The EU Draft Regulation to Counter Economic Coercion

A Brief Discussion of Economic Coercion in the Context of International Law

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Work-In-Progress

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Abstract: Economic coercion concerns the situation where one state uses trade or investment restrictions towards another state to coerce it to change its legitimate policies. The EU has taken the step to introduce a regulation on protection of the EU and its member states from economic coercion by third countries. The EU response to economic coercion can to some extent find legitimacy in general international law. The paper addresses briefly the concept of 'economic coercion' of the draft Regulation in the context of international law. It discusses some of its conceptual challenges as some types of economic coercion may be considered as lawful responses to EU conduct.

Introduction: the EU draft proposal to counter economic coercion

While the global tensions are rising, new legal tools are created to counter economic coercion. 'Economic coercion' generally implies that a state imposes trade or investment restrictions against another state to coerce it to change its legitimate policies. The state ultimately aims at injuring the counter-part who does not comply with specific interest of the coercive state.

There are several examples from history of economic coercion. For example, the Organization of Arab Petroleum Exporting Countries (OAPEC) issued the oil embargo in 1973 in support of the armed attack by Arab states on Israelian forces in the occupied territories. A more recent example—and also motivation behind the new EU draft regulation on protection against economic coercion from third countries[2] (hereafter: the draft Regulation)—is China's dispute with Lithuania where China reacted to the Lithuanian opening of a "Taiwan Representative Office" using the word "Taiwan" instead of "Taipei". The latter conforms with China's "One China Principle", the former does not. The result was that China froze permissions of Lithuanian products to the Chinese markets as well as targeted global supply chains with Lithuanian involvement. The EU has responded in the World Trade Organization (WTO) by filing a case against China in the WTO dispute settlement system. However, the EU takes a step further by introducing a regulation on protection of the EU and its member states from economic coercion by third countries. The draft Regulation is an anti-coercive

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[2] Proposal for a REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL on the protection of the Union and its Member States from economic coercion by third countries, Brussels, 8.12.2021, COM(2021) 775 final, 2021/0406 (COD)

instrument which at the same time shall force the coercive state to change its external coercive policies towards the EU.

In the draft Regulation, Art. 1, economic coercion is defined as the situation:

> *"where a third country seeks, through measures affecting trade or investment, to coerce the Union or a Member State into adopting or refraining from adopting a particular act."*

The scope of the draft Regulation is provided in Art. 2:

> *"This Regulation applies where a third country interferes in the legitimate sovereign choices of the Union or a Member State by seeking to prevent or obtain the cessation, modification or adoption of a particular act by the Union or a Member State by applying or threatening to apply measures affecting trade or investment*
>
> *For the purposes of this Regulation, such third-country actions shall be referred to as measures of economic coercion."*

Thus, the EU narrows 'economic coercion' down to third country interference into the EU's 'legitimate sovereign choices'. It is clear that the relation between the EU and other states is governed by public international law and the special rules and principles of WTO law in trade relations. Thus, the context of the draft Regulation is international law and its core assumption of state sovereignty. That leads to the question of what 'legitimate sovereign choices' means in the context of international law. Some guidance can be found in the preamble:

> *"Coercion is prohibited under international law when a country deploys measures such as trade or investment restrictions in order to obtain from another country an action or inaction which that country is not internationally obliged to perform and which falls within its sovereignty, when the coercion reaches a certain qualitative or quantitative threshold, depending on both the ends pursued and the means deployed."*

Thus, the 'legitimate sovereign choices' means any action where international law does not impose any constraints on the EU or the member states, and 'coercion' is when another state attempts to force the EU into an action/inaction that the EU has not consented to do/not do.

However, the EU regulation is not without challenges: the definition of economic coercion can encompass fully legitimate counter actions of a third country. For example, if the EU provides subsidies in a specific sector, a third country might consider adopting countervailing measures if the EU subsidies have an adverse effect on the industry in the third country. These countervailing measures are legitimate under WTO law while the EU subsidies might be legitimate as well. Another example is if a state sells goods that have been produced in a manner that complies with international law but which are incompatible with another state's moral or environmental policies and meets an import ban. There again we can find two legitimate types of conduct under international law and WTO law which could result in an EU response (provided here that the EU faces the import ban) with basis in the draft Regulation.

The paper addresses the scope of the draft Regulation's 'legitimate sovereign choices' and the scope of lawful 'economic coercion' and potential overlaps between them in light of international law. As the draft Regulation provides in the preamble:

> *"Any action undertaken by the Union on the basis of this Regulation should comply with the Union's obligations under international law. International law allows, under certain conditions, such as proportionality and prior notice, the imposition of countermeasures, that is to say of measures that would otherwise be contrary to the international obligations of an injured party vis-à-vis the country responsible for a breach of international law, and that are aimed at obtaining the cessation of the breach or reparation for it." (recital 10)*

Thus, international law forms the backdrop of assessing the concept of 'economic coercion' in the draft Regulation. The paper proceeds as follows: 1) It discusses the concept of 'economic coercion' as a legal concept of international law. 2) It moves the discussion of 'economic coercion' into the field of WTO law where certain types of lawful measures potentially could be at odds with the Regulation. 3) Concluding remarks.

Economic coercion – aggression or lawful conduct?

'Coercion' is a tricky concept in a legal context: in traditional legal theory 'coercion' can be related to an inevitable theoretical assumption of 'command'.[3] A traditional position of law as command[4] could give justification for 'economic coercion' as a sanction if an individual does not comply with the law. Or, legislator issues, for example, a tax law in contradiction to a specific individual's interest who will be forced to pay the tax.[5] The completeness of the legal system where there will be sanction if one does not comply with the law, regardless of the subject's consent to that law, fit well with municipal systems: a hierarchical system of governance with subjects obliged to follow the law of the legislator. International law is different. It is based on consent. A state is sovereign and cannot be imposed any rules of law unless it follows from its consent in a wide sense: a customary rule of law based on the state's practice and *opinio juris*; principles of law often deriving from national systems; or treaties signed and ratified by the state. 'Economic coercion' in the draft Regulation must therefore be seen in that light: a system where 'economic coercion' is regulated through the consent of states. Thus, the draft Regulation's reference to 'economic coercion' as prohibited must be found in the rules and principles of international law.

Economic coercion does not have a clear definition in international law.[6] A starting point from an international law perspective can be the fundamental principle that states are sovereign. A state can within its own territories adopt any political and legal system and apply any policies towards its own population without the risk of outside interference. That theoretical ideal often meets a political reality: 1) criminal regimes can hide behind the ideal from international law, and 2) any regime can be subject of apologetic interference by the international community under, for example, the heading of potential threats towards peace and security of

[3] (Kanwar et al., 2011)
[4] See e.g. (Austin, 1954) "Every *law* or *rule* (taken with the largest signification which can be given to the term *properly*) is a command", p. 13 (Lecture I).
[5] Not all law contains 'commands': in a Hartian universe law contains primary and secondary rules, i.e. some rules do not have sanctions, the concept of 'economic coercion' must be understood differently once moved into the sphere of international law. International law does not have the same level of development as municipal law, and may to a larger extent be made of primary rules than secondary rules (Hart, 1994) pp. 213-237.
[6] See debates in literature(Joyner, 1984; Tzanakopoulos, 2015)

the international order or a particular state.[7] Thus, a power-oriented approach can move the understanding of 'coercion' into a question of the strongest power with a *de facto* authority to decide the rules of the game. These aspects are both interesting and relevant to discuss but lie outside the scope of this paper. If it is assumed that the EU will comply with international law in a traditional sense, it signals that the legal framework of rules and principles of international law as provided in treaties, customary law, and principles of law must be followed by the EU. Thus, it suffices to discuss that particular framework.

The sovereign state, coercion, and aggression

International law does not provide a clear definition of sovereignty. According to Crawford, sovereignty of states:

> *"represents the basic constitutional doctrine of the law of nations, which governs a community consisting primarily of states having, in principle, a uniform legal personality. If international law exists, then the dynamics of state sovereignty can be expressed in terms of law. If states (and only states) are conceived of as sovereign, then in this respect at least they are equal, and their sovereignty is in a major aspect a relation to other states (and organization of states) defined by law".*[8]

Crawford points out three corollaries from sovereignty:

- Jurisdiction over a specific territory and its population
- Duty of non-intervention into other states' exclusive territories
- Consent-based system of law[9]

With these effects of sovereignty in mind, aggressive conduct by another state into the territory of the state is a violation of international law. Scholars have suggested 'economic coercion' be similar to 'intervention' and to 'aggression'.[10] The right of territorial integrity, including a right of non-intervention into a state's territory as well as political independence follows from Art. 2.4 of the UN Charter:

> *"All Members shall refrain in their international relations from the threat or use of force against the territorial integrity or political independence of any state, or in any other manner inconsistent with the Purposes of the United Nations."*

It is held in literature that 'force' might only cover 'armed force' and not 'economic coercion', although it may depend on the specific circumstances.[11] For example, Malcolm N. Shaw refers to the text of Art. 52 of the Vienna Convention on the Law of Treaties (VCLT), which provides:

> *"A treaty is void if its conclusion has been procured by the threat or use of force in violation of the principles of international law embodied in the Charter of the United Nations."*

During the negotiations of the VCLT at the Vienna Conference, it was debated whether 'force' should include 'economic coercion'. However, it did not find its way into the final text. Instead, the Vienna Conference

[7] Thus, international law is understood differently in international relations theories with its anchor in power.
[8] (Crawford, 2019), p. 432
[9] Ibid.
[10] See about 'intervention' (Tzanakopoulos, 2015,) See about 'aggression' (Dempsey, 1977)
[11] See inter alia (Crawford, 2019), p. 720; (Malcolm N. Shaw, 2021), p. 822.

resulted in—besides the VCLT—a Declaration on the Prohibition of Military, Political, and Economic Coercion. It provides that it:

> *"[s]olemnly condemns the threat or use of pressure in any form, whether military, political, or economic, by any State in order to coerce another State to perform any act relating to the conclusion of a treaty in violation of the principles of the sovereign equality of States and freedom of consent".*[12]

Thus, 'force' in Art. 52 of the VCLT may not include 'economic coercion' but it is nevertheless condemned and can be an element to consider in the assessment of nullification of a treaty if the accumulation of a range of elements, or the gravity of the economic coercion, cannot justifiably lead to a recognition of the treaty.

The UN General Assembly adopted the Declaration on Principles of International Law concerning Friendly Relations and Cooperation among States in accordance with the Charter of the United Nations. It provides in the preamble:

> *"Recalling the duty of States to refrain in their international relations from military, political, economic or any other form of coercion aimed against the political independence or territorial integrity of any State".*

The Declaration refers to the principle that

> *"States shall refrain in their international relations from the threat or use of force against the territorial integrity or political independence of any State, or in any other manner inconsistent with the purposes of the United Nations".*

Considering the preamble, the concept of 'force' could imply economic coercion targeting the political order of the victim state or aiming towards forcing the victim state to give up territory. Economic coercion is in that sense an aggressive conduct. Furthermore, in *Nicaragua,* the International Court of Justice did not rule out the possibility that prohibition of other types of force than armed force, in particular those expressly provided in the Declaration might express a customary rule of law.[13]

This view can be supported by the definition of 'aggression' by the UN General Assembly. Noting that "aggression is the most serious and dangerous form of the illegal use of force", 'aggression' is defined as "the use of armed force by a State against the sovereignty, territorial integrity or political independence of another State, or in any other manner inconsistent with the Charter of the United Nations".[14]

As an economic aggressive conduct does not involve 'armed force', economic coercion disqualifies as a criminal act under international law. Nevertheless, it does not—also in line with the position held by Malcom N. Shaw—rule out that depending on the situation, economic coercion can be a violation of general international law.

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[12] See Annex in the Final Act of the United Nations Conference on the Law of Treaties, A/CONF.39/26, United Nations Conference on the Law of Treaties, Vienna, Austria, First and Second sessions, 26 March – 24 May 1968 and 9 April – 22 May 1969

[13] Military and Paramilitary Activities in and against Nicaragua (Nicaragua v. United States of America). Merits, Judgment. I.C.J. Reports 1986, p. 14, para. 188.

[14] Art. 1 of the Definition of Aggression, United Nations General Assembly Resolution 3314 (XXIX).

Some scholars have suggested that economic coercion can be an aggressive act.[15] The distinction between 'aggression' in relation to the use of armed forces and 'economic aggression' can be fruitful if one wants to accept that some types of economic coercion have an aggressive nature while others may not be seen as aggressive, yet still coercive. On a general level, 'aggression' is defined as "The practice of attacking another or others; the making of an attack or assault."[16] Or in psychology: "Behaviour intended to injure another person or animal". That implies an act of attacking with the aim of injuring someone else, but not confined to the use of armed forces.[17]

In the context of economic coercion, aggression implies an economic attack on someone else with the intention to cause harm to the other party. A distinction can be made between intent to harm and intent to force a changed conduct. There can be a use of economic weapons to cause harm to another state as an aggressive conduct to acquire territory of another state or there can be the use of the economic weapon to get someone else to change their conduct. The latter can be further refined: it can be an act of countervailing measures used to get the other party to comply with obligations under international law, i.e. an act of defense against a violation of international law, or it can be an act to get another state to change its lawful policies. In either situation, the aim is not to cause harm to the other state but merely to change conduct. I.e. there is a spectrum of conducts that goes from purely legitimate types of economic coercions moving towards more aggressive types of economic coercion. In addition, there can be an overlap between economic aims and political aims of trade restrictive measures. When the Organization of Arab Petroleum Exporting Countries (OAPEC) issued the oil embargo in 1973, it was in support of the armed attack by Arab states on Israelian forces in the occupied territories. It was politically motivated. The reduction of oil output is different from the aim of Organization of the Petroleum Exporting Countries (OPEC) to counter the control of the oil supply by multinational enterprises. An economic goal to ensure inter alia tax revenue from oil supply. Multinational enterprises' control of the oil supply and the oil price could threat the tax revenue of the OPEC states.[18]

Competition between states can lead to conduct intentionally aiming at reducing another state's market power by applying strategies that can harm the economic position on the global market of the other party. On the other side, economic coercion aiming to intervene into a state's internal political affairs may violate international law. The UN General Assembly adopted the 1970 Declaration on Principles of International Law concerning Friendly Relations and Cooperation among States in accordance with the Charter of the United Nations (Friendly Relations Declaration). It provides the principle concerning:

> *"the duty not to intervene in matters within the domestic jurisdiction of any State, in accordance with the Charter".*

That principle is elaborated:

> *"No State may use or encourage the use of economic, political or any other type of measures to coerce another State in order to obtain from it the subordination of the exercise of its sovereign rights and to secure from it advantages of any kind"*

[15] (Dempsey, 1977)
[16] Oxford Dictionary
[17] Ibid.
[18] (Dempsey, 1977, p. 257)

Based on the Declaration, some types of economic coercion can be considered to be incompatible with international law provided they interfere into the domestic jurisdiction of a state.[19] Furthermore, the UN General Assembly have approved a resolution on "Unilateral economic measures as a means of political and economic coercion against developing countries".[20] The Resolution reaffirms the principles of the Declaration. The Resolution:

> *"Urges the international community to adopt urgent and effective measures to eliminate the use of unilateral economic, financial or trade measures that are not authorized by relevant organs of the United Nations, that are inconsistent with the principles of international law or the Charter of the United Nations or that contravene the basic principles of the multilateral trading system and that affect, in particular, but not exclusively, developing countries."*[21]

The Resolution was highly debated. Some states in opposition of the Resolution stated that they adopted economic measures against other states that violate human rights principles and to promote the rule of law.[22] The line between legitimate economic coercion and violation of international law is blurred. Nevertheless, as the Resolution also states, some types of economic coercion can be legitimate under international law. One type of legitimate economic coercion concerns resolutions of the UN Security Council. A state must comply with UN Security Council Resolutions. In some situations, the UN Security Council has mandate to impose economic sanctions on states for specific types of violations of international law, i.e. if they have infringed international law concerning peace and security or are a threat to peace and security.[23] Furthermore, even though resolutions from the UN General Assembly are not binding, they may nevertheless guide states to take certain actions, including some actions with economic sanctions in response to a state's violation of international law.

Economic coercion can have different degrees, ranging from aggressive economic conduct with the intent to harm another state to economic measures aiming to change another state's conduct or policies where some types of conduct or policies might be legitimate under international law. Thus, economic coercion must be seen in light of the aim of the particular measures. Not all types of economic coercion should be subject to an EU response.

The free market ideal of international trade

The principle of friendly relations cannot be extended to include a right of states to access other states' markets. Economic coercion is inevitable related to trade relations. There are numerous bilateral and multilateral trade treaties regulating the trade relations on international level. The WTO is the biggest

[19] However, it would require that the rule has attained status as a customary rule of law – where at least the Declaration is one of several elements that can be applied in that assessment as state practice. If these principles are reflected in national systems—or in the case with the draft Regulation (See e.g. recital 6 and 11 of the Regulation)—as an indicator of binding law, they may meet the threshold of opinio juris..

[20] General Assembly Resolution, Unilateral economic measures as a means of political and economic coercion against developing countries, A/C.2/78/L.6/Rev.1, 14 October 2023.

[21] Para. 2.

[22] See about the debate: https://press.un.org/en/2023/gaef3596.doc.htm

[23] See for example the UN Security Council has adopted sanctions on arms export to North Korea and restrictions on access to fund of specific individuals from North Korea, UN Security Council, S/RES/2371 (2017), and S/RES/2321 (2016).

organization administrating trade. WTO law builds on non-discrimination principles, market access principles, and transparency principles:

- Non-discrimination principles: There are two non-discrimination principles in WTO law. Most Favoured Nations (MFN), i.e. a state must not discriminate between its trading partners, and National Treatment (NT), i.e. a foreign good or service shall not be treated worse than a national good or service. It is in the nature of the non-discrimination principles that unless an exception applies, a state cannot exercise economic coercion against another state without infringing the MFN principle, nor apply economic coercion against foreign products without violating the NT principle.
- Market access principles: WTO members have gradually reduced the levels of tariffs and they must not impose quantitative restrictions on the import of goods.[24] By prohibiting access of goods from a state to get that state to change its legitimate policies, the importing state adopting such coercive measures may violate WTO law.
- Transparency principle: WTO members are required to publish and make available all regulations that concern the goods and services that are imported or exported from the state, and each WTO Member "shall administer in a uniform, impartial and reasonable manner all its laws, regulations, decisions and rulings."[25] The principle of transparency is relevant when a WTO member adopts measures with the aim of changing another state's legitimate policies. Measures aiming at coercing states can be at odds with the transparency principle of WTO law if they do not have a clear legal basis or if it is an arbitrary decision behind the measures.

There are several exceptions to these principles where there is also scope for economic 'coercive' measures as counter actions. First, measures adopted in compliance with a UN security council resolution as well as measures necessary for the protection of its essential security interests are compatible with WTO law.[26] Secondly, states may counter unfair trade and may also protect some political and moral interests under the rules of the general exceptions.

Unfair trade is generally condemned in WTO law. There are two situations that are considered as unfair trade:

- *Dumped prices by a producer*: if a producer in an exporting state has a lower export price than the price charged of the like product on the domestic market, the price is dumped. The importing state may apply antidumping duties against the producer provided that the dumped prices cause or are threatening to cause injury to the domestic industry.
- *State subsidies*: a state may impose countervailing duties if it is affected by the other state's subsidies. Furthermore, certain types of subsidies are prohibited.

In situations with unfair trade, a member state may adopt the specific types of measures provided in either the Antidumping Agreement or the Agreement on Subsidies and Countervailing Measures. Antidumping measures are tariffs that can be imposed on producers that dump the prices. However, antidumping measures are applied towards a price conduct that is not prohibited in WTO law, only condemned. If a state-owned

[24] See e.g. Art. XI of GATT 1994.
[25] See e.g. Art. X of GATT 1994.
[26] See Art. XXI of GATT 1994.

company[27] in the EU dumps the prices on its export market, it might face antidumping duties for actions which are not in violations of international law. Provided the various conditions for the imposition of antidumping duties are met by the importing state, there would not be legitimate basis to consider these antidumping duties as 'economic coercion' under the draft Regulation. Similarly, as mentioned above, EU subsidies may face legitimate responses from other WTO Members, even though the subsidies are not prohibited under WTO law.[28] Thus, there can be situations where lawful activities from the EU or the member states can be met with measures aiming at pressing the EU or the member state to change its conduct – even though the conduct is lawful.

WTO law further provides justification for trade barriers if there are *legitimate policy objectives with higher weight* than the free trade principles. As already mentioned above, national security concerns and resolutions from the UN Security Council can be legitimate reasons for the imposition of trade barriers with the aim of changing another state's conduct. Art. XX of GATT 1994 provides an exhaustive list of legitimate policy objectives that justify exemptions from the general WTO principles:

- protection of public morals;
- protection of human, animal or plant life or health;
- relating to the importations or exportations of gold or silver;
- necessary to secure compliance with laws or regulations which are not inconsistent with the provisions of GATT 1994;
- relating to the products of prison labour;
- imposed for the protection of national treasures of artistic, historic or archaeological value;
- relating to the conservation of exhaustible natural resources if such measures are made effective in conjunction with restrictions on domestic production or consumption;
- undertaken in pursuance of obligations under any intergovernmental commodity agreement;
- involving restrictions on exports of domestic materials necessary to ensure essential quantities of such materials to a domestic processing industry during periods when the domestic price of such materials is held below the world price as part of a governmental stabilization plan;
- essential to the acquisition or distribution of products in general or local short supply. For each policy objective there are additional conditions that the state must meet.

The application of Art. XX of GATT 1994 may at times lead to jurisdictional questions. For example, In *US – Shrimps,*[29] Malaysia complained about a US ban on import of shrimps unless they had been harvested following specific US requirements to protect sea turtles. The shrimps were harvested in Malaysian territory. The Appellate Body (AB)[30] had to examine whether sea turtles could be categorized as "exhaustible natural resources" under Article XX(g) of GATT 1994. It stated:

[27] I only refer to state owned companies as the draft Regulation seems to concern policies and actions of the EU and the member states. State owned enterprises can be subject of international law.
[28] WTO law distinguishes between prohibited subsidies and 'actionable subsidies'. The first category concerns, obviously, these subsidies that are incompatible with WTO law. The latter category contains subsidies that are legitimate, but if they have an adverse effect on another state, that other state may apply countervailing measures.
[29] *US – Shrimps*, WT/DS58/AB/R, adopted by the Dispute Settlement Body on 6 November 1998
[30] The AB is part of the quasi-judicial system of the WTO. It makes *de facto* binding recommendations on matters of law in disputes between WTO members.

> *"We do not pass upon the question of whether there is an implied jurisdictional limitation in Article XX(g), and if so, the nature or extent of that limitation. We note only that in the specific circumstances of the case before us, there is a sufficient nexus between the migratory and endangered marine populations involved and the United States for purposes of Article XX(g)."*[31]

Thus, the AB does not examine WTO law and its potential extra-jurisdictional issues. The AB links the conservation of exhaustible natural resources, here sea turtles—an endangered species—with their potential migration to US territory. The AB concluded that sea turtles was an "exhaustible natural resource".

Similarly, In *EC – Seal Products,*[32] the contested EU measures banned seal products. The EU measures aimed at seal welfare and were a response to inhumane hunting methods. It addressed hunting activities inside and outside the EU territory and thus had an extra-territorial dimension. The AB referred to its statement from *US – Shrimp* that it "would not pass upon the question of whether there is an implied jurisdictional limitation in Article XX(g), and if so, the nature or extent of that limitation." The AB made the statement in relation to Article XX(a) where WTO Members may impose trade restricting measures to protect its public morals and stated:

> *"while recognizing the systemic importance of the question of whether there is an implied jurisdictional limitation in Article XX(a), and, if so, the nature or extent of that limitation, we have decided in this case not to examine this question further."*[33]

Both the EU and the complainants; Canada and Norway, agreed that there was sufficient nexus between the public morals concerns of protecting seals due to inhuman hunting methods and the EU.[34]

Both examples demonstrate situations where a WTO member adopts economic measures to prevent goods from entering their respective markets due to animal welfare or exhaustible resources concerns, but where the breach of the respective states' animal welfare or environmental policies take place within the territories of the other states. It can be debated whether the measures have an impact on the policies in those jurisdictions and potentially intervenes into the other states' rights to adopt their policies within their jurisdictions.

Concluding remarks

The draft Regulation will probably be adjusted before it becomes final law. It is essential that the counter measures adopted under the draft Regulation does not end up becoming economic coercive measures if they are applied against lawful conduct or policies by another state.

The draft Regulation provides a series of elements that the Commission, i.e. the investigating authority in such cases, must consider. They include inter alia:

[31] Paragraph 133
[32] *EC – Seal Products*, WT/DS400/AB/R and WT/DS401/AB/R, adopted by the Dispute Settlement Body on 18 June 2014.
[33] Paragraph 5.173.
[34] See more generally in (Andersen, 2021)

> *"whether the third country is acting based on a legitimate concern that is internationally recognized",*

And:

> *"whether and in what manner the third country, before the imposition of its measures, has made serious attempts, in good faith, to settle the matter by way of international coordination or adjudication, either bilaterally or within an international forum."*[35]

The 'legitimate sovereign choices' of the EU should not be considered violated if the state that imposes the measures which have character of 'economic coercion' is in compliance with international law. That can for example be compliance with a resolution from the UN Security Council; imposition of antidumping duties in compliance with WTO law; imposition of countervailing duties in compliance with WTO law; trade barriers justified under the WTO exemptions.

Furthermore, 'economic coercion' can have different degrees. Some, as just mentioned, can be lawful, while others have a more aggressive nature. Economic aggression where a state aims at causing economic harm in the EU as a reaction to the EU response to that state's illegal operation, like violation of international criminal law, is clearly covered by the draft Regulation. From that side of the spectrum (i.e. that type of economic aggreesion) to the other side (i.e. economic coercion as a lawful response), there is a range of different types of 'economic coercion' whose legitimacy can vary due to cultural differences between the EU and the other states.

From an EU perspective, the EU might itself respond to global affairs with economic coercion even if there is not a clear violation of international law. Art. 21(1) of the TEU provides:

> *The Union's action on the international scene shall be guided by the principles which have inspired its own creation, development and enlargement, and which it seeks to advance in the wider world: democracy, the rule of law, the universality and indivisibility of human rights and fundamental freedoms, respect for human dignity, the principles of equality and solidarity, and respect for the principles of the United Nations Charter and international law.*

The respect of human rights can be a legitimate reason for the EU to adopt measures that restrict trade to a third country that violates universal human rights. That must be weighed against the principle of friendly relations and the principles reflected in the UN general Assembly resolution on unilateral economic measures as a means of political and economic coercion against developing countries. The Court of Justice of the European Union has also clearly indicated that human rights can outweigh the obligations following UN Security Council resolutions.[36] However, in these situations the EU might face economic coercion as a response to the EU's own economic coercion.

[35] Art. 2(2) litra d and e of the draft Regulation.
[36] *Kadi and Al Barakaat International Foundation v Council and Commission* [2008] C-402/05 P and C-415/05 P, ECR I 6351

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