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'I' ITEM NOTE

From: General Secretariat of the Council
To: Permanent Representatives Committee

Subject: Draft REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL amending Regulation (EU) No 654/2014 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 (**first reading**)

- Decision to use the written procedure for the adoption of the legislative act
- = Statements

Commission declaration on compliance with international law

When the Union brings a dispute under the Dispute Settlement Understanding (DSU) against another Member of the World Trade Organization (WTO), the Commission will make every reasonable effort to obtain, as early as possible, the agreement of that Member to resort to arbitration under Article 25 of the DSU as an interim appeal procedure, which preserves the essential features of appeals before the Appellate Body (the “appeal arbitration procedure”), as long as the Appellate Body is unable to fully resume its functions in accordance with Article 17 of the DSU.

When adopting implementing acts pursuant to Article 3(aa) of the Regulation, the Commission will act in accordance with the requirements of the international law on countermeasures, as codified in the Articles on the Responsibility of States for Internationally Wrongful Acts adopted by the International Law Commission.

In particular, before adopting implementing acts pursuant to Article 3(aa), the Commission will call upon the WTO Member concerned to implement the panel's findings and recommendations, notify that WTO Member of the Union's intention to take countermeasures and reiterate its openness to negotiate a mutually agreed solution in accordance with the requirements of the DSU.

When implementing acts have already been adopted pursuant to Article 3(aa), the Commission will suspend their application if the Appellate Body resumes its functions in respect to the case concerned in accordance with Article 17 of the DSU, or if an interim appeal procedure is initiated, provided that such procedure is pursued in good faith.

Statement by the Commission

The Commission welcomes the adoption of the Regulation of the European Parliament and of the Council amending Regulation (EU) No 654/2014.

The Commission recalls the Statement which it made upon the adoption of the original regulation, inter alia that the implementing acts which the Commission is empowered to adopt would be designed 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 the statement made upon the adoption of the original regulation as well as this Declaration.

When preparing draft implementing acts affecting trade in services or trade-related aspects of intellectual property rights, the Commission recalls its obligations pursuant to Article 9(1a) and confirms that it will undertake intensive prior consultations with a view to ensuring that all relevant interests and implications can be brought to the Commission's attention, shared with Member States and are duly taken into account in the possible adoption of measures. In those consultations, the Commission will seek and expects to receive input from private stakeholders affected by possible commercial policy measures to be adopted by the Union in those areas. Similarly, the Commission will seek and expects to receive input from public authorities that may be involved in or affected by the implementation of possible commercial policy measures adopted by the Union.

In the case of measures in the fields of trade in services and trade-related aspects of intellectual property rights, in particular the input from Member States' public authorities involved in the formulation or implementation of legislation regulating the affected fields will be duly taken into account in the preparation of draft implementing acts, inter alia on how possible commercial policy measures would interact with European Union and national legislation. Likewise, other stakeholders affected by such commercial policy measures will be given an opportunity to formulate their recommendations and concerns with respect to the choice and design of measures to be adopted. The observations will be shared with the Member States when measures are adopted pursuant to Article 8 of the Regulation. The regular review of any such measures imposed during their application or after their termination will likewise take into account the input from Member State authorities and private stakeholders in relation to the operation of such measures, and allow for adjustments to be made if problems have arisen.

Finally, the Commission reaffirms 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 and trade-related aspects of intellectual property rights. Therefore, the measures to be chosen in these fields must also ensure effective enforcement in line with the rights of the Union, such that they induce compliance by the third country concerned and are consistent with the applicable international rules on the type of enforcement measures allowed.
