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**REPORT FROM THE COMMISSION TO THE EUROPEAN PARLIAMENT AND
THE COUNCIL**

**Review of the scope of the Regulation No 654/2014 of the European Parliament and of
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1. INTRODUCTION

Regulation (EU) No 654/2014 of the European Parliament and of the Council of 15 May 2014 (hereafter the “Enforcement Regulation”) provides the rules and procedures for an effective and timely exercise of the Union’s rights under international trade agreements, with the objective of safeguarding the Union’s economic interests.¹ In 2021, the scope of the Enforcement Regulation was updated to provide for further possibilities for a Union action to face existing challenges, and to enhance the Regulation’s effectiveness and consistency.²

Currently, the Enforcement Regulation enables the Union to suspend or withdraw concessions or other obligations under the World Trade Organization (WTO) Agreement and other international trade agreements of the EU in the following situations:

- to enforce the Union’s rights under a trade agreement when the latter is breached by a third country either following a favourable outcome for the Union in a trade dispute or where the Union’s attempt to obtain binding resolution of a trade dispute is unsuccessful for reasons outside the Union’s responsibility; and
- to rebalance the Union’s obligations under and in line with a trade agreement, when third countries introduce a safeguard measure or unilaterally modify tariff concessions or services commitments from which the Union benefits.

The Enforcement Regulation empowers the Commission to adopt, modify, suspend and repeal commercial policy measures in those circumstances. Before the recent amendment of the Enforcement Regulation, the commercial policy measures that could be adopted by means of implementing acts consisted solely of measures concerning trade in goods and access to public procurement. The 2021 amendment extended these possibilities so as to include measures concerning trade in services and certain trade-related aspects of intellectual property rights. The Commission enacts implementing regulations following the examination procedure and, where applicable, an information gathering exercise with relevant stakeholders.

¹ 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 (OJ L 189, 27.6.2014, p. 50).

² Regulation (EU) 2021/167 of the European Parliament and of the Council of 10 February 2021 amending Regulation (EU) No 654/2014 concerning the exercise of the Union’s rights for the application and enforcement of international trade rules (OJ L 49, 12.2.2021, p. 1).

2. REVIEW REQUIREMENT

Article 10 of the Enforcement Regulation provides that the Commission shall review the scope of the Regulation taking into account in particular the commercial policy measures that may be adopted, as well as its implementation. The review should also focus on additional commercial policy measures suspending concessions or other obligations in the field of trade-related aspects of intellectual property rights.

The review is to be conducted no later than a year following 13 February 2021 and the Commission is to report its findings to the European Parliament and the Council.

The previous reviews of the Regulation took place in 2017 and 2019.³

The period subject to the present review encompasses the period following the latest review (2019), namely December 2019 to date. As regards the 2021 amendment, the review period runs respectively from 13 February 2021 (date of entry into force of the amendment) to date.

3. REVIEW OF THE SCOPE, COMMERCIAL POLICY MEASURES AND IMPLEMENTATION OF THE ENFORCEMENT REGULATION

3.1. Scope of the Regulation

Article 3 of the Enforcement Regulation sets out the specific situations in which the Enforcement Regulation applies and where the Union may respond via commercial policy measures. The 2021 amendment supplemented the original scope with additional situations, as presented below.

3.1.1. Articles 3(a) and (b): Following a binding adjudication of a trade dispute in favour of the Union

The Enforcement Regulation applies where a dispute settlement procedure in the WTO (*Article 3(a)*) or in relation to other international trade agreements (*Article 3(b)*) resulted in a binding adjudication of the trade dispute, and gives rise to a right to enforcement by the Union because of non-implementation by the defending party. The Enforcement Regulation is thus applicable following a dispute's binding resolution in favour of the Union.

In the period subject to review, the Enforcement Regulation has been used once for such a situation. In 2020, the Union introduced commercial policy measures on imports of certain products originating in the United States, as an enforcement action in relation to the adjudicated WTO dispute on subsidies to the aircraft manufacturer Boeing.⁴ The

³ REPORT FROM THE COMMISSION TO THE EUROPEAN PARLIAMENT AND THE COUNCIL Review of the scope of the Regulation No 654/2014 of the European Parliament and of the Council of 15 May 2014, [COM/2019/639 final](#); REPORT FROM THE COMMISSION TO THE EUROPEAN PARLIAMENT AND THE COUNCIL Initial Review of the scope of the Enforcement Regulation, [COM/2017/0373 final](#).

⁴ Commission Implementing Regulation (EU) 2020/1646 of 7 November 2020 on commercial policy measures concerning certain products from the United States of America following the adjudication of a trade dispute under the Dispute Settlement Understanding of the World Trade Organization (OJ L 373, 9.11.2020, p. 1); United States — Measures Affecting Trade in Large Civil Aircraft — Second Complaint (DS353).

measures were introduced following the adoption, in April 2019, of the Appellate Body report confirming the United States' non-compliance in the WTO dispute and the WTO arbitration on the level of countermeasures. The Appellate Body report confirmed that the United States' subsidies to Boeing continued to cause significant harm to Airbus.

For the purposes of introducing the countermeasures, the Commission carried out under the Enforcement Regulation an information gathering exercise on a preliminary list of products from the United States on which the Union could take countermeasures.⁵

In July 2021, the Union suspended the application of the imposed measures for a period of five years.⁶ The suspension is intended to allow the two sides to continue discussions to operationalise their intentions regarding financing, research and development funding as well as specific support to large civil aircraft.⁷

The use of the Enforcement Regulation in this case was a major factor behind the positive developments in the case. Only after the imposition of the EU measures on imports from the United States – which had already implemented far-reaching enforcement measures against the Union based on the Airbus WTO dispute – could sufficient balance and reciprocity be re-established. This created the right environment for subsequent constructive engagement and the solution that has by now been reached.

The limited use of the Regulation on the grounds set out in Articles 3(a) and (b) during the review period is attributable to the procedural stages of pending trade disputes. The enforcement stage is a very advanced phase in a trade dispute, which only few cases ever reach given that most are resolved much earlier.⁸ On the other hand, it cannot be excluded that the mere existence of the instrument, and the potential to exercise the Union's rights accordingly, has a deterrent effect on third countries, limiting their interest in non-compliance following successful litigation in the Union's favour, or even on non-observance of their commitments under a trade agreement in the first place.

3.1.2. Articles 3(aa) and (ba): where the resolution of a trade dispute is blocked

These grounds were introduced by the 2021 amendment. They are similar to those in point 3.1.1 as they relate to enforcement of the EU's rights on the basis of trade disputes but concern specifically blockage of a dispute settlement procedure.

The Enforcement Regulation was designed originally on the premise that a fully functioning dispute settlement procedure is in place, which leads to a final and binding adjudication of a dispute. However, in situations where the Union's counterpart to a dispute would not cooperate and would prevent a procedure leading to a binding and enforceable ruling, the objective of the Regulation, which is to safeguard the Union's

⁵ WTO Boeing dispute: EU issues preliminary list of US products considered for countermeasures; https://ec.europa.eu/commission/presscorner/detail/fi/ip_19_2162

⁶ Commission Implementing Regulation (EU) 2021/1123 of 8 July 2021 suspending commercial policy measures concerning certain products from the United States of America imposed by Implementing Regulation (EU) 2020/1646 following the adjudication of a trade dispute under the Dispute Settlement Understanding of the World Trade Organization (OJ L 243, 9.7.2021, p. 43).

⁷ [EU and US take decisive step to end aircraft dispute.](#)

⁸ See an [overview of EU's active dispute settlement cases](#) of 10 December 2021, available at DG TRADE website.

interests by equipping the Union with the instruments necessary to react effectively and swiftly to illegal measures of third countries, could not be achieved. To tackle these challenges, the Commission proposed an update of the Enforcement Regulation, and the Regulation was amended in 2021.

The specific circumstances of application are as follows:

- i. As regards WTO trade disputes, the Enforcement Regulation applies following the circulation of a WTO panel report upholding, in whole or in part, the claims brought by the Union, if an appeal under Article 17 of the WTO Dispute Settlement Understanding was filed, but cannot be completed because the Appellate Body is not operational and the third country does not agree to interim appeal arbitration under Article 25 of the WTO Dispute Settlement Understanding.

This amendment was triggered by the situation of the currently non-functioning WTO Appellate Body. As well known, the WTO Appellate Body is currently not operational due to the United States blocking the appointment of new Appellate Body members. The WTO Appellate Body cannot work on appeals filed as of 11 December 2019, nor is it working any more on appeals filed beforehand but not completed by early 2020. Therefore, the situation exists, allowing the Union to take enforcement action in WTO disputes that are blocked on appeal, except if appellate review is agreed under Article 25 of the WTO Dispute Settlement Understanding.

The amendment provides a safeguard in addition to the ongoing efforts of the Union to resolve the crisis. The Union developed the Multi-party Interim Arrangement, which aims at replicating as much as possible the WTO appellate mechanism through arbitration proceedings provided under Article 25 of the WTO Dispute Settlement Understanding.⁹ The arrangement notably maintains a binding two-tier WTO dispute settlement mechanism, among other features. A number of other WTO members joined the arrangement, which remains open to the rest of the membership on a voluntary basis, and also *ad hoc* for the purposes of specific disputes.

- ii. As regards trade disputes under other EU trade agreements, including regional or bilateral agreements, the Enforcement Regulation applies if adjudication is not possible because the third country is not taking the steps that are necessary for a dispute settlement procedure to function, including unduly delaying the proceedings amounting to non-cooperation in the process.

Such risks of blockages were identified in the 2019 review of the Enforcement Regulation. For instance, when the other party does not appoint an arbitrator and no fall-back mechanism remedies that situation, the Union would not be able to obtain a binding ruling that can be enforced.

Over the (relatively short) review period no such situation has arisen fully, leading to the use of the Enforcement Regulation as amended. The use of the amended instrument has, however, been contemplated in some instances, and the mere possibility to use it may

⁹ [Interim appeal arrangement for WTO disputes becomes effective.](#)

have produced the necessary encouragement for the responding third country in question to allow a binding resolution of the WTO dispute.

For ongoing disputes, the absence of practice is thus in part due to the fact that the Multi-party Interim Arrangement is available and operative and that in other cases the parties are able to agree, ad hoc, on appeal arbitration. Moreover, the absence of active practice is again linked to the procedural stage of pending disputes as a dispute must reach a certain stage for the Enforcement Regulation to become potentially applicable.

3.1.3. Article 3(c): Rebalancing measures in response to a third country's safeguard

The other situation in which the Enforcement Regulation applies covers rebalancing measures when a third country imposes a safeguard measure and the WTO Agreement on Safeguards (Article 8) or rules on safeguards in other Union agreements give the Union a right to rebalance.

The Enforcement Regulation has been used in total twice for this purpose, including once during the review period. The first instance concerns the Union's response to the import duties on steel and aluminium imposed by the United States in 2018.¹⁰ The second instance concerns a similar Union's response to related import duties on steel and aluminium derivative products introduced by the United States in 2020.¹¹ In both cases, the Union introduced rebalancing measures in the form of additional import tariffs on a number of products originating in the United States. Procedurally, the adoption of the implementing acts imposing rebalancing measures took around two months in the first instance, and a month in the second instance, in compliance with the deadlines of the WTO Agreement.

During the review period, the Enforcement Regulation was later on also applied in order to suspend these rebalancing measures on two occasions in 2021.¹² The suspension provided the necessary conditions for the Union and the United States to advance their ongoing cooperation, including with a view to eliminate the respective tariffs.¹³ Currently, the rebalancing measures are not applied.

The Enforcement Regulation ensured that the Union was able to respond swiftly to the United States' safeguard measures and to defend the Union's economic interests on two important occasions. Additionally, the availability of the Union's response played a role

¹⁰ Commission Implementing Regulation (EU) 2018/724 of 16 May 2018 on certain commercial policy measures concerning certain products originating in the United States of America (OJ L 122, 17.5.2018, p. 14) and Commission Implementing Regulation (EU) 2018/886 of 20 June 2018 on certain commercial policy measures concerning certain products originating in the United States of America and amending Implementing Regulation (EU) 2018/724 (OJ L 158, 21.6.2018, p. 5).

¹¹ Commission Implementing Regulation (EU) 2020/502 of 6 April 2020 on certain commercial policy measures concerning certain products originating in the United States of America (OJ L 109, 7.4.2020, p. 10).

¹² Commission Implementing Regulation (EU) 2021/866 of 28 May 2021 suspending commercial policy measures concerning certain products originating in the United States of America imposed by Implementing Regulation (EU) 2018/886 (OJ L 190, 31.5.2021, p. 94–95); Commission Implementing Regulation (EU) 2021/2083 of 26 November 2021 suspending commercial policy measures concerning certain products originating in the United States of America imposed by Implementing Regulations (EU) 2018/886 and (EU) 2020/502 (OJ L 426, 29.11.2021, p. 41).

¹³ [EU-US Joint statement of 31 October 2021](#); [European Union statement of 31 October 2021](#);

in the continued efforts to resolve the underlying matter. The suspension of the active rebalancing measures was instrumental in the pursuit of elimination of United States' tariffs. Therefore, it can be concluded that the Enforcement Regulation proved to be of essential use and was a significant tool for the Union to address successfully the United States' steel and aluminium tariffs.

3.1.4. *Article 3(d): Modification of concessions or commitments*

The last situation in which the the Enforcement Regulation may be used is in cases of unilateral modification by a WTO member of concessions under Article XXVIII of the General Agreement on Tariffs and Trade 1994 (GATT 1994) or of commitments under Article XXI of the General Agreement on Trade in Services (GATS), where no compensatory adjustments have been agreed as regards goods, and, compensatory adjustments are not made in conformity with the findings of the arbitration pursuant to Article XXI of the GATS, as regards services.

Originally, the Enforcement Regulation was applicable only in situations concerning Article XXVIII of the GATT 1994. The 2021 amendment supplemented the provision with situations concerning Article XXI of the GATS. The addition is logical and justified given the similarities between the two types of situations.

In the review period, no such cases occurred. Neither there have been indications that a particular WTO member was intending to modify concessions or commitments without engaging in negotiations on compensatory adjustments. The Regulation may have produced a deterrent effect because its mere existence demonstrates that the Union is willing and well equipped to avail itself effectively of its rebalancing rights under those provisions.

3.2. Commercial policy measures

Article 5 of the Enforcement Regulation lists the potential commercial policy measures, which the Union may use in the situations identified in point 3.1. Originally, the list provides for the following:

- (a) *Article 5(1)(a): the suspension of tariff concessions and the imposition of new or increased customs duties;*
- (b) *Article 5(1)(b): the introduction or increase of quantitative restrictions on imports or exports of goods; and*
- (c) *Article 5(1)(c): the suspension of concessions in the area of public procurement.*

The 2021 amendment expanded the list to the following:

- (a) *Article 5(1)(ba): the suspension of obligations regarding trade in services and the imposition of restrictions on trade in services; this is subject to a mandatory prioritisation/hierarchy of steps. The Commission would need to go through each category and conclude that measures are not possible before moving to the next category. The first category is those services where there is an authorisation at Union level. The second is where there is extensive Union legislation. The third is where the information gathering exercise has shown the least interference with national legislation.*

(b) *Article 5(1)(bb): the suspension of obligations with respect to trade-related aspects of intellectual property rights granted by a Union institution or agency and valid throughout the Union, and the imposition of restrictions on the protection of such intellectual property rights or their commercial exploitation, in relation to right-holders who are nationals of the third country concerned.* This range of possibilities corresponds largely to the first hierarchical step applicable to services.

The availability of measures in relation to services and intellectual property rights since February 2021 has been a significant improvement of the instrument and it adds heft to the Union's ability to enforce its rights under trade agreements in a number of respects:

- it renders the enforcement instrument more effective, including by producing an important deterrent effect on third countries's illegal actions;
- it corresponds to the needs of modern and knowledge-based economies;
- it matches the prominence of services and intellectual property rights in international trade;
- it makes the Union credible when it seeks to negotiate protection for right-holders abroad;
- it demonstrates that the Union is determined to exercise to a full extent the rights that it has under trade agreements, including by enhancing the efficacy of enforcement of obligations through cross-retaliation.

All three instances of application of the Enforcement Regulation in total, including within the review period, involved commercial policy measures in the form of additional customs duties on imports of goods into the Union. The measures were proportionate and commensurate to the harm inflicted by the third country's corresponding measures (in this case, the United States). The use of import duties proved to be effective in imposing a price on the economy of the United States and was a factor in inducing it, over time, to change its measures. As a result, all measures under the Enforcement Regulation are currently suspended as the United States' measures are not applied as before.

None of the other possibilities under Article 5 was deployed during the review period. This is partly due to the relatively short period of time following the 2021 amendment that introduced the additional possibilities. Furthermore, as mentioned, the use of import duties on goods has been effective. At the same time, the question of cross-retaliation did not arise¹⁴ during the review period, which might have seen consideration of countermeasures beyond goods, such as in the fields of trade in services or intellectual property rights. In the Boeing case, the United States' measures that triggered the Union countermeasures concerned goods under the WTO Agreement and the Union could respond effectively via goods measures. In the WTO safeguards cases, it would not have been allowed to respond through measures other than those taken on goods further to a suspension of obligations under the WTO General Agreement on Tariffs and Trade. Therefore, the remaining possibilities under Article 5 of the Enforcement Regulation are still untested but are available for future use.

¹⁴ Article 22 of the WTO Dispute Settlement Understanding.

Further extension of measures in the field of trade-related aspects of intellectual property rights

The 2021 extension of the scope of possible measures in the field of trade-related aspects of intellectual property rights can be considered significant as a matter of principle, but it is limited in extent. It provides for enforcement action in the form of restrictions on the protection or commercial exploitation of intellectual property rights that are granted by a Union institution or agency and are valid throughout the Union, in relation to right-holders who are nationals of the third country concerned. This scope corresponds largely to the first step of the hierarchy of steps applicable to the measures in trade in services. In practice, currently, it may apply to geographical indications, EU trademarks, EU designs and plant varieties. It does not provide for an enforcement action in the form of measures affecting patents and copyright, for instance.

The Commission's current assessment is that there are no legal or technical impediments to a further extension, and that an extension would be generally beneficial. It would increase the effectiveness and credibility of the enforcement instrument because it would add to the situations where the Union would be able to enforce its rights effectively when a third country violates intellectual property protection enshrined in an EU agreement and the possibility to take such action as a matter of international law is already provided for. It would further induce the third country's compliance in the event that that third country violates the agreed protection.

Moreover, stakeholders have been generally positive about measures going beyond the current scope of the Enforcement Regulation. In the context of the public consultation related to the Commission proposal for an anti-coercion instrument,¹⁵ stakeholders were asked specifically about further measures in the field of trade-related aspects of intellectual property rights. While they pointed out sensitivities (concerns about collateral damage to EU business), they also recognised potential benefits (increased effectiveness and credibility).

The Commission leaves open the possibility of presenting a legislative proposal to update the Enforcement Regulation in this and potentially other aspects in the future. At this stage, a legislative proposal is not considered opportune given that the last amendment of the Regulation is still very recent.

The recent proposal for an anti-coercion instrument as well as the specific legislative act that the Commission has committed to propose to the Council and the European Parliament for the enforcement of the EU-UK Trade and Cooperation Agreement may be of relevance in considering a further future extension of the Enforcement Regulation.

At the same time, the Commission considers it important to continue monitoring and reviewing the range of measures available and their utility. Such a review should be based on EU dispute settlement activity, future cases of application, and other developments that may have implications on the effectiveness of the Enforcement Regulation in the wider context.

¹⁵ [Detailed results of the public consultation; Towards an EU anti-coercion instrument;](#)

3.3. Implementation

The Regulation proved to be a suitable and sufficiently flexible instrument in terms of process. It has allowed for a timely and appropriate response by the Union when it was used. It enabled the Union to react within the tight deadlines for establishing and exercising rebalancing rights under the WTO Agreement, in 2018 and 2020. It also supported swift and efficient action where this was justified by the urgency of the matter in suspending ongoing commercial policy measures (twice in 2021).

4. CONCLUSION

The Enforcement Regulation has only been used on a few occasions so far, both to introduce measures in response to safeguards and for enforcement, as well as to suspend such measures. It delivered on its objectives to safeguard the Union's economic interests and proved to be an essential and suitable instrument to respond to third countries' actions in the specific circumstances. Even if limited, the practice has shown that the Union is able to react swiftly, effectively and resolutely and bring about positive results. The Commission considers that, beyond the Regulation's limited application in specific case so far, the very existence of an enforcement instrument has a positive impact and a deterrent effect. It sends a clear signal of the Union's ability to effectively assert its rights under trade agreements or in the event of their breach. It may therefore be that the instrument does not need to be used frequently to establish that it has an impact because the threat of using it has already produced results.

The Commission will continue to monitor the overall use and utility of the Enforcement Regulation. It leaves open the possibility for a further update of available commercial policy measures or the situations that could trigger their application.