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FOR COMPARATIVE PUBLIC LAW
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***Standard of Review for Economic Sanctions:
In Search of the Golden Fleece?***

MPIL Agora

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Recent economic sanctions imposed by the EU and US on Russia in relation to the Ukrainian conflict rekindled a discussion concerning the security exception clauses in international law. These clauses permit a particular State (or international organisation) to take actions aimed at protecting its national security that might be otherwise inconsistent with its substantive treaty obligations. One prominent example of the security exception provisions in international trade law is GATT Article XXI. Taking into account the ambiguity of such provisions, there is a threat that the States use the security exceptions as protectionist measures. The issue is also becoming more important in view of recent increased use of sanctions and the possibility of their challenge by the targeted States or entities.

Indeed, on 19 May 2017, Russia challenged the Ukrainian economic sanctions at the WTO. Therefore, it seems that the “sleeping beauty” of GATT Article XXI might be interpreted by the WTO judicial bodies. The question therefore arises as to how to verify whether the adopted sanctions were actually introduced for protection of national security and whether they are proportionate to the aim pursued. Thus, the research discusses the possible standard of review for sanctions applied by the States under the umbrella of security exceptions. To do so, the author analyses the different standards of review applied by international tribunals. Preliminary research suggests that it is possible to subdivide the existing standards into three distinct groups by their stringency. The author attempts to draw conclusions as to the best-suited standard for verification of proportionality of the sanctions with regards to the aim pursued.



Viktoriia Lapa is a PhD candidate at Bocconi University, Milan where she also does research and teaching assistance. She holds an LL.M. from Maastricht University, Netherlands, and University of Barcelona, IELPO program. Before, Viktoriia worked as a public prosecutor in Ukraine and afterwards as a lawyer at an international law firm. Her research interests include WTO Law and International Investment Law.

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