have a particularly difficult relation when it comes to regulating U.S.-based companies. Most notably, in recent years, the Union has enacted multiple regulations to establish a legal framework for major social media platforms, which platforms originate in an overwhelming majority from the United States. For example, the EU has enacted the Digital Services Act (DSA), a regulation aimed at combatting online illegal content, ranging from hate speech to disinformation.[155] The regulation sets a general framework for any online platform, consisting of rules that explain when these platforms have a duty to act on illegal content.[156] The biggest duties fall upon the biggest companies. Any company that on average attracts more than 45 million monthly users receives an additional set of obligations to adhere too.[157] These obligations entail for example the duty to make a risk assessment, specifically to assess where

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[152] The New York Times, ‘Trump Tariffs: What’s the Latest on the Trade War?’ (4 June 2025) https://www.nytimes.com/article/trump-tariffs-canada-mexico-china.html accessed 5 June 2025.
[153] Maurice Obstfeld, ‘The U.S. Trade Deficit: Myths and Realities’ *Brookings Papers on Economic Activity* (26 March 2025) 1.
[154] Ibid., 2.
[155] European Commission, ‘The Digital Services Act’ https://commission.europa.eu/strategy-and-policy/priorities-2019-2024/europe-fit-digital-age/digital-services-act_en accessed 5 June 2025.
[156] See e.g. Art. 9 REGULATION (EU) 2022/2065 OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL of 19 October 2022 on a Single Market For Digital Services and amending Directive 2000/31/EC (Digital Services Act).
[157] Art. 33(1) Digital Services Act.

the probability within the platform for illegal content is the highest[158] and the duty to do a yearly internal audit on compliance with the DSA on their own costs.[159] Most obligations are forms of self-regulation for online platforms. But that does not mean that these large corporations are left with a choice to adhere to the DSA. Non-compliance can lead to hefty fines, totalling up to 6% of worldly revenue.[160]

There are currently 20 providers of platforms that have been labelled as a "very large online platform" (VLOP), thus trespassing the threshold of 45 million monthly users. Half of these companies finds their origin in the United States, which makes the U.S. the largest provider of major online social media platforms, thus also with the most regulated social media platforms within the European Union.[161]

The Trump administration is not fond of these types of regulations. To them, it serves as a way to undermine free speech and meddle in the internal affairs of American companies, in this way overstretching into their jurisdiction. Since the reinstatement of Donald Trump, he has labelled this practice as unjust and disproportionally aimed at U.S. based corporations.[162] Moreover, he has signed a memorandum that aims at preventing foreign governments from regulating American corporations. In this context, the Trump administration has also threatened responsive actions if the current situation within the EU persists. In its threat, the administration explicitly mentions tariffs as such a responsive action.[163]

In other words, there is another dimension to the difficult economic relationship between the United States and the European Union. It does not merely pertain to the existence of a trade deficit, but also to the way the Union regulates American companies. As a result, it is not unthinkable that the Digital Services Act will be a part of trade negotiations, and neither is it unthinkable that Trump will impose tariffs as a result of dissatisfaction with the continuous

[158] Art. 34(1) Digital Services Act.
[159] Art. 37(1) Digital Services Act.
[160] Art. 74(1) Digital Services Act.
[161] European Commission, 'Supervision of the designated very large online platforms and search engines under DSA' *Shaping Europe's Digital Future* (updated 27 May 2025) https://digital-strategy.ec.europa.eu/en/policies/list-designated-vlops-and-vloses#ecl-inpage-wikimedia accessed 5 June 2025.
[162] Competition Policy International, 'Trump Administration Steps Up Pressure On EU Digital Laws' (PYMNTS 18 May 2025) https://www.pymnts.com/cpi-posts/trump-administration-steps-up-pressure-on-eu-digital-laws/ accessed 5 June 2025.
[163] The White House, 'Fact Sheet: President Donald J. Trump Issues Directive to Prevent the Unfair Exploitation of American Innovation' (21 February 2025) https://www.whitehouse.gov/fact-sheets/2025/02/fact-sheet-president-donald-j-trump-issues-directive-to-prevent-the-unfair-exploitation-of-american-innovation/ accessed 5 June 2025.

situation of the EU regulating foreign companies or that his promised 10% baseline tariff will be motivated by regulatory actions within the Union.

But the DSA is an internal policy choice made by the European Union, with the support of its sovereign Member States. Imposing tariffs in reaction to the regulation is therefore a direct interference in the policy choices of sovereign states, constituting a classic example of economic coercion. However unhappy Donald Trump may be with the regulatory directions within the Union, it is not up to him to decide what regulatory chances the Union can and cannot take. The American companies operate within the territory of the EU, thus they have to adhere to its local regulations.

Indeed, arguments exist to show that the tariffs Donald Trump has imposed at this time have the ulterior motive to strongarm the European Union into changing the Digital Services Act. Therefore, undertaking countermeasures with the ACI as a legal basis would not be unwarranted. A case of economic coercion by the United States exists and may be combatted as such. Although the choice of using the Enforcement Regulation as legal basis for now is understandable and may help steer negotiations in the right direction, choosing for the ACI if such negotiations fail is a logical next step, granting the EU with the comprehensive arsenal of possible countermeasures it needs to battle the economic coercion as exercised by the Trump administration.

6. The effects of using the ACI as a defensive measure vis-à-vis the United States

Using the ACI as a defensive measure may be warranted, but does come with certain consequences for both the European Union and its population. These consequences are best seen through an economic perspective and a legal one. The next section will assess both perspectives. Although this thesis is not aimed at answering questions of economy, it is unavoidable to first note the economic consequences of both the tariffs imposed by the United States and likely counteractions taken by the EU, to determine the severity of the situation resulting out of the imposed tariffs. This determination will help in assessing whether prompt deployment of the ACI is necessary and subsequently help in understanding the difficult position the EU finds itself in vis-à-vis the WTO. The legal consequences will then be highlighted, specifically pertaining to the question of compliance of the ACI with the WTO agreements and international law.

However, measuring any consequences of deploying the ACI is difficult, since it greatly depends on the final trade policy of the United States. An escalating trade war would have detrimental consequences on the economy of both the U.S. and the EU, as on its inhabitants. There are lessons from history to be taught here. The Great Depression (1929-1939), a period of time in which both the U.S. and European countries were in a deep recession, is said to be caused by increasingly higher retaliatory tariffs.[164] Considering the far-reaching consequences, it is for now a less likely scenario. At the moment, the most likely scenario seems to be a 10% baseline tariff. Howard Lutnick, the Commerce Secretary within the Trump administration, has stated that the U.S. is unwilling to go below such percentage, even after the conclusion of trade negotiations.[165] For the purpose of effectively assessing both the economic and legal consequences of using the ACI as a defensive measure against economic coercion originating out of the U.S., this next section will be based on the presumption that the EU has to defend itself against a 10% baseline tariff rate.

6.1. Economic consequences of a U.S.-imposed 10% baseline tariff

A tariff of 10% towards all goods from all countries being exported to the U.S. would have negative consequences for both the economies of the United States and the European Union, although there are noticeable differences. The consequences will be most obvious within the United States. Tariffs are nothing more than a tax on incoming products. They raise the price of products for importers, which are subsequently likely to raise domestic prices, meaning that consumers end up paying the price.[166] This reduces demand for foreign products. In quantitative terms, the amount of imports within the United States is likely to fall dramatically. In the 10% baseline tariff scenario, imports are estimated to drop approximately 20%.[167] A similar effect is to be expected on the amount of exports out of the U.S., since many exported products are made by imported parts, which have been increased in price due to the tariffs, thus leading to a higher price for export products, lowering foreign demand for U.S.-made products.[168] Eventually, it could lead to a loss in GDP of up to 0,6%, although the calculated amount also takes a 60% tariff on China into account[169], an amount that in reality stands at

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[164] Farok J. Contractor, 'Assessing the economic impact of tariffs: adaptations by multinationals and traders to mitigate tariffs' *Review of International Business and Strategy* 35, no. 2/3 (2025) 195.
[165] Taylor Tompkins, 'The White House Is Sticking to a 10% Baseline Tariff' (Investopedia 12 May 2025) https://www.investopedia.com/why-the-white-house-is-sticking-to-a-10-baseline-tariff-trump-lutnick-11732863 accessed 6 June 2025.
[166] Contractor, 196.
[167] Stefan Boeters & Gerdien Meijerink, 'Effects of US Import Tariffs on the Dutch and European Economy' *CPB Publication* (Centraal Planbureau November 2024) 8.
[168] Ibid.
[169] Aurélien Saussay, 'The economic impacts of Trump's tariff proposals on Europe' *Policy Insight* (Graham Research Institute on Climate Change and the Environment October 2024) 10.

51,1%[170] and a 100% tariff on all vehicle imports, a percentage that in reality amounts to 27,5% worldwide.[171]

For the European Union, the consequences of a 10% baseline tariff originating from the United States are much less extreme. A decrease in imports and exports is to be expected here as well, since the U.S. is an important trade partner, but these consequences can be mitigated by trade diversion through the strengthening of trade relations with other countries.[172] A 10% blanket tariff, alongside 60% tariff on China and 100% tariff on vehicles, would lead to a loss in GDP of approximately 0,1%.[173]

Although the loss in GDP for the EU seems to be small, this loss is still incurred by the actions of a former friendly country and important trade partner. Such actions do call for a reaction, to punish the imposing country for enacting unwarranted trade barriers and to show you will stand your ground as a bloc on the world stage. A counteraction is also accepted under the framework of the WTO, but only after the normal process of adjudication has been followed and a decision by the dispute settlement body has been given allowing the complaining country to impose countermeasures.[174] Considering this, it is likely that the European Union wants to strike back, although that has not happened yet in anticipation of the ongoing trade negotiations. As mentioned before, a counterreaction by the Union will initially be in the form of retaliatory tit-for-tat tariffs, a tactic more countries pursue since it is a relatively proportionate response without loss of face.[175] Unfortunately, these retaliatory tariffs have their own negative consequences for the economies of the parties involved.

6.2. Retaliatory tariffs

In the situation that the EU retaliates with a tit-for-tat 10% baseline tariff, the effects would be much less far-reaching, since there is only a limitation towards trade flowing from the U.S. to the EU, as opposed to the first situation in which trade flowing from all trading partners with

[170] Chad P. Bown, 'US-China Trade War Tariffs: An Up-to-Date Chart' *PIIE Charts* (Peterson Institute for International Economics 14 May 2025) https://www.piie.com/research/piie-charts/2019/us-china-trade-war-tariffs-date-chart accessed 6 June 2025.
[171] White & Case, 'President Trump Orders 25% Global Tariff on Automotive Imports' (27 March 2025) https://www.whitecase.com/insight-alert/president-trump-orders-25-global-tariff-automotive-imports accessed 6 June 2025.
[172] Boeters & Meijerink, 8.
[173] Saussay, 10.
[174] World Trade Organization, 'The process — Stages in a typical WTO dispute settlement case' https://www.wto.org/english/tratop_e/dispu_e/disp_settlement_cbt_e/c6s10p1_e.htm accessed 6 June 2025.
[175] See e.g.: Government of Canada, 'Canadian tariffs of 25% on goods from the United States: How they apply at the border' (updated 12 May 2025) https://www.cbsa-asfc.gc.ca/travel-voyage/tariffs-tarifs/index-eng.html accessed 6 June 2025.

the U.S. is impacted. Total exports originating out of the U.S. are expected to decrease an additional 1,5%, whereas imports decrease an additional 1%.[176] As for the EU, total export and imports only decrease an additional 0,2%.[177] This is also reflected in projected loss in GDP, with an estimated additional 0,05% of decrease in GDP for both the European Union and the United States.[178]

The economic consequences of retaliating may not be as severe, but retaliating poses a major risk of overreaction, leading to additional tariffs by the United States and subsequent counterreactions by the EU, escalating into an all-out trade war.[179] This is exactly what already happened between the U.S. and China with tariffs spiralling up to amounts of 145%, although a (temporary) solution was later found, bringing the percentage down again.[180] If such tariffs were to be implemented and prolonged vis-à-vis the European Union, the consequences would be much more severe, in the most extreme situation leading to another Great Depression. It poses a strong reminder that retaliation does not always provide the desired outcome and that implementation of such measures is to be handled cautiously.

6.3. Legal consequences of ACI deployment

Implementing countermeasures with the ACI as legal basis is surrounded by some controversy. Whereas tit-for-tat retaliation may be accepted under the WTO framework if all procedures have been followed through, the ACI explicitly allows countermeasures that lead to non-compliance if swift implementation is necessary, defying the procedural WTO framework.[181] Indeed, the ACI states that measures may lead to the non-performance of applicable international obligations if "necessary".[182] This seems to be an ambiguous statement, since the ACI also specifies that any action taken shall be consistent with international law.[183] This discrepancy has led to questions about the justification of the Commission for countermeasures that might defy international law obligations, especially WTO law, since it is mostly a matter of trade issues. To examine whether potential countermeasures are consistent with WTO law, the next section will be aimed at answering two specific questions. First, it will be assessed whether tit-for-tat retaliation without adjudication in front of a WTO panel could be allowed

[176] Boeters & Meijerink, 13.
[177] Ibid.
[178] Saussay, 13.
[179] Ibid., 14.
[180] Peter Hoskins & Laura Bicker, 'China says US has 'severely violated' tariffs truce' (BBC 2 June 2025) https://www.bbc.com/news/articles/cj09dnzjdpzo accessed 7 June 2025.
[181] Annex I ACI.
[182] Ibid.
[183] Art. 1 ACI.

under the WTO agreements, to see if an immediate approach under the ACI to combat the unpredictable and everchanging tariffs originating out of the United States could be dealt with quickly and adequately. Subsequently, an assessment will be made whether such countermeasures in general could be justified under international law, extending the scope beyond the WTO.

6.4. WTO compliance of countermeasures

As mentioned before, there are certain situations in which a country may deploy tit-for-tat countermeasures without following through with the adjudication procedures of the WTO. One example is the WTO agreement on Safeguards, which the Union referred to as legal basis for direct countermeasures under the Enforcement Regulation. However, the WTO agreement on Safeguards functions as a *lex specialis*, thus pertaining only to issues relating to safeguards and should not be perceived as a general rule. Since the ACI is a measure against economic coercive actions, the regulation falls outside the scope of the WTO agreement on Safeguards, since safeguards do not fall under the definition of economic coercive actions, due to the lack of having an aim to induce certain policy choices within the coerced jurisdiction. Within the WTO legal framework, no specific agreement exists on economically coercive actions, leaving only the general framework as a legal basis.

As a general rule, when Members are looking to impose countermeasures in reaction to a violation of WTO obligations by a third country, they have to adhere to the procedures as set out under the DSU.[184] The DSU is very clear in this respect. Members that are somehow impaired by violations of WTO obligations by a third country, may not undertake any measures themselves to impose countermeasures, but seek the establishment of a panel for dispute settlement.[185] The panel shall then rule within a period of up to 9 months, which time limit is extended to 12 months in case of an appeal.[186] After the adoption of a decision originating from either the panel or the Appellate Body, the coercing Member has a period of 30 days to inform the coerced country of its intentions to remedy the situation.[187] Eventually, the possibility of countermeasures arises first when the coercing Member has not implemented such remedy within a reasonable period of time.[188] Tit-for-tat retaliatory measures are then permissible, meaning that the coerced country may counter the measures taken by the coercing country

[184] Art. 23 DSU.
[185] Art. 23(1) DSU.
[186] Art. 20 DSU.
[187] Art. 21(3) DSU.
[188] Art. 22(1) DSU.

towards the same sector where the measures are aimed at and to the extent of nullification or impairment.[189]

Thus, under the general framework of the WTO, retaliatory measures are allowed. However, these are not allowed without the implementation of a panel or Appellate Body decision. In the hypothetical situation that the Union were to implement countermeasures based on the ACI without seeking the establishment of a panel first, the countermeasures would not be in accordance with WTO law. In other words, the WTO does not provide a quick solution in cases of economic coercive acts, although such quick solution may well be needed vis-à-vis the unpredictable nature of the U.S. trade policy.

The Commission is aware of this, and has sought for a justification, to be able to still implement the ACI in a timely manner. This justification is interpreted from the recital of the ACI. Within the recital, first a statement is made explaining that Union measures could consist of measures leading to the non-performance of international obligations towards the coercing country.[190] However, this statement is contradictory with later parts within the recital. For example, the recital also mentions that the EU should have an instrument against economic coercion, 'whilst always acting within the framework of international law'.[191] This is subsequently strengthened by the repeated statement that any action should be consistent with international law, including customary international law, with afterwards a referral to the WTO framework being the cornerstone of the rules-based multilateral trading system.[192] The Commission has thus far not given an explanation that has solved this ambiguity.

But the last recital explicitly refers to the inclusion of customary international law, in which an intention could be read to justify countermeasures under the general practices of other countries vis-à-vis economic coercion, instead of using WTO law.[193] Such departure from WTO law could be justified if it could be argued that actions of economic coercion do not fall within the scope of WTO law. One way to do so is to argue that economic coercion does not solely pertain to issues of economy, due to the two-sided nature of economic coercion, balancing somewhere between economy and politics, an issue that already came to light in the interinstitutional negotiations during the enactment process of the ACI. Such line of argumentation could provide the EU with the option to indeed not having to adhere to WTO law, since it would

[189] Art. 22(3) DSU.
[190] Recital 13 ACI.
[191] Recital 7 ACI.
[192] Recital 12 ACI.
[193] Ibid.

exceed its scope and thus mean that the WTO would be unable to address the issues of economic coercion properly.[194] The problem with this line of argumentation is that there are some precedents of countries seeking to resolve economic coercive actions within the WTO legal framework, specifically originating from China.[195] The most striking example here is the WTO request for consultations by the EU in reaction to the diplomatic fall-out of China and Lithuania.[196] Although it might seem ironic that the Union would resort to a platform itself needs to accuse of not having jurisdiction over economic coercive actions, the motives would be easy to explain, since the ACI was not enacted yet when the consultations request was launched and the WTO does also provide a general framework for diplomatic discussions on trade issues. Furthermore, after the Union resorted to the dispute settlement mechanism, the following procedure of adjudication was unfruitful. As a result, no binding panel decision has been given in response to the economic coercive actions by China, leaving a definitive answer to whether the WTO does have jurisdiction over such actions open.[197] Since no such ruling on jurisdiction over economic coercive actions within the WTO exists, there is, from a legal standpoint, nothing that withholds the Union from arguing that economic coercion does indeed fall outside the scope of WTO adjudication.

6.5. The non-intervention principle as a legal basis for the ACI

The remaining question is which alternative legal basis exists in international law to settle matters of economic coercion. The reference to customary international law within the recital of the ACI might be interpreted in this regard as a reference to the principle of non-intervention. This principle aims to prohibit any intervention into the internal and external affairs of a country.[198] It can for example be found in the famous *Nicaragua* decision by the International Court of Justice (ICJ), in which case it was ruled that intervention is unlawful when methods of coercion are used to intervene in the choices of other countries.[199] In the same ruling, the principle was accepted as an undeniable autonomous principle under customary international

[194] Chien Huei Wu, 'The EU's Proposed Anti-Coercion Instrument: Legality and Effectiveness' *Journal of World Trade* 57, no. 2 (2023) 307.
[195] Ibid.
[196] Matěj Hulička, 'Lithuania's WTO Case and Why It Won't Change Anything' (China Observers in Central and Eastern Europe 2 November 2023) Lithuania's WTO Case and Why It Won't Change Anything – chinaobservers accessed 7 June 2025.
[197] Wu, 307.
[198] Olsthoorn, 65.
[199] Wu, 310.

law.[200] Therefore, the use of the ACI could still find a legal basis in international law, outside of WTO law.

However, the interpretation and application of the non-intervention principle is difficult. For example, it is unclear what should be understood under "methods", as was mentioned in the *Nicaragua* ruling. Normally, these methods should include some form of direct interference. Physical intervention is a clear example,[201] as is the funding of insurrectionary opposition groups to establish a regime change.[202] But whether coercion through the means of economic measures also has the ability to constitute a breach of the non-intervention principle is unclear. Exactly this question exceeded the subject matter of the *Nicaragua* ruling, thus not provoking a decision on compatibility of the non-intervention principle with economic coercion. That being said, the court in the *Nicaragua* case did note that it was "unable to regard such action on the economic plane as is here complained of as a breach of the customary-law principle of non-intervention", in reference to certain actions like a trade embargo and quotas imposed upon Nicaragua by the United States.[203] A trade embargo and quotas are considered some of the heaviest means of economic coercion.[204] But the judges in *Nicaragua* regarded these measures as insufficient to meet the threshold for breaching the non-intervention principle.[205]

This does not necessarily mean that any lighter form of economic coercion will automatically fail to meet the threshold for the non-intervention principle. The outcome of the *Nicaragua* ruling was specific to that case, and is not directly applicable to other cases. Circumstances always play a role, and whether certain forms of economic coercion constitute a breach of the non-intervention principle will have to be ascertained on an individual basis. For example, it might be the case that the coerced country is dependent on the aid of or trade with the coercing country, and that suspension of that aid or trade (or part thereof) could in such a specific case still constitute a breach of the non-intervention principle due to the wide-spread consequences of the economic coercion, although the measure as such is less rigorous than a trade embargo.[206]

[200] Maziar Jamnejad & Michael Wood, 'The Principle of Non-intervention' *Leiden Journal of International Law* 22 (2009) 358.
[201] 'Military and Paramilitary Activities in and against Nicaragua' (*Nicaragua v. United States of America*) (Merits 1986) ICJ Rep. 14, para 205.
[202] Jamnejad & Wood, 368.
[203] 'Military and Paramilitary Activities in and against Nicaragua' (*Nicaragua v. United States of America*) (Merits 1986) ICJ Rep. 14, para 245.
[204] Jamnejad & Wood, 370.
[205] Olsthoorn, 64.
[206] Jamnejad & Wood, 371.

Nonetheless, when it comes to matters of economic coercion, the bar is very high and does not entail a right for countries to be completely free of any economic coercion.[207] Compared to a trade embargo that did not meet this bar, it is unlikely that a 10% baseline tariff would, it being a much lighter measure of economic coercion. Prompt implementation of countermeasures under the ACI, based on the non-intervention principle, would thus likely not hold up in court, risking a breach of international law.

6.6. Consequences of non-compliance for the credibility of the multilateral system

Indeed, usage of the ACI in the form the EU envisions vis-à-vis the U.S. is problematic. If the EU were to pursue a line of argumentation based on the non-intervention principle, thus deploying the ACI towards the U.S., the risks are not only associated with the U.S. retaliating even more or non-compliance with international law in one specific case. The consequences are likely to extend beyond that, due to the nature of enforcement in international law and the way international law has been set up in such a way that developed countries are able to exert much more influence than developing countries.

The enforcement of international law has always been a difficult topic, due to the nature of dispute settlement in international law. Even if adjudication is followed through a well-functioning international tribunal, there is no independent international enforcer to ensure compliance.[208] Eventually, this leads more or less to the self-enforcement by contracting parties, based on the principle of state consent. When states enter into a treaty, there is already a display of state consent to adhere to said treaty. Self-enforcement after adjudication strengthens this display and thus functions as a manifestation of credibility to commit to the treaty or international agreement in question.[209]

Therefore, if the EU reluctantly uses the ACI in trade disputes as legal basis for countermeasures, in spite of a (possible) breach of international law principles, this would undermine not only the credibility of the EU as an actor in multilateral relations, but also the credibility of the international agreements themselves. Simply stated, if the EU does not adhere to international law principles, it functions as an incentive for other countries to also not adhere to international law principles. Specifically to trade issues, even if an international tribunal warrants the use of the ACI vis-à-vis the U.S. based on the non-intervention principle, it would merely send a signal to any other Member of the WTO that WTO law can

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[207] Olsthoorn, 64.
[208] Paul B. Stephan, 'The Oxford Handbook of Law and Economics' no. 3 (Oxford University Press 2017) 467.
[209] Ibid, 468.

be circumvented by labelling trade issues as economic coercion, thus undermining the international legal framework that was specifically build to address trade issues.

Adding to this, is the imbalance of powers within the WTO. Developed countries, like the EU, have a much more significant position within the WTO compared to their developing counterparts. For example, developed countries have better possibilities to participate in the expensive procedure of dispute settlement, due to a wider availability of resources.[210] They are also able to better withstand possible measures under the WTO legal framework and can easier force the other party into compromising or agreeing to favourable terms to the developed country.[211] This disparity of power is well-known and has prompted the WTO in the past to grant special rights to developing and least developed countries.[212] Nonetheless, cases of adjudication in front of a WTO panel have in overwhelming majority been brought forward by developed countries.[213]

Indeed, the EU has a place as one of the biggest participants within the WTO, being able to exert a large amount of influence. If such a large actor suddenly decides to bypass the multilateral system all Members agreed upon, it would clearly serve as a signal, also to smaller countries, that adherence to the WTO is optional and that the rules are susceptible to legal bending. Moreover, the credibility of the WTO has already been under pressure, since actions by other big actors, like the Chinese trade ban towards Lithuania and the tariffs by the United States themselves are also likely to defy the rules of WTO law. The EU adding to this, would only cripple an already wounded system more. Not only does this risk other Members opting out or additional non-adherence by them, it also increases the risk of the feared full-out trade war scenario, since one function of the WTO is also described as preventing exactly such a scenario.[214]

6.7. Using the ACI as a defensive measure against the U.S.

Using the ACI as a defensive measure against the U.S. is controversial and should be done cautiously. Immediate deployment of the ACI in reaction to Trump's tariffs ends in regulatory

[210] Ruyi Xiao, 'An Analysis of the Merits and Demerits of the World TradeOrganization's Dispute Settlement Mechanism System and the Disadvantageous Position of Developing Countries in it' 4 no. 1 (Pisco Med Publishing 2022) 13.
[211] Ibid.
[212] World Trade Organization, 'Who are the developing countries in the WTO?' https://www.wto.org/english/tratop_e/devel_e/d1who_e.htm accessed 2 July 2025.
[213] Chad P. Bown, 'Self-Enforcing Trade; Developing Countries and WTO Dispute Settlement' (Brookings Institution Press 2009) 69.
[214] Robert Koopman & others, 'The Value of the WTO' *Journal of Policy Modeling* 42 (2020) 845.

limbo. Neither imposing prompt countermeasures based on WTO law, nor other international law principles that could function as a legal basis seems to be possible or successful, either due to the procedure not functioning or legality issues. This is a real risk in a world where economic coercion is nowadays more widespread and more threatening. Using the Enforcement Regulation as a legal basis is clever, since WTO adjudication may be bypassed, but limits the options in type and effectiveness of countermeasures. Using the ACI as a defensive measure would be warranted and provide the needed additional options, thus filling a hole the Enforcement Regulation is unable to do, but will almost certainly lead to non-compliance with international law. For now, the only possibility to use the ACI in reaction to the 10% baseline tariff (as will be the case with most other possible economic measures taken by the U.S.) is to return to the WTO system and follow the normal adjudication procedure, which procedure is unlikely to lead anywhere due to the Appellate Body crisis and non-participation of the United States in the MPIA, but it does show that the EU is still willing to adhere to the rules of the multilateral system of the WTO, neither undermining the credibility of the EU as a trustworthy partner, nor allowing further decay of the multilateral system of the WTO. Moreover, refraining from immediate implementation of the ACI vis-à-vis the United States and adhering to WTO rules may prevent further escalation towards a full-out EU-US trade war.

7. Conclusion

The last decade has been marked by hostility on the world stage. Implementing actions of economic coercion towards other countries seems to increasingly happen often, with both China and the U.S. not shying away from such actions. Especially the position of the United States has taken a major turn from friend to foe, mainly due to the ‘America First’ policy of Donald Trump. The European Union has made a big change itself, turning its head more towards the rest of the world under the principle of ‘Open Strategic Autonomy’. The message is clear: the Union is happy to engage in further multilateralism, but will defend itself against hostile actors. In line with this premise, the Union has enacted the ACI, which bears a two-step approach of negotiating first, but imposing counteractions as a last resort. The ACI is a comprehensive tool aimed at battling forms of economic coercion. Considering the wide-spread implications of the tool, the Council has demanded and been granted more power to decide on the definition of economic coercion than was initially envisioned by the Commission, which has been a blow to the wish of becoming a ‘Geopolitical Commission’. Nonetheless, the ACI was implemented with a non-exhaustive and varied list of tools to be deployed as countermeasures to economic coercion. Recently, the possible deployment of the ACI has become topic of debate. Donald Trump has announced to instate an extensive tariff policy, also targeting the EU. The Union has announced countermeasures, for now finding the legal basis for these in the Enforcement Regulation, which grants powers for a limited but immediate response. Considering the motives of Donald Trump that hint at economic coercion, there is an argument to be made for the implementation of the ACI instead. The ACI has more options and flexibility than the Enforcement Regulation, but does come with questions about its legality and consequences for the multilateral system of the WTO. WTO law does not provide a legal basis for immediate countermeasures and adjudication is too much of a lengthy process in the unpredictable looming EU-US trade war. In addition to that, panel-assigned countermeasures are unlikely to be imposed, due to the absence of an Appellate Body to mandate the countermeasures themselves, as well as their enforcement. Immediately imposing countermeasures, thus circumventing WTO law, could legally be argued by stating that its scope does not cover acts of economic coercion. However, it is unclear to what extent acts of economic coercion could constitute a breach of the alternative under customary international law, being the non-intervention principle in customary international law. It is with fair certainty that a 10% blanket tariff imposed by the United States does not constitute such a breach. As a result, such countermeasures under the ACI would lack a legal basis. Defying international law could have extensive consequences. The credibility of the EU as a trustworthy trade partner would take a hit, but the multilateral system of the WTO would face undermining too, since the EU would need to actively circumvent WTO law on a trade issue, thus opening the way for other Members to do the same. In the worst scenario, prompt implementation of the ACI could lead to such an undermining of the WTO, that it loses its function to solve trade issues, increasing the risk of escalation to a full-out EU-US trade war. Therefore, it is best advised to use the ACI cautiously, and only implement countermeasures vis-à-vis the U.S. after adherence to WTO law has been displayed.

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Appendix

Abstract (EN)

The multilateral world of trade is under increasing pressure. Today, trade is more and more used as a geopolitical tool to persuade other countries into making certain policy changes, so-called "economic coercion". Economic coercion poses large risks for the European Union (EU), since it may result in slowing economic growth. Especially the United States, a long-time ally of the EU, has since the first presidency of Donald Trump shown to not shy away from using trade, specifically tariffs, as tools to pressure the EU into changing its direction of policy. This trade policy can also be so erratic, that the World Trade Organization (WTO) does not provide adequate and immediate counteractions. This situation has contributed to the enactment of the Anti-Coercion Instrument (ACI), a regulation that was enacted in 2023 to combat economic coercion. The main focus of this thesis is on its possible implementation as a defensive measure against the tariff policy of the United States and legal implications thereof.

In 2025, many tariffs have been threatened against the EU, prompting it to propose countermeasures already, which use the Enforcement Regulation (ER) as legal basis. Although the ER provides a ground for three types of immediate countermeasures against safeguards in accordance with WTO law, the ACI provides more versality in counteractions and could therefore function as the preferred legal basis for such actions in a possible future EU-US trade war. However, two questions arise if the ACI was to be used against the United States, pertaining to the justification of its use and its legality in immediate deployment.

The ACI cannot be used as legal basis for countermeasures against safeguards as they do not qualify as economic coercion. However, the threatened tariffs towards the EU also express dissatisfaction with policy choices. For example, the Digital Services Act has received very adverse reactions from the Trump administration, prompting them to threaten tariffs in response. With such a line of argumentation, the tariffs could be labelled as economic coercion instead of safeguards, justifying the use of the ACI as legal basis under EU law. But the legality of the ACI under international law is problematic. The ACI is most effective when implemented immediately, but under WTO law, countermeasures are only allowed after adjudication within the dispute settlement mechanism, which can be lengthy and unfruitful due to the Appellate Body crisis. An alternative exists, which is bypassing the WTO by arguing that economic coercion falls outside its domain, which leaves merely the non-intervention principle as legal basis under international law. This principle allows for immediate countermeasures, but the threshold to breach the principle is high, and it is unlikely to be met just by the tariffs of the U.S.. By reflecting on scholarly views, this thesis shows that immediate implementation of the ACI posed great risks, since it will almost certainly constitute a breach of international law, which has far-reaching consequences for both the credibility of the EU and the credibility of the multilateral system of the WTO and could lead to a full-out EU-US trade war.

Abstrakt (DE)

Die multilaterale Welt Handelswelt steht unter zunehmendem Druck. Heutzutage wird Handel immer mehr als geopolitisches Instrument eingesetzt, um andere Länder zu bestimmten politischen Änderungen zu bewegen, der sogenannte „wirtschaftliche Zwang”. Wirtschaftlicher Zwang birgt große Risiken für die Europäische Union (EU), da sie zu einer Verlangsamung des Wirtschaftswachstums führen kann. Besonders die Vereinigten Staaten, ein langjähriger Verbündeter der Europäischen Union, haben seit der ersten Präsidentschaft von Donald Trump gezeigt, dass sie nicht davor zurückscheuen, den Handel, spezifisch Zölle, als Druckmittel einzusetzen, um die EU zu einer Änderung ihrer Politik zu zwingen. Darüber hinaus kann die Handelspolitik so unberechenbar sein, dass die Welthandelsorganisation (WTO) nicht rechtzeitig angemessene Gegenmaßnahmen zuweisen kann. Diese Situation hat zur Verabschiedung des Anti-Coercion Instruments (ACI) beigetragen, einer EU-Verordnung, die 2023 zur Bekämpfung wirtschaftlichen Zwangs erlassen wurde. Der Schwerpunkt dieser Arbeit liegt auf der möglichen Anwendung dieses Instruments als Verteidigungsmaßnahme gegen die Zollpolitik der Vereinigten Staaten und deren Implikationen.

Im Jahr 2025 wurden zahlreiche Zölle gegen die EU angedroht, was diese dazu veranlasste, bereits Gegenmaßnahmen vorzuschlagen, die sich auf die „Enforcement Regulation“ (ER) stützen. Obwohl die ER eine Grundlage für drei Arten unmittelbarer Vergeltungsmaßnahmen gegen Wirtschaftsschutzmaßnahmen im Einklang mit dem WTO-Recht bietet, bietet das ACI mehr Flexibilität bei Gegenmaßnahmen und könnte daher die bevorzugte Rechtsgrundlage für Vergeltungsmaßnahmen in einem möglichen zukünftigen Handelskrieg zwischen der EU und den USA sein. Es stellen sich jedoch zwei Fragen, falls das ACI gegen die Vereinigten Staaten eingesetzt werden soll: die Frage nach der Rechtfertigung seines Einsatzes und nach dessen Rechtmäßigkeit bei unmittelbarer Anwendung.

Das ACI kann nicht als Rechtsgrundlage für Gegenmaßnahmen gegen Wirtschaftsschutzmaßnahmen herangezogen werden, da Wirtschaftsschutzmaßnahmen nicht als wirtschaftlicher Zwang gelten. Die angedrohten Zölle gegenüber der EU drücken jedoch auch Unzufriedenheit mit politischen Entscheidungen aus. So hat beispielsweise das „Digital Services Act“ sehr negative Reaktionen seitens der Trump-Regierung hervorgerufen, die daraufhin mit Zöllen gedroht hat. Mit einer solchen Argumentation könnten die Zölle nicht als Wirtsschaftschutzmaßnahmen, sondern als wirtschaftlichen Zwang eingestuft werden, was den Einsatz des ACI als Rechtsgrundlage nach EU-Recht rechtfertigen würde. Problematisch ist jedoch die Rechtmäßigkeit des ACI nach internationalem Recht. Das ACI ist am wirksamsten, wenn es sofort angewendet wird, allerdings sind Gegenmaßnahmen jedoch nur nach einem Schiedsverfahren im „dispute settlement mechanism“ erlaubt, der sich als langwierig und wenig erfolgreich erweisen kann, aufgrund der Krise des „Appellate Body“. Eine Alternative besteht darin, die WTO zu umgehen, indem argumentiert wird, dass wirtschaftlicher Zwang nicht in ihren Zuständigkeitsbereich fällt, wodurch nur noch das Nichtinterventionprinzip als Rechtsgrundlage im internationalen Recht übrig bleibt. Dieser Grundsatz erlaubt sofortige Gegenmaßnahmen, aber die Schwelle für einen Verstoß gegen diesen Grundsatz ist hoch und wird durch die Zölle der Vereinigten Staaten alleine wahrscheinlich nicht erreicht. Damit steht die EU vor einer schwierigen Entscheidung. Durch die Reflexion wissenschaftlicher

Standpunkte zeigt diese Arbeit, dass die sofortige Umsetzung des ACI große Risiken mit sich brachte, da sie mit ziemlicher Sicherheit einen Verstoß gegen das Völkerrecht darstellen würde, was weitreichende Folgen sowohl für die Glaubwürdigkeit der EU als auch für die Glaubwürdigkeit des multilateralen Systems der WTO hätte und zu einem umfassenden Handelskrieg zwischen der EU und den USA führen könnte.