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►B REGULATION (EU) No 654/2014 OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL

of 15 May 2014

concerning the exercise of the Union's rights for the application and enforcement of international trade rules and amending Council Regulation (EC) No 3286/94 laying down Community procedures in the field of the common commercial policy in order to ensure the exercise of the Community's rights under international trade rules, in particular those established under the auspices of the World Trade Organization

(OJ L 189, 27.6.2014, p. 50)

Amended by:

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concerning the exercise of the Union's rights for the application and enforcement of international trade rules and amending Council Regulation (EC) No 3286/94 laying down Community procedures in the field of the common commercial policy in order to ensure the exercise of the Community's rights under international trade rules, in particular those established under the auspices of the World Trade Organization

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union, and in particular Article 207 (2) thereof,

Having regard to the proposal from the European Commission,

After transmission of the draft legislative act to the national parliaments,

Acting in accordance with the ordinary legislative procedure ([1]),

Whereas:

(1) The Union has concluded a number of multilateral, regional and bilateral international trade agreements creating rights and obligations for the mutual benefit of the parties.

(2) It is essential that the Union possess appropriate instruments to ensure the effective exercise of the Union's rights under international trade agreements in order to safeguard its economic interests. This is particularly the case in situations where third countries enact trade restrictive measures that diminish the benefits accruing to the Union's economic operators under international trade agreements. The Union should be in a position to react swiftly and in a flexible manner in the context of the procedures and deadlines set out by the international trade agreements which it has concluded. There is therefore a need for rules defining the framework for exercising the Union's rights in certain specific situations.

(3) The dispute settlement mechanisms set up by the Agreement establishing the World Trade Organization (WTO) and by other international trade agreements, including regional or bilateral agreements, aim at finding a positive solution to any disputes arising between the Union and the other party or parties to those agreements. The Union should, nevertheless, be able to

([1]) Position of the European Parliament of 2 April 2014 (not yet published in the Official Journal) and decision of the Council of 8 May 2014.

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suspend concessions or other obligations, in accordance with those dispute settlement mechanisms, when other avenues to find a positive solution to a dispute have proven unsuccessful. Action by the Union in such cases should serve the purpose of inducing compliance of the third country concerned with the relevant international trade rules in order to restore a situation of reciprocal benefits.

(4) Under the WTO Agreement on Safeguards, a WTO member proposing to apply a safeguard measure or seeking an extension of a safeguard measure has to endeavour to maintain a substantially equivalent level of concessions and other obligations between it and the exporting Members, which would be affected by such a measure. Similar rules are laid down in other international trade agreements concluded by the Union, including regional or bilateral agreements. The Union should take rebalancing measures by suspending concessions or other obligations in cases where the third country concerned implements no adequate and proportionate adjustments. Action by the Union in such cases should serve the purpose of inducing the introduction of trade-enhancing measures by third countries in order to restore a situation of reciprocal benefits.

(5) Article XXVIII of the General Agreement on Tariffs and Trade 1994 (GATT 1994) and the related Understanding govern the modification or withdrawal of concessions established in the tariff schedules of WTO Members. WTO Members affected by any such modification are entitled, under certain conditions, to withdraw substantially equivalent concessions. The Union should adopt rebalancing measures in such cases, unless compensatory adjustments are agreed. Action by the Union should be aimed at inducing third countries to implement trade-enhancing measures.

(6) The Union should have the possibility to enforce its rights in the area of public procurement when a trade partner fails to respect its commitments under the WTO Agreement on Government Procurement (GPA) or other international trade agreements. The GPA states that any dispute arising thereunder is not to result in the suspension of concessions or other obligations under any other covered agreement of the WTO. The Union's action should be aimed at ensuring the maintenance of a substantially equivalent level of concessions, as laid down in the relevant international trade agreements.

(7) Member States should ensure the application within their respective territories of commercial policy measures in the field of public procurement in the manner that is best suited to their administrative structures and practices, while respecting Union law.

(8) Commercial policy measures adopted under this Regulation should be selected and designed on the basis of objective criteria, including the effectiveness of the measures in inducing compliance of third countries with international trade rules, their potential to provide relief to economic operators within the Union affected by third country measures, and the aim of minimising negative economic impacts on the Union, including with regard to essential raw materials.

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(9) This Regulation should focus on those measures in respect of which the Union has experience in design and application. The possibility to extend its scope in order to provide for the adoption of measures in the sector of intellectual property rights and additional measures concerning services should be assessed as part of the review on the functioning of this Regulation, with due regard to the specificities of each area.

(10) When enforcing the Union's rights, the origin of a good should be determined in accordance with Council Regulation (EEC) No 2913/92 ([1]). When enforcing the Union's rights following dispute settlement in the area of public procurement, the origin of a service should be determined on the basis of the origin of the natural or legal person providing it. Contracting authorities or entities should apply normal precautions and exercise due diligence when assessing information and guarantees provided by tenderers as regards the origin of goods and services.

(11) The Commission should review the scope, functioning and efficiency of this Regulation, including possible measures in the sector of intellectual property rights and additional measures concerning services, no later than three years after the first instance of its implementation or no later than five years from its date of entry into force, whichever is the earlier. The Commission should report on its assessment to the European Parliament and the Council. The review may be followed up by appropriate legislative proposals.

(12) It is important to ensure an effective communication and exchange of views between the Commission on the one hand and the European Parliament and the Council on the other, in particular on disputes under international trade agreements that may lead to the adoption of measures under this Regulation.

(13) Council Regulation (EC) No 3286/94 ([2]) should be amended in order to refer to this Regulation with regard to the implementation of commercial policy measures.

(14) In order to ensure uniform conditions for the implementation of this Regulation, implementing powers should be conferred on the Commission. Those powers should be exercised in accordance with Regulation (EU) No 182/2011 of the European Parliament and of the Council ([3]).

([1]) Council Regulation (EEC) No 2913/92 of 12 October 1992 establishing the Community Customs Code (OJ L 302, 19.10.1992, p. 1).

([2]) Council Regulation (EC) No 3286/94 of 22 December 1994 laying down Community procedures in the field of the common commercial policy in order to ensure the exercise of the Community's rights under international trade rules, in particular those established under the auspices of the World Trade Organization (OJ L 349, 31.12.1994, p. 71).

([3]) Regulation (EU) No 182/2011 of the European Parliament and of the Council of 16 February 2011 laying down the rules and general principles concerning mechanisms for control by the Member States of the Commission's exercise of implementing powers (OJ L 55, 28.2.2011, p. 13).

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(15) In light of the high complexity involved in the examination of the multiple impacts that commercial policy measures adopted under this Regulation may have, and with a view to allowing sufficient opportunities to achieve the widest possible support, implementing acts should not be adopted by the Commission where, exceptionally, the committee referred to in this Regulation delivers no opinion on the draft implementing act presented by the Commission.

(16) In order to safeguard the Union's interests, the Commission should adopt immediately applicable implementing acts where, in duly justified cases relating to the need to adapt commercial policy measures to the behaviour of the third party concerned, imperative grounds of urgency so require.

(17) This Regulation is without prejudice to the possible adoption of commercial policy measures on the basis of other relevant Union acts or of the provisions of the Treaty on the Functioning of the European Union, while respecting the applicable provisions in international trade agreements on the suspension or withdrawal of concessions or other obligations,

HAVE ADOPTED THIS REGULATION:

Article 1

Subject matter

This Regulation lays down rules and procedures to ensure an effective and timely exercise of the Union's rights to suspend or withdraw concessions or other obligations under international trade agreements, with the intention of:

(a) responding to breaches by third countries of international trade rules which affect the Union's interests, with a view to seeking a satisfactory solution that restores benefits for the Union's economic operators;

(b) rebalancing concessions or other obligations in the trade relations with third countries, when the treatment accorded to goods from the Union is altered in a way that affects the Union's interests.

Article 2

Definitions

For the purposes of this Regulation the following definitions apply:

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(a) "country" means any State or separate customs territory;

(b) "concessions or other obligations" means tariff concessions or any other benefits that the Union has committed itself to applying in its trade with third countries by virtue of international trade agreements to which it is a party;

(c) "level of nullification or impairment" means the degree to which the benefits accruing to the Union under an international trade agreement are affected. Except as otherwise defined in the relevant agreement, it includes any adverse economic impact resulting from a third country measure;

(d) "mandatory price penalty" means an obligation on contracting authorities or entities conducting public procurement procedures to increase, subject to certain exceptions, the price of services and/or goods originating in certain third countries that have been offered in contract award procedures.

Article 3

Scope

This Regulation applies:

(a) following the adjudication of trade disputes under the WTO Understanding on Rules and Procedures Governing the Settlement of Disputes (WTO Dispute Settlement Understanding), when the Union has been authorised to suspend concessions or other obligations under the multilateral and plurilateral agreements covered by the WTO Dispute Settlement Understanding;

(b) following the adjudication of trade disputes under other international trade agreements, including regional or bilateral agreements, when the Union has the right to suspend concessions or other obligations under such agreements;

(c) for the rebalancing of concessions or other obligations, to which the application of a safeguard measure by a third country may give right pursuant to Article 8 of the WTO Agreement on Safeguards, or to the provisions on safeguards included in other international trade agreements, including regional or bilateral agreements;

(d) in cases of modification of concessions by a WTO member under Article XXVIII of the GATT 1994, where no compensatory adjustments have been agreed.

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Article 4

Exercise of the Union's rights

1. Where action is necessary to safeguard the Union's interests in the cases referred to in Article 3, the Commission shall adopt implementing acts determining the appropriate commercial policy measures. Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 8(2).

2. Implementing acts adopted pursuant to paragraph 1 shall meet the following conditions:

(a) where concessions or other obligations are suspended following the adjudication of a trade dispute under the WTO Dispute Settlement Understanding, their level shall not exceed the level authorised by the WTO Dispute Settlement Body;

(b) where concessions or other obligations are suspended following the discharge of an international dispute settlement procedure under other international trade agreements, including regional or bilateral agreements, their level shall not exceed the level of nullification or impairment as a result of the third country measure concerned, as determined by the Commission or through recourse to arbitration, as the case may be;

(c) in the case of rebalancing of concessions or other obligations under provisions on safeguards in international trade agreements, the Union's action shall be substantially equivalent to the level of concessions or other obligations affected by the safeguard measure, in accordance with the conditions of the WTO Agreement on Safeguards or of the provisions on safeguards in other international trade agreements, including regional or bilateral agreements, under which the safeguard measure is applied;

(d) where concessions are withdrawn in the trade with a third country in connection with Article XXVIII of the GATT 1994 and the related Understanding ([1]), they shall be substantially equivalent to the concessions modified or withdrawn by that third country, in accordance with the terms established in Article XXVIII of the GATT 1994 and the related Understanding.

3. Commercial policy measures referred to in paragraph 1 shall be determined on the basis of the following criteria, in light of available information and of the Union's general interest:

(a) effectiveness of the measures in inducing compliance of third countries with international trade rules;

([1]) Understanding "Interpretation and Application of Article XXVIII".

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(b) potential of the measures to provide relief to economic operators within the Union affected by third country measures;

(c) availability of alternative sources of supply for the goods or services concerned, in order to avoid or minimise any negative impact on downstream industries, contracting authorities or entities, or final consumers within the Union;

(d) avoidance of disproportionate administrative complexity and costs in the application of the measures;

(e) any specific criteria that may be established in international trade agreements in connection with the cases referred to in Article 3.

Article 5

Commercial policy measures

1. Without prejudice to any international agreement to which the Union is a party, the commercial policy measures that may be enacted by means of an implementing act pursuant to Article 4(1) shall consist of:

(a) the suspension of tariff concessions and the imposition of new or increased customs duties, including the re-establishment of customs duties at the most favoured nation level or the imposition of customs duties beyond the most favoured nation level, or the introduction of any additional charge on imports or exports of goods;

(b) the introduction or increase of quantitative restrictions on imports or exports of goods, whether made effective through quotas, import or export licences or other measures;

(c) the suspension of concessions regarding goods, services or suppliers in the area of public procurement, through:

(i) the exclusion from public procurement of suppliers of goods or services established in and operating from the third country concerned and/or of tenders the total value of which is made up of more than 50 % of goods or services originating in the third country concerned; and/or

(ii) the imposition of a mandatory price penalty on tenders of suppliers of goods or services established in and operating from the third country concerned and/or on that part of the tender consisting of goods or services originating in the third country concerned.

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2. Measures adopted pursuant to paragraph 1(c) shall:

(a) include thresholds, according to the characteristics of the goods or services concerned, above which the exclusion and/or mandatory price penalty is to apply, taking into account the provisions of the trade agreement concerned and the level of nullification or impairment;

(b) determine the sectors or the categories of goods or services to which they apply, as well as any applicable exceptions;

(c) determine the contracting authorities or entities or categories of contracting authorities or entities, listed by Member State, whose procurement is covered. To provide the basis for this determination, each Member State shall submit a list of appropriate contracting authorities or entities or categories of contracting authorities or entities. The measures shall ensure that an appropriate level of suspension of concessions or other obligations and a fair distribution among Member States is achieved.

Article 6

Rules of origin

1. The origin of a good shall be determined in accordance with Regulation (EEC) No 2913/92.

2. The origin of a service shall be determined on the basis of the origin of the natural or legal person providing it. The origin of the service provider shall be deemed to be:

(a) in the case of a natural person, the country of which the person is a national or where he has a right of permanent residence;

(b) in the case of a legal person, either of the following:

(i) if the service is provided other than through a commercial presence within the Union, the country where the legal person is constituted or otherwise organised under the laws of that country and in the territory of which the legal person is engaged in substantive business operations;

(ii) if the service is provided through a commercial presence within the Union, the Member State where the legal person is established and in the territory of which it is engaged in substantive business operations such that it has a direct and effective link with the economy of that Member State.

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For the purposes of point (ii) of point (b) of the first subparagraph, if the legal person providing the service is not engaged in substantive business operations such that it has a direct and effective link with the economy of the Member State in which it is established, the origin of that legal person shall be deemed to be the origin of the natural or legal persons which own or control it.

The legal person providing the service shall be considered to be "owned" by persons of a given country if more than 50 % of the equity interest in it is beneficially owned by persons of that country and "controlled" by persons of a given country if such persons have the power to name a majority of its directors or otherwise to legally direct its actions.

Article 7

Suspension, modification and repeal of measures

1. Where, after the adoption of an implementing act pursuant to Article 4(1), the third country concerned accords adequate and proportionate compensation to the Union in the cases referred to in Article 3(1)(a) and (b), the Commission may suspend the application of that implementing act for the duration of the compensation period. The suspension shall be decided in accordance with the examination procedure referred to in Article 8(2).

2. The Commission shall repeal an implementing act adopted under Article 4(1) in any of the following circumstances:

(a) when the third country whose measures were found to be in breach of international trade rules in a dispute settlement procedure brings itself into compliance, or where a mutually satisfactory solution has otherwise been reached;

(b) in cases of rebalancing of concessions or other obligations following the adoption by a third country of a safeguard measure, when the safeguard measure is withdrawn or expires, or when the third country concerned accords adequate and proportionate compensation to the Union after the adoption of an implementing act under Article 4(1);

(c) in cases of modification of concessions by a WTO member under Article XXVIII of the GATT 1994, when the third country concerned accords adequate and proportionate compensation to the Union after the adoption of an implementing act under Article 4(1).

The repeal referred to in the first subparagraph shall be decided in accordance with the examination procedure referred to in Article 8(2).

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3. Where it is necessary to make adjustments to commercial policy measures adopted under this Regulation, subject to Article 4(2) and (3), the Commission may introduce any appropriate amendments in accordance with the examination procedure referred to in Article 8(2).

4. On duly justified imperative grounds of urgency relating to the termination or the modification of the third country measure concerned, the Commission shall adopt immediately applicable implementing acts suspending, amending or repealing implementing acts adopted under Article 4(1), as provided for in this Article, in accordance with the procedure referred to in Article 8(3).

Article 8

Committee procedure

1. The Commission shall be assisted by the committee established by Regulation (EC) No 3286/94. That committee shall be a committee within the meaning of Article 3 of Regulation (EU) No 182/2011.

2. Where reference is made to this paragraph, Article 5 of Regulation (EU) No 182/2011 shall apply.

Where the Committee delivers no opinion, the Commission shall not adopt the draft implementing act and the third subparagraph of Article 5(4) of Regulation (EU) No 182/2011 shall apply.

3. Where reference is made to this paragraph, Article 8 of Regulation (EU) No 182/2011 in conjunction with Article 5 thereof, shall apply.

Article 9

Information gathering

1. The Commission shall seek information and views regarding the Union's economic interests in specific goods or services or in specific sectors, in the application of this Regulation, through a notice in the *Official Journal of the European Union* or through other suitable public communication means, indicating the period within which input is to be submitted. The Commission shall take the input received into account.

2. Information received pursuant to this Regulation shall be used only for the purpose for which it was requested.

3. Neither the European Parliament, nor the Council, nor the Commission, nor Member States, nor their respective officials shall reveal any information of a confidential nature received pursuant to this Regulation, without specific permission from the supplier of such information.

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4. The supplier of information may request that information supplied be treated as confidential. In such cases, it shall be accompanied by a non-confidential summary which presents the information in a generalised form or a statement of the reasons why the information cannot be summarised.

5. If it appears that a request for confidentiality is not justified and if the supplier is unwilling either to make the information public or to authorise its disclosure in generalised or summary form, the information in question may be disregarded.

6. Paragraphs 2 to 5 shall not preclude the disclosure of general information by the institutions of the Union and the authorities of the Member States. Such disclosure must take into account the legitimate interest of the parties concerned in not having their business secrets divulged.

Article 10

Review

1. No later than three years after the first instance of the adoption of an implementing act or no later than 18 July 2019, whichever is the earlier, the Commission shall review the scope of this Regulation, particularly as regards the commercial policy measures that may be adopted, as well as its implementation, and shall report its findings to the European Parliament and the Council.

2. Notwithstanding paragraph 1, the Commission shall undertake a review aimed at envisaging under this Regulation additional commercial policy measures suspending concessions or other obligations in the field of trade in services. The Commission shall examine, inter alia, the following aspects:

(a) international developments with regard to the suspension of other obligations under the General Agreement on Trade in Services (GATS);

(b) developments within the Union with regard to the adoption of common rules on services sectors;

(c) the effectiveness of possible additional commercial policy measures as a means to enforce the Union's rights under international trade agreements;

(d) available mechanisms to ensure the practical implementation, in a uniform and efficient manner, of possible additional commercial policy measures concerning services; and

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(e) implications for service providers present in the Union at the time of adoption of implementing acts under this Regulation.

The Commission shall report its initial assessment to the European Parliament and the Council by 18 July 2017.

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Article 12

Entry into force

This Regulation shall enter into force on the twentieth day following that of its publication in the *Official Journal of the European Union*.

This Regulation shall be binding in its entirety and directly applicable in all Member States.

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Statement by the Commission

The Commission welcomes the adoption of the Regulation of the European Parliament and of the Council concerning the exercise of the Union's rights for the application and enforcement of international trade rules and amending Council Regulation (EC) No 3286/94.

Under the Regulation, the Commission is empowered to adopt implementing acts in certain specific situations, on the basis of objective criteria and subject to the control of the Member States. In exercising that empowerment, the Commission intends to act in accordance with this Declaration.

When preparing draft implementing acts, the Commission will undertake extensive consultations with a view to ensuring that all relevant interests are duly taken into account. Through those consultations, the Commission expects to receive input from private stakeholders affected by third country measures or by possible commercial policy measures to be adopted by the Union. Similarly, the Commission expects to receive input from public authorities that may be involved in the implementation of possible commercial policy measures to be adopted by the Union. In the case of measures in the field of public procurement, in particular input from Member States' public authorities will be duly taken into account in the preparation of draft implementing acts.

The Commission recognizes the importance of Member States receiving timely information when it is considering the adoption of implementing acts under this Regulation so as to enable them to contribute to fully informed decisions and will act to achieve this objective.

The Commission confirms that it will promptly transmit to the Parliament and to the Council draft implementing acts that it submits to the committee of Member States. Similarly, it will promptly transmit to the Parliament and the Council final draft implementing acts following the delivery of opinions in the committee.

The Commission will keep the Parliament and the Council regularly informed of international developments that may lead to situations requiring the adoption of measures under the Regulation. This will be done through the responsible committees in Council and in Parliament.

The Commission welcomes the Parliament's intention to promote a structured dialogue on dispute settlement and enforcement issues and will fully engage in dedicated sessions with the responsible Parliamentary committee to exchange views on trade disputes and enforcement actions, including with regard to impacts on Union industries.

Finally, the Commission confirms that it attaches great importance to ensuring that the Regulation is an effective and efficient tool for the enforcement of the Union's rights under international trade agreements, including in the field of trade in services. Therefore, the Commission will, in accordance with the provisions of the Regulation, review the scope of Article 5 with a view to covering additional commercial policy measures concerning trade in services as soon as the conditions for ensuring the workability and effectiveness of such measures are present.