



## **NOTAT**

31 May 2021  
2021 - 6561

### **Danish response to the public consultation initiated by the Commission on a mechanism to deter and counteract coercive action by non-EU countries**

The Danish government appreciates the opportunity to provide input to the Commission's public consultation in order to inform the Commission's policy preparation regarding a potential mechanism to deter and counteract coercive action by non-EU countries (so-called "anti-coercion" instrument).

We agree with the Commission that there have been examples of third countries attempting to dissuade and influence EU and EU Member States' policy decisions through means that violate multilateral trade rules. In this regard, it is important for the EU to find appropriate ways to tackle this form of coercive action. The EU needs to have the right tools to respond to illegal trade measures where third countries have taken or threatened to take action against the EU and/or EU Member States, in breach of multilateral trade rules and exerts economic pressure on private companies with the aim of influencing policymaking in the EU or its Member States.

However, it is not inherently given that there is a need for an additional legal instrument in this regard. A thorough, factual analysis will be necessary to be able to assess the need for a new legal instrument in the field of trade. The Danish government therefore welcomes the Commission's intention to collect data and evidence of economic coercion through the ongoing consultation. In the same vein, the intention of the Commission to publish an Impact Assessment alongside a legislative proposal for an instrument is welcome and essential for the further deliberations on such an instrument.

Denmark is a strong supporter of the Commission's agenda to strengthen the multilateral trading system and fully shares the goal of reforming the WTO and restoring a fully functioning dispute settlement system. With this in mind, it is essential that a future mechanism in the area of trade to deter and counteract the coercive measures of third countries does not undermine

the efforts to reform the WTO and that such a mechanism is in full compliance with WTO and international public law in general.

In this regard, it is important that the Commission considers whether there is indeed a distinction between coercive measures of third countries that belong within the realm of the WTO dispute settlement system and coercive measures that do not fall within the scope of the WTO, e.g. trade-related vs. investment-related measures. If there is such a distinction, the scope of application for an instrument would need to clearly define this.

Countermeasures imposed in line with a new instrument may have significant political implications and negative consequences in terms of foreign relations with third countries. As such, we urge the Commission to carefully consider the decision mechanism for such an instrument to take into account the positions of EU Member States to the fullest extent possible. Relevant stakeholders should be part of the consultation process and the decision to impose countermeasures should include a thorough Union interest test.

The Danish government stresses that it will be crucial that the EU continues to seek to address challenges in bilateral trade relations first and foremost through political dialogue. It is especially important now with a new US administration that the EU focuses on seizing the current opportunity to improve transatlantic relations and trade relations and working with the US to restore a well-functioning rule-based international trade order.

The Danish government notes that the Commission has not yet taken a position on whether the instrument could be used to counter extraterritorial sanctions. It is apparent that the EU's Blocking Statute (Council Regulation (EC) No 2271/96) does not function as intended and therefore cannot be used to motivate the US to refrain from directing their extraterritorial sanctions and export control measures against companies in the EU. Consequently, there may be grounds for arguing that there is a need for an instrument to deal with the US extraterritorial sanctions, insofar as other existing EU instruments are unable to. The Danish government would welcome the Commission's thoughts in this regard.

Denmark welcomes further clarifications and elaborations in terms of:

- The triggers of the instrument, and how the intention of coercion by a third country can be determined
- Concrete examples of economic pressure having been exerted on EU Member States and/or companies where the regulation would in the future apply
- The compatibility with WTO law and relation to the WTO dispute settlement process

- The parallels and potential overlaps to the countermeasures available through the Enforcement Regulation
- The parallels and links to the Blocking Statute and a possible revision of the Blocking Statute.

The Danish government looks forward to further deliberations with the Commission on this possible instrument.