

European Commission
DG TRADE

18. January 2022

The Danish Chamber of Commerce's consultation response regarding a mechanism to deter and counteract coercive action by non-EU countries

General remarks

The Danish Chamber of Commerce supports the Commission's ambition to protect the EU, the individual Member States and companies against arbitrary coercive measures from third countries. However, the Danish Chamber of Commerce emphasizes that this instrument must not be used as a protectionist measure and that it is crucial that the EU remains open to international trade and investment. Therefore, it is crucial that the proposed measures are only used as a last resort when all other options have been exhausted.

A strong global trade regime run by the WTO is a great advantage for European companies and for the EU as a whole. The Danish Chamber of Commerce emphasizes that the proposed instrument must be compatible with current WTO legislation. Clear guidelines should be developed addressing which coercive measures are to be dealt with under WTO legislation instead of through the forthcoming instrument. In addition, the Danish Chamber of Commerce emphasizes that any overlap with existing legislation, such as the blocking statute, international procurement instrument and Agreement on Government Procurement (GPA) should be examined and avoided.

The Danish Chamber of Commerce believes that the negative consequences in connection with a future instrument and its measures should be carefully considered. This includes any sanctions that the instrument may lead to and the consequences for international cooperation and multilateralism in general.

The Danish Chamber of Commerce is concerned about the wording of the possible initiatives and when these will take effect. The measures are vaguely worded and a very broad framework for action is set up. It is crucial that there is clarity about the potential use of the instrument and what measures different actions from third countries trigger. Uncertainty is detrimental to trade and if clarity is lacking it will harm our own companies.

The Danish Chamber of Commerce calls for caution as to when the measures in the instrument should be used, as it is preferable that disagreements are resolved without the use of sanctions. Companies with global production may face difficult dilemmas when sanctions are imposed to third countries. The Danish Chamber of Commerce therefore urge the Commission only to use

anti-coercive measures when vital interests are at stake and when the coercion has a significant impact on the EU or its Member States.

In addition, the basic principles of better regulation should be remembered. The Commission must ensure that the instrument exclusively addresses the identified problems of coercion from third countries, and that it is proportionate to the purpose. In other words, the Commission must ensure that any negative effects of measures do not become burdensome for European companies and are only used when it is absolutely necessary.

Specific remarks

'Interest of the Union'

The Danish Chamber of Commerce believes that 'interest of the Union' should be defined more clearly. Both article 7 paragraph 1 (c), article 9 paragraph 2, article 10 paragraphs 2 and 4 (d) and others refer to 'interest of the Union' without commenting further on what may fall under that definition.

Proportionality, p. 3

The Danish Chamber of Commerce welcomes the explicit non-interventionist focus in the paragraph, where it is made clear that countermeasures should only be taken if the problems cannot be solved in any other way (also described in paragraph 3 on p. 4 and in paragraph 9 on p. 11). However, the Danish Chamber of Commerce believes that it is only in the above case that the Commission can take action and not "where the need arises", as is now written on p. 3.

Article 1, p. 14

Paragraph 2: The Danish Chamber of Commerce emphasizes that it is extremely important that any countermeasures are in accordance with current international law, including WTO legislation.

Article 2, p. 15

Paragraph 1: The Danish Chamber of Commerce believes that the definition of 'coercion' is too broad. Especially point 2 is problematic as it also describes threats of coercion as being coercive. Paragraph 2: The Danish Chamber of Commerce believes that the specific parameters for when a country exercises coercion are too vague. Especially point (d), where it must be taken into account whether the third country is acting 'based on a legitimate concern that is internationally recognized'.

Article 3, p. 15

Paragraph 3: Here, the Danish Chamber of Commerce believes that the Commission should be required to examine the impact of the actions of the third country. So instead of "may" it should say "shall". This is necessary in order to ensure that any counterreactions are proportionate to the damage caused by the actions of the third country. This obligation to proportionality is described e.g. on p. 11, paragraph 9 as well as in article 9, p. 19.

Article 4, p. 16

Here too, the Danish Chamber of Commerce believes that the Commission should be required to obtain information from third countries regarding their actions. This again to avoid unnecessary countermeasures. The word "may" should therefore be replaced by "shall".

Article 7, pp. 16-17

Paragraph 1 (a): The Danish Chamber of Commerce believes that an indicative time frame must be set for what 'a reasonable period of time' implies.

Article 9, p. 19

Paragraph 1: The Danish Chamber of Commerce believes that it is important that any response measure is proportionate in relation to the economic and political damage that the action of the third country has caused. However, the Danish Chamber of Commerce also believes that this can be extremely difficult assess, especially within a short period of time, thus estimates should be conservative.

Article 11, p. 21

Paragraph 1: It is important that the Commission is obliged to collect data on the economic impact of the actions of the third country before deciding on any countermeasures.

Paragraph 3: Related to the above, it is important that the wording of the Commission's obligation to inform and consult with stakeholders and in particular industry associations is maintained.

The Danish Chamber of Commerce is of course available if there are any questions about the answers given in the consultation.

Best regards

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The Danish Chamber of Commerce