



SPECTARIS e. V.
11. Juni 2021

COMMENTATION

Comments on the Commission's roadmap for a mechanism to deter and counteract coercive action by non-EU countries

Foreign Trade and Export Promotion

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We welcome the opportunity to provide feedback on the roadmap for a mechanism to deter and counteract coercive action by third countries.

The SPECTARIS industries have been repeatedly faced with coercive measures by international trading partners as a reaction to certain policies or measures enacted by the European Union. In the past years the industries we represent, have witnessed a significant rise in trade barriers and the introduction of new unnecessary, unjustified and often unlawful technical barriers to trade. These measurements were opposed on them by new or changing technical regulations, market entry requirements but also through new requirements for taking part in public tenders in certain countries.¹

At the same time tariff wars, sanctions and extra-territorial export control regulations both from China and the United States have emerged which can lead to direct sanctions against Europeans and European companies. The effects especially from the secondary sanctions often pressure European companies to cut off or control European trade with certain third countries. It criminalizes actions that are actually legal, which lead companies into a conflict situation especially when counter-sanctions by the affected states apply.

The increase in new restrictions show that protectionism and coercive measures by international trading partners are unfortunately on the rise and closely interlinked. To establish a mechanism to deter and counteract coercive action by non-EU countries would be an important step to strengthen the EU's regulatory freedom and to protect the interests of the EU export industries at the same time. SPECTARIS therefore welcomes the European Commission's efforts to reinforce the protection of the EU against such retaliation – however, we would like to do so with some important reservations and additions.

■ **Clear definition of criteria when anti-coercion actions will be taken and prior estimation of potential impacts of counter measures on EU firms**

The introduction of a new instrument such as the mechanism to deter and counteract coercive action by third countries is a new tool for the European Union. For the SPECTARIS industries we would like to stress that an EU mechanism to deter and counteract coercive action by third countries can be a positive new tool, provided it does not place additional risks or even hinder the EU's trading interests and does not sacrifice business opportunities in export strong industries. Therefore, a clear definition of criteria what a coercion involves and a proper evaluation process, which involve the relevant stakeholders through

¹ EU Commission Report from the Commission to the Parliament on Trade and Investment Barriers 1. January 2019-31. December 2019, https://trade.ec.europa.eu/doclib/docs/2020/june/tradoc_158789.pdf.



consultations or public hearings, should be put in place prior to implementing any counter actions. It is necessary to assess possible impacts of the EU's counteractions for the exporting EU business before measures are taken.

Additionally, the Commission needs to ensure that all further instruments and tools to be elaborated (based on Regulation 654/2014 and its amendment 2021/167) are to be in compliance with international law and WTO-Principles.

■ Coercive actions are not always tangible

When assessing the usefulness of the new EU mechanism, it also needs to be noted that sometimes there is no clear evidence such as a written regulation for coercive practices. However, the absence of clear evidence does not necessarily mean that the problem does not exist. Our member companies have witnessed in the past that they were for example excluded from public tenders in countries such as China or Saudi-Arabia due to sanctions imposed by European Union or even just due to critical remarks made by German or EU politicians directed to the countries' governments.

Additionally, third countries work with the instrument of "uncertainty" and publish very vague or general regulations which leave a wide scope for interpretation by authorities and by the affected companies. Guidelines or FAQs on the implementation are often missing. The recently published Chinese export control law or the Chinese blocking regulations as well as the various US sanctions listings are examples with their very vague regulations aimed at and leading to uncertainty for European companies who trade internationally. This leads to European companies often being caught amidst a rock and a hard place as they will either violate US regulations or Chinese regulations.

In some cases, third countries also threaten to exclude European companies from public tenders or blacklist them, when these companies comply with EU regulations and decide to reject an order from a third country. There is no legal ground for these measures in the third country itself but sometimes the threat is enough for European companies to jeopardize future business in these third countries.

As coercive actions by third countries are not always tangible SPECTARIS proposes to focus more on countermeasures against extra-territorial designed measures of third countries.



■ Strengthening of EU-Blocking Statute should be main priority

The European Union and other member states are currently also working on measures against extra-territorial sanctions enacted by third countries.² As the differences between anti-coercion and protectionist measures are fluent, it is crucial to avoid any overlap (of policy objective and/or scope) between the two initiatives before legislation is proposed. The current EU Blocking Statute is currently not used to its full potential and serves more as a paper tiger than an effective deterring instrument. A possible solution to respond to coercion measures as well as to extraterritorial sanctions and other violations of sovereignty would be to update the EU Blocking Statute in order to make it more efficient, enforceable and supportive for companies.

■ Implement additional support instruments for companies

Besides a new regulatory instrument, it is also crucial for the European companies that additional non-regulatory support instruments are put in place. EU companies who deal with Iran and could possibly face secondary sanctions by the United States are under extreme pressure to secure financial support from European banks. The European Union needs to ensure that there is an independent bank such as the proposed European Export Bank which will be able to keep payment channels open with third countries sanctioned by great powers and can support European companies by providing them with European export credit guarantees to guard against coercion.

SPECTARIS is the German Industry Association for Optics, Photonics, Analytical and Medicinal Technologies. The association represents 450 mainly small and medium sized German companies. The represented industries achieved a total turnover of around 72 billion euros in 2020 and employed around 327,0000 people. Our members are very export-oriented with an average of two thirds of their products being exported.

² European Commission: Kommission ergreift weitere Schritte: Förderung der Offenheit, Stärke und Resilienz des europäischen Wirtschafts- und Finanzsystems; 19. Januar 2021 https://ec.europa.eu/commission/presscorner/detail/de/ip_21_108
European Council on Foreign Relations' Task Force for Strengthening Europe against Economic Coercion
https://ecfr.eu/article/commentary_how_europe_can_defend_itself_against_us_economic_sanctions/