



Council of the European Union  
General Secretariat

---

---

**Interinstitutional files:  
2019/0273(COD)**

---

---

**Brussels, 01 October 2020**

**WK 10439/2020 INIT**

**LIMITE**

**COMER**

*This is a paper intended for a specific community of recipients. Handling and further distribution are under the sole responsibility of community members.*

#### **WORKING DOCUMENT**

---

From:	Presidency
To:	Working Party on Trade Questions
Subject:	Enforcement Regulation - Compromise proposal from the European Commission on all clusters

---

## **Explanatory Note**

### **Enforcement Regulation: Commission informal compromise proposal**

The Commission was tasked at the last trilogue (of 23 September) with developing a possible compromise text on the four clusters of amendments on which there is no agreement yet between the co-legislators. This document accompanies these compromise proposals and seeks to provide an explanation of the draft compromise text.

The Commission has produced a working version of the original regulation with the various amendments proposed by the Parliament and Council and the draft compromises (this includes accompanying Declarations). This has the advantage of putting the changes into context and of allowing references to other relevant Articles which are less apparent when looking at the Commission's original proposal of December 2019.

It is important to note that the Commission's compromise text is circulated on an informal basis in the hope of fostering agreement between the co-legislators. The Commission will have to formally take a position in the light of any potential agreement between the co-legislators.

On Cluster 1 (Enlarged scope), the compromise proposal seeks to establish a balance between the concerns raised by a number of Member States on the impact of measures in the fields of trade in services and intellectual property and the support from the Parliament and other Member States for an extension in order to ensure the effectiveness of the Union's enforcement policy. The main elements of the compromise text are as below:

- a) Require that the Commission organise a specific information gathering exercise (allowing for comments from stakeholders and Member States on the types of measures and to permit them to raise issues of interaction with national rules and procedures). The analysis from this exercise will influence the Commission's draft implementing measures (see point (d) below) and will be made available to Member States when considering draft implementing acts.
- b) Explicitly state that the measures fall under Article 207 (this is a recital on competence) and hence that measures falling under another legal base cannot be adopted under the

Enforcement Regulation. This addresses the concerns which some have raised about the range of measures which could be adopted and leaves no doubt that the permitted measures will only be ones falling under Article 207.

- c) The WTO cross-retaliation rules (Article 22.3 of the WTO Dispute Settlement Understanding) are expressly incorporated into the Regulation. This brings into EU law the requirements that exist at WTO law level (but not in EU FTAs). This means that if a dispute concerns goods the countermeasures will be in principle in goods. Likewise, when a dispute is started in the area of trade-related aspects of intellectual property, the countermeasures are likely to be in trade-related aspects of intellectual property. Consequently, Council and Parliament will be aware that when a dispute is initiated there is a possibility of countermeasures in a particular sector or under a particular WTO agreement. Cross retaliation will remain possible under the strict conditions set down in the WTO Dispute Settlement Understanding (Article 22.3). This gives reassurances that countermeasures will normally be in the same sector or agreement, and that the Commission will follow established rules (the WTO rules – in place since 1995) before envisaging acting in another sector or agreement.
- d) The draft compromise text then imposes a mandatory prioritisation of measures. 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/intellectual property rights where there is an authorisation at EU level. The second is where there is extensive EU legislation. The third is where the information gathering exercise has shown the least interference with national legislation.
- e) Measures would be reviewed whilst in operation (it is suggested to have a first review after 6 months) particularly with a focus on any interaction with Member States rules. This could then lead to an adjustment to address any problems encountered.
- f) Finally, there would be an ex-post analysis closely after the end of the measures, from which any lessons could be drawn for future measures.
- g) The objectives of the specific information gathering exercise would be set out in the regulation. These would in particular focus on the impact of potential measures (which would be subject to consultation before being put forward as draft implementing measures) and on the interaction with Member State rules and procedures.

- h) The proposed Commission declaration would explain that the Commission would pay particular attention to the comments from the Member States and stakeholders notably on any interaction with national measures.

The Commission has also added language based on the WTO TRIPS Agreement on the origin of intellectual property right holders.

This would replace the following Council and Parliament amendments: Recital (8a) and Articles 2(b), 3(d), 5(1)(ba), 5(1)(bb) and 10 of the Enforcement Regulation.

#### Cluster 2 (Provisional measures)

The Commission's draft declaration of April 2020 has been reworked to take account of the Parliament's views on these matters and of the recent Letter of Intent of the Commission to the Presidency of the Council and the President of the Parliament.

This would replace the following Parliament amendments: Recital (7b) and Articles 3(bb), 3(da), 4(2)(bb) of the Enforcement Regulation.

#### Cluster 3 (Request by the European Parliament and/or the Council to adopt implementing acts)

A draft Commission declaration on the new enforcement mechanism provides that the Commission will take account of concerns raised by the European Parliament, provided there is sufficient supporting evidence. The declaration also elaborates and clarifies how the Commission will interact with the Parliament in terms of providing updates on dispute settlement cases and interacting when managing the Enforcement Regulation. In particular, the Commission commits to systematically provide immediate information on the launching of cases, information which was not systematically shared in the past.

This would replace the following Parliament amendments: Article 4a of the Enforcement Regulation.

Cluster 4 (Enforcement of international law including Trade and Sustainable Development (TSD) chapters)

The Commission, Council and Parliament would adopt a declaration on the importance of the multilateral trading system.

A draft Commission Declaration would commit the Commission to treat complaints in the area of trade and sustainable development on par with market access complaints in the new enforcement mechanism and explains the criteria by which the Commission would handle cases in the area of trade and sustainable development.

This would replace/affect the following Parliament amendments: Recitals (1a) and (2a) and Article 10(1) of the Enforcement Regulation.

\* \* \*

30/09/2020

**Proposal for a 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**

(COM(2019)0623 – C9-0197/2019 – 2019/0273(COD))

<b>Original Commission proposal</b> (COM(2019) 623 final - 2019/0273 (COD)) <b>12 December 2019</b>	<b>Presidency compromise proposal</b> (ST 6929/20 + COR 1) <b>8 April 2020</b>	<b>EP amendments adopted in</b> <b>INTA Committee (A9-0133/2020)</b> <b>6 July 2020</b>	<b>Comments/Commission</b> <b>compromise text of 30 September</b> <b>2020</b>
Proposal for a 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			
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,			

<b>Original Commission proposal</b> (COM(2019) 623 final - 2019/0273 (COD)) <b>12 December 2019</b>	<b>Presidency compromise proposal</b> (ST 6929/20 + COR 1) <b>8 April 2020</b>	<b>EP amendments adopted in</b> <b>INTA Committee (A9-0133/2020)</b> <b>6 July 2020</b>	<b>Comments/Commission</b> <b>compromise text of 30 September</b> <b>2020</b>
		<i>- having regard to opinion 2/15 of the European Court of Justice,</i>	
After transmission of the draft legislative act to the national parliaments,			
Acting in accordance with the ordinary legislative procedure,			
Whereas:			
(1) Regulation (EU) No 654/2014 of the European Parliament and of the Council <sup>1</sup> establishes a common legislative framework for exercising the Union's rights under international trade agreements in certain specific situations.			
		<i>(1a) Opinion 2/15 of the Court of Justice of the European Union<sup>1a</sup> provided clarity regarding the question of competences covered by comprehensive trade agreements. That opinion clarifies, inter alia, that provisions covered by Trade</i>	<b>Deleted [see draft declaration under Cluster 4]</b>

<sup>1</sup> 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).

<b>Original Commission proposal</b> (COM(2019) 623 final - 2019/0273 (COD)) <b>12 December 2019</b>	<b>Presidency compromise proposal</b> (ST 6929/20 + COR 1) <b>8 April 2020</b>	<b>EP amendments adopted in</b> <b>INTA Committee (A9-0133/2020)</b> <b>6 July 2020</b>	<b>Comments/Commission</b> <b>compromise text of 30 September</b> <b>2020</b>
		<i>and Sustainable Development chapters fall within the exclusive competence of the Union and that the goal of sustainable development forms an integral part of the common commercial policy.</i>	
(2) One of those situations relates to 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. Regulation (EU) No 654/2014 enables the Union to suspend obligations after dispute settlement proceedings are concluded.			
		<i>(2a) The Regulation should ensure the coherent application of the enforcement mechanism in trade disputes relating to international trade agreements, including regional or bilateral agreements. Dispute settlement provisions, including in regional or bilateral trade agreements, might not be sufficiently specific or explicit enough to effectively resolve disputes in the event of a clear breach of obligations of trade agreements. A full impact assessment should accompany the Commission's future legislative proposal to review</i>	Deleted [see draft declaration under Cluster 4]



<b>Original Commission proposal</b> (COM(2019) 623 final - 2019/0273 (COD)) <b>12 December 2019</b>	<b>Presidency compromise proposal</b> (ST 6929/20 + COR 1) <b>8 April 2020</b>	<b>EP amendments adopted in</b> <b>INTA Committee (A9-0133/2020)</b> <b>6 July 2020</b>	<b>Comments/Commission</b> <b>compromise text of 30 September</b> <b>2020</b>
		<i>Regulation (EU) No 654/2014. The Commission should make proposals to strengthen the enforcement of sustainable development commitments.</i>	
<p>(3) That Regulation however does not address a situation where the Union has a right of action in response to a measure maintained by a third country, but dispute settlement through adjudication is blocked or otherwise not available for reasons of non-cooperation of the third country having adopted that measure.</p>			
<p>(4) The WTO Dispute Settlement Body has been unable to fill the outstanding vacancies on the Appellate Body. The Appellate Body is no longer able to fulfil its function from the moment when there are fewer than three Appellate Body Members left. Until this situation is resolved and in order to preserve the essential principles and features of the WTO dispute settlement system and the Union's procedural rights in ongoing and future disputes, the Union has sought to agree interim arrangements for appeal arbitration pursuant to Article 25 of the WTO Understanding on Rules and Procedures Governing the Settlement of</p>			

<b>Original Commission proposal</b> (COM(2019) 623 final - 2019/0273 (COD)) <b>12 December 2019</b>	<b>Presidency compromise proposal</b> (ST 6929/20 + COR 1) <b>8 April 2020</b>	<b>EP amendments adopted in</b> <b>INTA Committee (A9-0133/2020)</b> <b>6 July 2020</b>	<b>Comments/Commission</b> <b>compromise text of 30 September</b> <b>2020</b>
<p>Disputes (“WTO Dispute Settlement Understanding”). This approach has been endorsed by the Council of the European Union on 27 May 2019 and 15 July 2019 and supported in a resolution of the European Parliament on 28 November 2019. If a WTO Member refuses to enter into such an arrangement, and files an appeal to a non-functioning Appellate Body, the resolution of the dispute is effectively blocked.</p>			
		<p><i>(4a) The Union insists on the primacy of international trade law, as administered by the WTO and enforced under Article 23 of the WTO Agreement, and will cooperate in all endeavours aiming to reform the WTO Dispute Settlement Mechanism in order to ensure the appropriate functioning of the WTO’s Appellate Body.</i></p>	<p><b>Deleted [see draft declaration under Cluster 4]</b></p>

<b>Original Commission proposal</b> (COM(2019) 623 final - 2019/0273 (COD)) <b>12 December 2019</b>	<b>Presidency compromise proposal</b> (ST 6929/20 + COR 1) <b>8 April 2020</b>	<b>EP amendments adopted in</b> <b>INTA Committee (A9-0133/2020)</b> <b>6 July 2020</b>	<b>Comments/Commission</b> <b>compromise text of 30 September</b> <b>2020</b>
		<i>(4b) By ...[ one year following the entry into force of this Regulation], the Commission should report to the European Parliament and to the Council about ongoing developments in the area of international trade dispute settlements and the actions it has taken relating to the reform of the Appellate Body of the WTO.</i>	Deleted [see draft declaration under Cluster 3]
(5) In the same vein, a similar situation may arise under other international trade agreements, in particular regional or bilateral agreements, where a third country does not cooperate, as necessary, for the dispute settlement to function, for example by failing to appoint an arbitrator and where there is no mechanism foreseen to secure the functioning of dispute settlement in this situation.			
		<i>(5ba) The Union remains committed to a multilateral approach to international dispute settlement, rules-based trade, and international cooperation to achieve the United Nation's Sustainable Development Goals.</i>	Deleted [see draft declaration under Cluster 4]
(6) In the face of blockage of dispute settlement, the Union will be unable to			

<b>Original Commission proposal</b> (COM(2019) 623 final - 2019/0273 (COD)) <b>12 December 2019</b>	<b>Presidency compromise proposal</b> (ST 6929/20 + COR 1) <b>8 April 2020</b>	<b>EP amendments adopted in</b> <b>INTA Committee (A9-0133/2020)</b> <b>6 July 2020</b>	<b>Comments/Commission</b> <b>compromise text of 30 September</b> <b>2020</b>
<p>enforce international trade agreements. Therefore, it is appropriate to extend the scope of Regulation (EU) No 654/2014 to such situations.</p>			
<p>(7) To this end, the Union should be able to expeditiously suspend obligations under international trade agreements, including regional or bilateral agreements, when effective recourse to a binding dispute settlement mechanism is not possible because the third country has rendered it impossible for the Union to do so.</p>			
		<p><i>(7a) Services and intellectual property rights account for a large and growing share of world trade and are covered by international trade agreements, including regional or bilateral Union agreements. Services and intellectual property rights should therefore be included in the scope of the trade policy measures available to the Union which are currently limited to goods and public procurement. Extending the scope of those measures in that way should make Regulation (EU) No 654/2014 more consistent and effective.</i></p>	<p><b>Accept</b></p>

<b>Original Commission proposal</b> (COM(2019) 623 final - 2019/0273 (COD)) <b>12 December 2019</b>	<b>Presidency compromise proposal</b> (ST 6929/20 + COR 1) <b>8 April 2020</b>	<b>EP amendments adopted in</b> <b>INTA Committee (A9-0133/2020)</b> <b>6 July 2020</b>	<b>Comments/Commission</b> <b>compromise text of 30 September</b> <b>2020</b>
		<p><i>(7b) Given the mounting tension in international trade and in the context of the crisis facing the WTO, the Union should be able to react swiftly in the event of a unilateral, illegal measure taken against it. The Union should, therefore, be able to impose measures in the event of a clear breach of international law or a clear violation of trade obligations towards the Union by a third country, which threatens or impairs the Union's commercial interests or jeopardises the Union's strategic autonomy, provided that the Union has appropriately challenged those illegal measures at the WTO or in front of the relevant dispute settlement body.</i></p>	<p>Deleted [see draft declaration under Cluster 2]</p>
			<p><i>(7b) [Recalling that measures to be adopted pursuant to this regulation relate specifically to international trade, in that they are essentially intended to govern such trade and have direct and immediate effects on it and, therefore, fall within the scope of the Union's exclusive competence pursuant to Article 207 of the Treaty on the Functioning of the European Union (Court of Justice, Opinion 2/15, para. 36)]</i></p>

<b>Original Commission proposal</b> (COM(2019) 623 final - 2019/0273 (COD)) <b>12 December 2019</b>	<b>Presidency compromise proposal</b> (ST 6929/20 + COR 1) <b>8 April 2020</b>	<b>EP amendments adopted in</b> <b>INTA Committee (A9-0133/2020)</b> <b>6 July 2020</b>	<b>Comments/Commission</b> <b>compromise text of 30 September</b> <b>2020</b>
<p>(8) It is also appropriate to set out that where measures are taken to restrict the trade with a third country in the situations at stake, such measures should be commensurate to the nullification or impairment of the Union's commercial interests caused by the measures of that third country, in line with the Union's obligations under international law.</p>			
	<p><u>(8a) Furthermore, international economic activities, inter alia trade in services and the protection of trade-related intellectual property rights continue to gain importance. Accordingly, the Union should consider the desirability of being able also to expeditiously take measures beyond those envisaged in Article 5 of Regulation (EU) No 654/2014. Currently, Regulation (EU) No 654/2014 envisages only certain forms of measures in the fields of trade in goods and public procurement and no commercial policy measures in other fields such as trade in services and trade-related aspects of intellectual property rights. Therefore, it is desirable to continue assessing whether and when the developments in other fields support an</u></p>		<p>Deleted [see draft compromise text and draft declaration under Cluster 1]</p>

Original Commission proposal (COM(2019) 623 final - 2019/0273 (COD)) 12 December 2019	Presidency compromise proposal (ST 6929/20 + COR 1) 8 April 2020	EP amendments adopted in INTA Committee (A9-0133/2020) 6 July 2020	Comments/Commission compromise text of 30 September 2020
	<u>expansion of the possible scope of measures under Regulation (EU) No 654/2014. It would be appropriate for the Commission to assess all these aspects as part of a review in the short term, within three years as from the entry into force of this Regulation at the latest. The review may be followed by appropriate legislative proposals.</u>		
(9) Finally, the review clause of Regulation (EU) No 654/2014 should be renewed for another five-year period and should cover the application of the proposed amendment.	(9) Finally, the review clause of Regulation (EU) No 654/2014 should be <del>renewed for another five-year period and</del> <u>should also</u> cover the application of the proposed amendment.	(9) Finally, the review clause of Regulation (EU) No 654/2014 should <i>also</i> cover the application of the proposed amendment.	<b>Accept</b>
(10) Regulation (EU) No 654/2014 should therefore be amended accordingly,			
HAVE ADOPTED THIS REGULATION:			
<i>Article 1</i>			
Regulation (EU) No 654/2014 is amended as follows:			

Original Commission proposal (COM(2019) 623 final - 2019/0273 (COD)) 12 December 2019	Presidency compromise proposal (ST 6929/20 + COR 1) 8 April 2020	EP amendments adopted in INTA Committee (A9-0133/2020) 6 July 2020	Comments/Commission compromise text of 30 September 2020
		<i>(-1) in Article 1, point (b) is replaced by the following:</i>	Accept
		(b) rebalancing concessions or other obligations in the trade relations with third countries, when the treatment accorded to goods <i>or services</i> from the Union is altered in a way that affects the Union's interests.	
		<i>(-1a) in Article 2, point (b) is replaced by the following:</i>	Accept as modified below
		(b) "concessions or other obligations" means tariff concessions, <i>commitments in the field of services, obligations concerning trade-related aspects of intellectual property rights</i> , 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;	(b) "concessions or other obligations" means tariff concessions <i>or other, commitments in the field of services, obligations or benefits in the field of trade in goods or services, or concerning trade-related aspects of intellectual property rights</i> , <del>or any other benefits</del> 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;



Original Commission proposal (COM(2019) 623 final - 2019/0273 (COD)) 12 December 2019	Presidency compromise proposal (ST 6929/20 + COR 1) 8 April 2020	EP amendments adopted in INTA Committee (A9-0133/2020) 6 July 2020	Comments/Commission compromise text of 30 September 2020
(1) Article 3 is amended as follows:			
(a) the following point (aa) is inserted:			
<i>“(aa) following the circulation of a WTO panel report upholding, in whole or in part, the claims brought by the European Union, if an appeal under Article 17 of the WTO Dispute Settlement Understanding cannot be completed and if the third country has not agreed to interim appeal arbitration under Article 25 of the WTO Dispute Settlement Understanding;”</i>			
(b) the following point (bb) is inserted:			<b>Modification unnecessary because already covered.</b>
<i>“(bb) in trade disputes relating to other international trade agreements, including regional or bilateral agreements, if adjudication is not possible because the third country is not taking the steps that are necessary for a dispute settlement procedure to function;”</i>		<i>“(bb) in trade disputes relating to other international trade agreements, including regional or bilateral agreements, if adjudication is not possible because the third country is <b>delaying the proceedings or</b> is not taking the steps that are necessary for a dispute settlement procedure to function;”</i>	<i>“(bb) in trade disputes relating to other international trade agreements, including regional or bilateral agreements, if adjudication is not possible because the third country is <del>delaying the proceedings</del> <del>or is</del> not taking the steps that are necessary for a dispute settlement procedure to function;”</i>

<b>Original Commission proposal</b> (COM(2019) 623 final - 2019/0273 (COD)) <b>12 December 2019</b>	<b>Presidency compromise proposal</b> (ST 6929/20 + COR 1) <b>8 April 2020</b>	<b>EP amendments adopted in</b> <b>INTA Committee (A9-0133/2020)</b> <b>6 July 2020</b>	<b>Comments/Commission</b> <b>compromise text of 30 September</b> <b>2020</b>
		<i>(1a) in Article 3, point (d) is replaced by the following:</i>	Accept as modified below
		(d) in cases of modification of concessions <i>or commitments</i> by a WTO member under Article XXVIII of the GATT 1994 <i>or Article XXI of the GATS</i> , where no compensatory adjustments have been agreed.	(d) in cases of modification of concessions <i>or commitments</i> by a WTO member under Article XXVIII of the GATT 1994 <i>or Article XXI of the GATS</i> , where no compensatory adjustments have been agreed <i>and, as regards services, compensatory adjustments are not made in conformity with the findings of the arbitration pursuant to Article XXI of the GATS.</i>
		<i>(1b) in Article 3, the following point is added:</i>	Deleted [see draft declaration under Cluster 2]
		<i>(da) in the event of the adoption by a third country of commercial policy measures that threaten or impair the commercial interests of the Union or jeopardise the Union's strategic autonomy, and constitute a clear breach of international law or a clear violation of its trade obligations towards the Union, provided that the Union has appropriately challenged these measures at the WTO or in front of the relevant dispute settlement</i>	

Original Commission proposal (COM(2019) 623 final - 2019/0273 (COD)) 12 December 2019	Presidency compromise proposal (ST 6929/20 + COR 1) 8 April 2020	EP amendments adopted in INTA Committee (A9-0133/2020) 6 July 2020	Comments/Commission compromise text of 30 September 2020
		<i>body.</i>	
(2) In Article 4 (2), the following point (bb) is inserted:			
“(bb) where measures are taken to restrict the trade with a third country in situations under Article 3(aa) or Article 3(bb), such measures shall be commensurate to the nullification or impairment of the Union’s commercial interests caused by the measures of that third country;”		(bb) where measures are taken to restrict the trade with a third country in situations under Article 3(aa), Article 3(bb) <b>or Article 3[(da)](e)</b> , such measures shall be commensurate to the nullification or impairment of the Union’s commercial interests caused by the measures of that third country <b>and, to the extent possible, provide relief to the Union sectors affected;</b> ”	(bb) where measures are taken to restrict the trade with a third country in situations under Article 3(aa), Article 3(bb) <b>or Article 3[(da)]</b> , the level of such measures shall <b>not exceed be commensurate to</b> the nullification or impairment of the Union’s commercial interests caused by the measures of that third country <b>and, to the extent possible, provide relief to the Union sectors affected;</b> ”
		(2a) in Article 4, paragraph 2, point (d) is replaced by the following:	Accept
		(d) where concessions <b>or commitments</b> are <b>modified or</b> withdrawn in the trade with a third country in connection with Article XXVIII of the GATT 1994 and the related Understanding <sup>2</sup> , <b>or Article XXI of the GATS and the related implementing</b>	

<sup>2</sup> Understanding "Interpretation and Application of Article XXVIII".

<b>Original Commission proposal</b> (COM(2019) 623 final - 2019/0273 (COD)) <b>12 December 2019</b>	<b>Presidency compromise proposal</b> (ST 6929/20 + COR 1) <b>8 April 2020</b>	<b>EP amendments adopted in</b> <b>INTA Committee (A9-0133/2020)</b> <b>6 July 2020</b>	<b>Comments/Commission</b> <b>compromise text of 30 September</b> <b>2020</b>
		<p><i>procedures</i>, they shall be substantially equivalent to the concessions <i>or commitments</i> modified or withdrawn by that third country, in accordance with the terms established in Article XXVIII of the GATT 1994 and the related Understanding <i>or Article XXI of the GATS and the related implementing procedures</i>.</p>	
		<p><i>(2b) the following article shall be inserted :</i></p>	<p>Deleted [see draft declaration under Cluster 3]</p>
		<p><i>Article 4a</i></p>	
		<p><i>Request by the European Parliament and/or the Council</i></p>	
		<p><i>1. The European Parliament and/or the Council may ask the Commission to adopt or take appropriate steps to adopt the implementing acts referred to in Article 4.</i></p>	
		<p><i>2. If the European Parliament and/or the Council decides to make use of the possibility referred to in paragraph 1, it shall supply the Commission with any evidence of cases as referred to in Article 3 that nullifies or impairs the commercial interests of the Union.</i></p>	

Original Commission proposal (COM(2019) 623 final - 2019/0273 (COD)) 12 December 2019	Presidency compromise proposal (ST 6929/20 + COR 1) 8 April 2020	EP amendments adopted in INTA Committee (A9-0133/2020) 6 July 2020	Comments/Commission compromise text of 30 September 2020
		3. <i>After receiving a request, the Commission shall inform the European Parliament and the Council without delay of how it intends to follow up on the request.</i>	
		(2c) <i>in Article 5(1), the following point is inserted:</i>	
		(ba) <i>the suspension of commitments or other obligations in the field of services;</i>	(ba) <i>the suspension of <del>commitments or other</del> obligations regarding trade in <del>the field of</del> services or with respect to trade-related intellectual property rights, and the imposition of restrictions on trade in services or on the protection of intellectual property rights or their commercial exploitation, in relation to right-holders who are nationals of the third country concerned;</i>
		(2d) <i>in Article 5(1), the following point is inserted:</i>	Deleted (incorporated into paragraph (ba) above)
		(bb) <i>the suspension of obligations regarding trade-related aspects of intellectual property rights;</i>	

<b>Original Commission proposal</b> (COM(2019) 623 final - 2019/0273 (COD)) <b>12 December 2019</b>	<b>Presidency compromise proposal</b> (ST 6929/20 + COR 1) <b>8 April 2020</b>	<b>EP amendments adopted in</b> <b>INTA Committee (A9-0133/2020)</b> <b>6 July 2020</b>	<b>Comments/Commission</b> <b>compromise text of 30 September</b> <b>2020</b>
			<p><i>(2d) in Article 5, the following paragraph is inserted:</i></p>
			<p><i>3. Measures adopted pursuant to paragraph 1(ba) shall:</i></p> <p><i>(a) be subject to an information gathering exercise pursuant to Article 9(1a);</i></p> <p><i>(b) be imposed, in the same sector or sectors as the nullification or impairment has been found, unless the application of the conditions provided for in paragraph 3 of Article 22 of the WTO Dispute Settlement Understanding mean that measures should be imposed in other sectors or with respect to other WTO agreements or commitments in other trade agreements;</i></p> <p><i>(c) subject to paragraph (b), when selecting measures, the Commission shall prioritise measures:</i></p> <p><i>(i) relating to trade in services requiring an authorisation with Union-</i></p>

<b>Original Commission proposal</b> (COM(2019) 623 final - 2019/0273 (COD)) <b>12 December 2019</b>	<b>Presidency compromise proposal</b> (ST 6929/20 + COR 1) <b>8 April 2020</b>	<b>EP amendments adopted in</b> <b>INTA Committee (A9-0133/2020)</b> <b>6 July 2020</b>	<b>Comments/Commission</b> <b>compromise text of 30 September</b> <b>2020</b>
			<p><i>wide validity, based on secondary legislation, or the protection or commercial exploitation of intellectual property rights granted on a Union-wide basis and valid throughout the Union; or, where no such measures are available,</i></p> <p><i>(ii) relating to other services or intellectual property rights in areas where extensive Union legislation exists; or, where no such measures are available,</i></p> <p><i>(iii) which the information gathering exercise conducted pursuant to Article 9(1a) has demonstrated would not impose a disproportionate burden on the administration of relevant national regulations.</i></p> <p><i>(d) be adjusted, if necessary, by means of an implementing act pursuant to Article 4(1), where, after a review conducted pursuant to Article 9(1a) the Commission concludes that the measures are of insufficient effectiveness or impose</i></p>

<b>Original Commission proposal</b> (COM(2019) 623 final - 2019/0273 (COD)) <b>12 December 2019</b>	<b>Presidency compromise proposal</b> (ST 6929/20 + COR 1) <b>8 April 2020</b>	<b>EP amendments adopted in</b> <b>INTA Committee (A9-0133/2020)</b> <b>6 July 2020</b>	<b>Comments/Commission</b> <b>compromise text of 30 September</b> <b>2020</b>
			<p><i>an unreasonable burden on the administration of relevant national regulations. Such review by the Commission shall be first conducted six months after the application of the measures and in intervals of twelve months thereafter;</i></p> <p><i>(e) be subject to an evaluation report, six months after their termination and based inter alia on stakeholder input, which shall examine their effectiveness and operation, and draw possible conclusions for future measures.</i></p>
			<p><i>(2da) in Article 6, the following paragraph is inserted:</i></p>
			<p><i>3. Regarding trade-related intellectual property rights, the term “nationals” shall be understood in the same sense as it is used in the paragraph 3 of Article 1 of the WTO Agreement on Trade-Related Aspects of Intellectual Property Rights.</i></p>
		<p><i>(2e) in the first subparagraph of Article 7(2), point (c) is replaced by the following:</i></p>	<p><b>Accept</b></p>



<b>Original Commission proposal</b> (COM(2019) 623 final - 2019/0273 (COD)) <b>12 December 2019</b>	<b>Presidency compromise proposal</b> (ST 6929/20 + COR 1) <b>8 April 2020</b>	<b>EP amendments adopted in</b> <b>INTA Committee (A9-0133/2020)</b> <b>6 July 2020</b>	<b>Comments/Commission</b> <b>compromise text of 30 September</b> <b>2020</b>
		(c) in cases of <i>the withdrawal or</i> modification of concessions <i>or commitments</i> by a WTO member under Article XXVIII of the GATT 1994 <i>or Article XXI of the GATS</i> , when the third country concerned accords adequate and proportionate compensation to the Union after the adoption of an implementing act under Article 4(1).	
		<i>(2f) in Article 9, paragraph 1 is replaced by the following:</i>	<b>Accept</b>
		1. The Commission shall seek information and views regarding the Union's economic interests in specific goods or services or in specific sectors, <i>or as regards intellectual property rights</i> , 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.	
			<i>(2g) in Article 9, the following paragraph is inserted:</i>

<b>Original Commission proposal</b> (COM(2019) 623 final - 2019/0273 (COD)) <b>12 December 2019</b>	<b>Presidency compromise proposal</b> (ST 6929/20 + COR 1) <b>8 April 2020</b>	<b>EP amendments adopted in</b> <b>INTA Committee (A9-0133/2020)</b> <b>6 July 2020</b>	<b>Comments/Commission</b> <b>compromise text of 30 September</b> <b>2020</b>
			<p><i>1a. In circumstances where it is envisaged to adopt measures affecting trade in services or the protection or commercial exploitation of intellectual property rights, the Commission shall provide information as to the possible measures it considers adopting and in addition seek information on:</i></p> <p><i>(a) the impact of such measures on third country service providers or right-holders who are nationals of the third country concerned and on EU competitors, users or consumers of such services or intellectual property rights holders ;</i></p> <p><i>(b) the interaction of such measures with relevant Member State regulations;</i></p> <p><i>(c) the administrative burden which may be occasioned by such measures.</i></p> <p><i>In conducting its analysis, the Commission shall take into account</i></p>

<b>Original Commission proposal</b> (COM(2019) 623 final - 2019/0273 (COD)) <b>12 December 2019</b>	<b>Presidency compromise proposal</b> (ST 6929/20 + COR 1) <b>8 April 2020</b>	<b>EP amendments adopted in</b> <b>INTA Committee (A9-0133/2020)</b> <b>6 July 2020</b>	<b>Comments/Commission</b> <b>compromise text of 30 September</b> <b>2020</b>
			<i>information provided by Member State authorities. The Commission shall provide this analysis to Member States when they are called to examine measures pursuant to Article 8.</i>
(3) Article 10 is amended as follows:			
(a) paragraph 1 is replaced by the following:			<b>[Modified as below. For final sentence see cluster 4 declaration]</b>

<b>Original Commission proposal</b> (COM(2019) 623 final - 2019/0273 (COD)) <b>12 December 2019</b>	<b>Presidency compromise proposal</b> (ST 6929/20 + COR 1) <b>8 April 2020</b>	<b>EP amendments adopted in</b> <b>INTA Committee (A9-0133/2020)</b> <b>6 July 2020</b>	<b>Comments/Commission</b> <b>compromise text of 30 September</b> <b>2020</b>
<p>“By 1 March 2025 at the latest, the Commission shall review the scope of this Regulation, taking into account in particular the amendments to the scope having effect from [date of entry into force of this amending Regulation], 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.”</p>	<p><del>“By 1 March 2025 at the latest</del> <u><b>As soon as practical after the latest [date of entry into force of this amending Regulation] but no later than three years after that date,</b></u> the Commission shall review the scope of this Regulation, taking into account in particular the amendments to the scope having effect from [date of entry into force of this amending Regulation], 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.”</p>	<p><i>At the earliest possible opportunity after ... [the date of entry into force of this amending regulation], but no later than two years after that date,</i> the Commission shall review the scope of this Regulation, taking into account in particular 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. <b><i>That review shall include proposals to strengthen the enforcement of sustainable development commitments.</i></b></p>	<p><i>At the earliest possible opportunity after ... [the date of entry into force of this amending regulation], but no later than two years after that date,</i> the Commission shall review the scope of this Regulation, taking into account in particular 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. <del><i>That review shall include proposals to strengthen the enforcement of sustainable development commitments.</i></del></p>
<p>(b) paragraph 2 is amended as follows:</p>		<p><b><i>Deleted</i></b></p>	<p><b>Accept</b></p>
<p>(i) in the first subparagraph of paragraph 2 the first sentence is replaced by the following:</p>			
<p>“In acting pursuant to 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”.<sup>3</sup></p>	<p>“In acting pursuant to paragraph 1, the Commission shall undertake a review aimed at envisaging under this Regulation additional commercial policy measures suspending concessions or other obligations in <del>other the fields</del> <u><b>such as</b></u> <del>of trade in services</del> <u><b>and trade-related intellectual</b></u></p>		

<sup>3</sup> The Commission proposal leaves points (a) to (e) of the first subparagraph of Article 10(2) intact.

Original Commission proposal (COM(2019) 623 final - 2019/0273 (COD)) 12 December 2019	Presidency compromise proposal (ST 6929/20 + COR 1) 8 April 2020	EP amendments adopted in INTA Committee (A9-0133/2020) 6 July 2020	Comments/Commission compromise text of 30 September 2020
	<u>property rights.</u> ”		
	(ii) in the first subparagraph of paragraph 2 letter (a) is replaced by the following:		
	<u>“(a) international trade and investment developments including with regard to the suspension of other obligations under the General Agreement on Tariffs and Trade 1994 (GATT 1994) than the ones covered by this Regulation, of obligations under the General Agreement on Trade in Services (GATS), the Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS), the Agreement on Government Procurement, free trade agreements or other actions affecting international trade and investment;”</u>		
	(iii) in the first subparagraph of paragraph 2 letter (b) is replaced by the following:		

<b>Original Commission proposal</b> (COM(2019) 623 final - 2019/0273 (COD)) <b>12 December 2019</b>	<b>Presidency compromise proposal</b> (ST 6929/20 + COR 1) <b>8 April 2020</b>	<b>EP amendments adopted in</b> <b>INTA Committee (A9-0133/2020)</b> <b>6 July 2020</b>	<b>Comments/Commission</b> <b>compromise text of 30 September</b> <b>2020</b>
	<u>"(b) developments within the Union with regard to the adoption of common rules on services sectors and such developments with regard to trade-related intellectual property rights, public procurement and other fields, taking into account the possible interaction between the additional commercial policy measures and relevant national laws of the Member States;"</u>		
	<u>(iv) in the first subparagraph of paragraph 2 letter (d) 'concerning services' is deleted;</u>		
	<u>(v) in the first subparagraph of paragraph 2 letter (e) 'service providers' is replaced by 'operators';</u>		
(ii) the second subparagraph is deleted.	<u>(vi)</u> the second subparagraph is deleted.		
<i>Article 2</i>			
This Regulation shall enter into force on the [...] day following that of its publication in the <i>Official Journal of the European Union</i> .			

<b>Original Commission proposal</b> (COM(2019) 623 final - 2019/0273 (COD)) <b>12 December 2019</b>	<b>Presidency compromise proposal</b> (ST 6929/20 + COR 1) <b>8 April 2020</b>	<b>EP amendments adopted in</b> <b>INTA Committee (A9-0133/2020)</b> <b>6 July 2020</b>	<b>Comments/Commission</b> <b>compromise text of 30 September</b> <b>2020</b>
This Regulation shall be binding in its entirety and directly applicable in all Member States.			
Done at Brussels,			
<i>For the European Parliament</i>  <i>The President</i>	<i>For the Council</i>  <i>The President</i>		
	<p style="text-align: right;"><u><b>ANNEX</b></u></p> <p><u><b>Statements by the Commission</b></u></p> <p><b>1. Commission declaration on compliance with international law</b></p> <p>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 the appeals before the Appellate Body (the “appeal arbitration procedure”),</p>		

<b>Original Commission proposal</b> (COM(2019) 623 final - 2019/0273 (COD)) <b>12 December 2019</b>	<b>Presidency compromise proposal</b> (ST 6929/20 + COR 1) <b>8 April 2020</b>	<b>EP amendments adopted in</b> <b>INTA Committee (A9-0133/2020)</b> <b>6 July 2020</b>	<b>Comments/Commission</b> <b>compromise text of 30 September</b> <b>2020</b>
	<p>as long as the Appellate Body is unable to fully resume its functions in accordance with Article 17 of the DSU.</p> <p>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.</p> <p>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.</p> <p>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</p>		



<b>Original Commission proposal</b> (COM(2019) 623 final - 2019/0273 (COD)) <b>12 December 2019</b>	<b>Presidency compromise proposal</b> (ST 6929/20 + COR 1) <b>8 April 2020</b>	<b>EP amendments adopted in</b> <b>INTA Committee (A9-0133/2020)</b> <b>6 July 2020</b>	<b>Comments/Commission</b> <b>compromise text of 30 September</b> <b>2020</b>
	<p>accordance with Article 17 of the DSU, or if an interim appeal procedure is initiated, provided that such procedure is pursued in good faith.</p> <p><b>2. Commission declaration on other possible measures</b></p> <p>_____</p>		
	<p>The Commission takes note of Member States' concerns as to the practices of certain third countries to seek to coerce the EU and/or its Member States to take or withdraw particular policy measures. The Commission shares the view that such practices raise significant concerns. The Commission confirms its intention to further examine possible measures which could be adopted in order to dissuade or offset such actions. The Commission intends to continue its assessment and on the basis of that assessment, taking into account all relevant circumstances, decide whether it is appropriate to adopt a report on these matters which may be combined with a legislative proposal providing for a mechanism allowing to dissuade or offset such actions in a manner consistent with</p>		<p>The Commission takes note of <u>the Member States'</u> concerns <u>of the Parliament and Member States</u> as to the practices of certain third countries to seek to coerce the EU and/or its Member States to take or withdraw particular policy measures. The Commission shares the view that such practices raise significant concerns. The Commission confirms its intention to further examine possible measures which could be adopted in order to dissuade or offset such actions. The Commission intends to continue its assessment and on the basis of that assessment, taking into account all relevant circumstances, <del>decide whether it is appropriate to adopt a report on these matters which may be combined with</del> <u>adopt</u> a legislative proposal providing for a mechanism allowing to dissuade or offset such actions in a</p>

<b>Original Commission proposal</b> (COM(2019) 623 final - 2019/0273 (COD)) <b>12 December 2019</b>	<b>Presidency compromise proposal</b> (ST 6929/20 + COR 1) <b>8 April 2020</b>	<b>EP amendments adopted in</b> <b>INTA Committee (A9-0133/2020)</b> <b>6 July 2020</b>	<b>Comments/Commission</b> <b>compromise text of 30 September</b> <b>2020</b>
	international law. It shall do so within a year of the adoption of the revisions of the Enforcement Regulation.		manner consistent with international law. <u>As announced in the Letter of Intent of the President of the Commission to the President of the Parliament and President in office of the Council of 16 September 2020 the Commission shall adopt the proposal no later than the end of 2021. It shall do so within a year of the adoption of the revisions of the Enforcement Regulation.</u>
			Statement by the Commission (cluster 1)  The Commission welcomes the adoption of the Regulation of the European Parliament and of the Council amending Regulation 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 Declaration of

<b>Original Commission proposal</b> (COM(2019) 623 final - 2019/0273 (COD)) <b>12 December 2019</b>	<b>Presidency compromise proposal</b> (ST 6929/20 + COR 1) <b>8 April 2020</b>	<b>EP amendments adopted in</b> <b>INTA Committee (A9-0133/2020)</b> <b>6 July 2020</b>	<b>Comments/Commission</b> <b>compromise text of 30 September</b> <b>2020</b>
			<p>[2014] as well as this Declaration.</p> <p>When preparing draft implementing acts affecting trade in services or trade-related 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 Commissions attention, shared with Member States and are duly taken into account in the possible adoption of measures. In those consultations, the Commission shall 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 shall 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.</p> <p>In the case of measures in the fields of trade in services and trade-related intellectual property rights, in particular the input from Member States' public authorities involved in the formulation or implementation of</p>

<b>Original Commission proposal</b> (COM(2019) 623 final - 2019/0273 (COD)) <b>12 December 2019</b>	<b>Presidency compromise proposal</b> (ST 6929/20 + COR 1) <b>8 April 2020</b>	<b>EP amendments adopted in</b> <b>INTA Committee (A9-0133/2020)</b> <b>6 July 2020</b>	<b>Comments/Commission</b> <b>compromise text of 30 September</b> <b>2020</b>
			<p>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 shall 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.</p> <p>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</p>

<b>Original Commission proposal</b> (COM(2019) 623 final - 2019/0273 (COD)) <b>12 December 2019</b>	<b>Presidency compromise proposal</b> (ST 6929/20 + COR 1) <b>8 April 2020</b>	<b>EP amendments adopted in</b> <b>INTA Committee (A9-0133/2020)</b> <b>6 July 2020</b>	<b>Comments/Commission</b> <b>compromise text of 30 September</b> <b>2020</b>
			<p>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.</p>
			<p><b>Declaration of the Commission (cluster 3)</b></p> <p>Upon the adoption of the Regulation in 2014, the Commission committed to an effective communication and exchange of views with the European Parliament and the Council on trade disputes that may lead to the adoption of measures under the Regulation, and on enforcement actions in general. Mindful of the overarching objective of effective and efficient enforcement of Union's rights under the Union's international trade agreements, the Commission will continue to promote and streamline its interactions with the European Parliament and the Council to the mutual benefit.</p> <p>In particular, the Commission undertakes to examine, as part of its</p>

<b>Original Commission proposal</b> (COM(2019) 623 final - 2019/0273 (COD)) <b>12 December 2019</b>	<b>Presidency compromise proposal</b> (ST 6929/20 + COR 1) <b>8 April 2020</b>	<b>EP amendments adopted in</b> <b>INTA Committee (A9-0133/2020)</b> <b>6 July 2020</b>	<b>Comments/Commission</b> <b>compromise text of 30 September</b> <b>2020</b>
			<p>enhanced enforcement monitoring system, alleged violations of the Union's international trade agreements when raised by the Parliament, its Members, or its Committees, or by the Council on the understanding that such requests be accompanied by supporting evidence. The Commission will keep the Parliament and the Council informed of the output of its enhanced enforcement work.</p> <p>The Commission will continue to 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. In this context, the Commission will continue its reporting practice by providing periodically a state of play on all pending disputes and instant information for major developments in relation to disputes at the same time such information is shared with Member States. This reporting and information sharing will take place through the responsible committees in the Council and in the Parliament.</p> <p>At the same time, the Commission will continue keeping the Parliament and</p>

<b>Original Commission proposal</b> (COM(2019) 623 final - 2019/0273 (COD)) <b>12 December 2019</b>	<b>Presidency compromise proposal</b> (ST 6929/20 + COR 1) <b>8 April 2020</b>	<b>EP amendments adopted in</b> <b>INTA Committee (A9-0133/2020)</b> <b>6 July 2020</b>	<b>Comments/Commission</b> <b>compromise text of 30 September</b> <b>2020</b>
			<p>the Council regularly informed of international developments that may lead to situations requiring the adoption of measures under the Regulation.</p> <p>Finally, the Commission reaffirms its commitments to promptly transmit to the Parliament and to the Council draft implementing acts that it submits to the committee of Member States as well as final draft implementing acts following the delivery of opinions in the committee. This is managed via the comitology register.</p>
			<p><b>Declaration of the Parliament, Council and the Commission (cluster 4)</b></p> <p>The Union remains committed to a multilateral approach to international dispute settlement, rules-based trade, and international cooperation to achieve the Sustainable Development Goals of the United Nations. The Union <del>insists on the primacy of international trade law, as administered by the WTO and enforced under Article 23 of the WTO Agreement,</del> and will cooperate in all endeavours aiming to reform the WTO Dispute Settlement Mechanism which can ensure the effective functioning of the WTO's Appellate</p>

<b>Original Commission proposal</b> (COM(2019) 623 final - 2019/0273 (COD)) <b>12 December 2019</b>	<b>Presidency compromise proposal</b> (ST 6929/20 + COR 1) <b>8 April 2020</b>	<b>EP amendments adopted in</b> <b>INTA Committee (A9-0133/2020)</b> <b>6 July 2020</b>	<b>Comments/Commission</b> <b>compromise text of 30 September</b> <b>2020</b>
			<b>Body.</b>  <b>[Changes from EP amendments]</b>
			<b>Declaration of the Commission (cluster 4)</b>  <b>In deploying the enhanced enforcement system, the Commission will pay equal attention to alleged breaches of the trade and sustainable development provisions of EU trade agreements as it pays to alleged breaches of market access systems. The processing of alleged breaches of trade and sustainable provisions will be fully integrated into the system. The Commission will prioritise those cases which are particularly serious in terms of their effect on workers or the environment in a trade context, which have systemic importance and which are legally sound.</b>

\* \* \*



**WORKING VERSION OF REGULATION (EU) No 654/2014 WITH PROPOSED AMENDMENTS  
INCORPORATED IN THE TEXT**

Proposed amendments are marked as follows:

~~**Bold and Strikethrough mark**~~ – proposed deletions

**Bold mark** – proposed additions

**In black** – Commission original proposal

**In blue** – Council Presidency compromise proposal of 8 April 2020

**In red** – EP amendments of 6 July 2020

**In green** – Commission compromise proposal of 30 October 2020

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

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<sup>(4)</sup>,

Whereas:

- <sup>(1)</sup> 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.

---

<sup>(4)</sup> 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.

- (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 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.
- (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 <sup>(5)</sup>. 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<sup>(6)</sup> 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 <sup>(7)</sup>.
- (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

---

<sup>(5)</sup> Council Regulation (EEC) No 2913/92 of 12 October 1992 establishing the Community Customs Code ([OJ L 302, 19.10.1992, p. 1](#)).

<sup>(6)</sup> 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](#)).

<sup>(7)</sup> 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](#)).

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 **or services** 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:

- (a) "country" means any State or separate customs territory;
- (b) "concessions or other obligations" means tariff concessions **or other, commitments in the field of services, obligations or benefits in the field of trade in goods or services, or concerning trade-related aspects of intellectual property rights, 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;

- (aa) following the circulation of a WTO panel report upholding, in whole or in part, the claims brought by the European Union, if an appeal under Article 17 of the WTO Dispute Settlement Understanding cannot be completed and if the third country has not agreed to interim appeal arbitration under Article 25 of 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;
  - (bb) in trade disputes relating to other international trade agreements, including regional or bilateral agreements, if adjudication is not possible because the third country is ~~delaying the proceedings or is not taking the steps that are necessary for a dispute settlement procedure to function;~~
  - (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 **or commitments** by a WTO member under Article XXVIII of the GATT 1994 **or Article XXI of the GATS**, where no compensatory adjustments have been agreed **and, as regards services, compensatory adjustments are not made in conformity with the findings of the arbitration pursuant to Article XXI of the GATS.**
- ~~(da) in the event of the adoption by a third country of commercial policy measures that threaten or impair the commercial interests of the Union or jeopardise the Union's strategic autonomy, and constitute a clear breach of international law or a clear violation of its trade obligations towards the Union, provided that the Union has appropriately challenged these measures at the WTO or in front of the relevant dispute settlement body.~~

#### *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;

(bb) where measures are taken to restrict the trade with a third country in situations under Article 3(aa) or Article 3(bb) ~~or Article 3(da)~~, the level of such measures shall not exceed be commensurate to the nullification or impairment of the Union's commercial interests caused by the measures of that third country ~~and, to the extent possible, provide relief to the Union sectors affected;~~

(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 ~~or commitments~~ are ~~modified or~~ withdrawn in the trade with a third country in connection with Article XXVIII of the GATT 1994 and the related Understanding (8) (5), ~~or Article XXI of the GATS and the related implementing procedures~~ they shall be substantially equivalent to the concessions ~~or commitments~~ modified or withdrawn by that third country, in accordance with the terms established in Article XXVIII of the GATT 1994 and the related Understanding ~~or Article XXI of the GATS and related implementing procedures~~.

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;

(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 4a~~

#### ~~Request by the European Parliament or Member States~~

~~1. The European Parliament and/or the Council may ask the Commission to adopt or take appropriate steps to adopt the implementing acts referred to in Article 4.~~

~~2. If the European Parliament and/or the Council decides to make use of the possibility referred to in paragraph 1, it shall supply the Commission with any evidence of cases as referred to in Article 3 that nullifies or impairs the commercial interests of the Union.~~

---

<sup>(8)</sup> Understanding "Interpretation and Application of Article XXVIII".

~~3. After receiving a request, the Commission shall inform the European Parliament and the Council without delay of how it intends to follow up on the request.~~

#### 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;

~~(ba) the suspension of commitments or other obligations regarding trade in the field of services or with respect to trade-related intellectual property rights, and the imposition of restrictions on trade in services or on the protection of intellectual property rights or their commercial exploitation, in relation to right-holders who are nationals of the third country concerned;~~

~~(bb) the suspension of obligations regarding trade-related aspects of intellectual property rights;~~

- (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.

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.

### 3. Measures adopted pursuant to paragraph 1(ba) shall:

[Note recital to be added:

“Recalling that measures to be adopted pursuant to this regulation relate specifically to international trade, in that they are essentially intended to govern such trade and have direct and immediate effects on it and, therefore, fall within the scope of the Union’s exclusive competence pursuant to Article 207 of the Treaty on the Functioning of the European Union (Court of Justice, Opinion 2/15, para. 36)” ]

- (a) be subject to an information gathering exercise pursuant to Article 9(1a);
- (b) be imposed, in the same sector or sectors as the nullification or impairment has been found, unless the application of the conditions provided for in paragraph 3 of Article 22 of the WTO Dispute Settlement Understanding mean that measures should be imposed in other sectors or with respect to other WTO agreements or commitments in other trade agreements;
- (c) subject to paragraph (b), when selecting measures, the Commission shall prioritise measures:
  - (i) relating to trade in services requiring an authorisation with Union-wide validity, based on secondary legislation, or the protection or commercial exploitation of intellectual property rights granted on a Union-wide basis and valid throughout the Union; or, where no such measures are available,
  - (ii) relating to other services or intellectual property rights in areas where extensive Union legislation exists; or, where no such measures are available,
  - (iii) which the information gathering exercise conducted pursuant to Article 9(1a) has demonstrated would not impose a disproportionate burden on the administration of relevant national regulations.
- (d) be adjusted, if necessary, by means of an implementing act pursuant to Article 4(1), where, after a review conducted pursuant to Article 9(1a) the Commission concludes that the measures are of insufficient effectiveness or impose an unreasonable burden on the administration of relevant national regulations. Such review by the Commission shall be first conducted six months after the application of the measures and in intervals of twelve months thereafter;
- (e) be subject to an evaluation report, six months after their termination and based inter alia on stakeholder input, which shall examine their effectiveness and operation, and draw possible conclusions for future measures.

### *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.

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.

**3. Regarding trade-related intellectual property rights, the term “nationals” shall be understood in the same sense as it is used in the paragraph 3 of Article 1 of the WTO Agreement on Trade-Related Aspects of Intellectual Property Rights.**

#### *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 **the withdrawal or** modification of concessions **or commitments** by a WTO member under Article XXVIII of the GATT 1994 **or Article XXI of the GATS**, 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).

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, **or as regards intellectual property rights**, 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.

**1a. In circumstances where it is envisaged to adopt measures affecting trade in services or the protection or commercial exploitation of intellectual property rights, the Commission shall provide information as to the possible measures it considers adopting and in addition seek information on:**

- (a) the impact of such measures on third country service providers or right-holders who are nationals of the third country concerned and on EU competitors, users or consumers of such services or intellectual property rights holders ;**

(b) the interaction of such measures with relevant Member State regulations;

(c) the administrative burden which may be occasioned by such measures.

In conducting its analysis, the Commission shall take into account information provided by Member State authorities. The Commission shall provide this analysis to Member States when they are called to examine measures pursuant to Article 8.

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.

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, [COM: By 1 March 2025 at the latest] [Council: As soon as practical after [the date of entry into force of this amending regulation], but no later than three[two] years after that date,] [EP: At the earliest opportunity after [the date of entry into force of this amending regulation], but no later than two years after that date,] the Commission shall review the scope of this Regulation taking into account in particular [COM and Council: the amendments to the scope having effect from [date of entry into force of this amending 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. That review shall include proposals to strengthen the enforcement of sustainable development commitments.~~

~~[EP: 2. Notwithstanding In acting pursuant to 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~~
- ~~(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.~~

~~[Council: 2. In acting pursuant to paragraph 1, the Commission shall undertake a review aimed at envisaging under this Regulation additional commercial policy measures suspending concessions or other obligations in other the fields such as of trade in services and trade related intellectual property rights. The Commission shall examine, inter alia, the following aspects:~~

- ~~(a) international trade and investment developments including with regard to the suspension of other obligations under the General Agreement on Tariffs and Trade 1994 (GATT 1994) than the ones covered by this Regulation, of obligations under the General Agreement on Trade in Services (GATS), the Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS), the Agreement on Government Procurement, free trade agreements or other actions affecting international trade and investment;~~
- ~~(b) developments within the Union with regard to the adoption of common rules on services sectors and such developments with regard to trade related intellectual property rights, public procurement and other fields, taking into account the possible interaction between the additional commercial policy measures and relevant national laws of the Member States;~~
- ~~(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~~
- ~~(e) implications for service providers operators present in the Union at the time of adoption of implementing acts under this Regulation.}~~

## *Article 11*

### Amendments to other acts

In Article 13 of Regulation (EC) No 3286/94, paragraph 3 is replaced by the following:

"3. Where the Union, having acted in accordance with Article 12(2), has to take a decision on the measures of commercial policy to be adopted pursuant to Article 11(2)(c) or pursuant to Article 12, it shall act, without delay, in accordance with Article 207 of the Treaty on the Functioning of the European Union and, as

appropriate, Regulation (EU) No 654/2014 of the European Parliament and of the Council <sup>(6)</sup> or any other applicable procedures.

## *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.

Done at Brussels, 15 May 2014.

*For the European Parliament*

*The President*

M. SCHULZ

*For the Council*

*The President*

D. KOURKOULAS

---

### 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.

### **Statement by the Commission**

**The Commission welcomes the adoption of the Regulation of the European Parliament and of the Council amending Regulation 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 Declaration made upon the adoption of Regulation 654/2014 as well as this Declaration.**

**When preparing draft implementing acts affecting trade in services or trade-related 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 Commissions attention, shared with Member States and are duly taken into account in the possible adoption of measures. In those consultations, the Commission shall 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 shall 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 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 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 shall 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 and 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 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.

#### Commission declaration (cluster 2)

The Commission takes note of the Member States' concerns of the Parliament and Member States as to the practices of certain third countries to seek to coerce the EU and/or its Member States to take or withdraw particular policy measures. The Commission shares the view that such practices raise significant concerns. The Commission confirms its intention to further examine possible measures which could be adopted in order to dissuade or offset such actions. The Commission intends to continue its assessment and on the basis of that assessment, taking into account all relevant circumstances, ~~decide whether it is appropriate to adopt a report on these matters which may be combined with~~ adopt a legislative proposal providing for a mechanism allowing to dissuade or offset such actions in a manner consistent with international law. As announced in the Letter of Intent of the President of the Commission to the President of the Parliament and President in office of the Council of 16 September 2020 the Commission shall adopt the proposal no later than the end of 2021. It shall do so within a year of the adoption of the revisions of the Enforcement Regulation.

[changes from draft declaration in 4 column document]

#### Commission Declaration (cluster 3)

Upon the adoption of the Regulation in 2014, the Commission committed to an effective communication and exchange of views with the European Parliament and the Council on trade disputes that may lead to the adoption of measures under the Regulation, and on enforcement actions in general. Mindful of the overarching objective of effective and efficient enforcement of Union's rights under the Union's international trade agreements, the Commission will continue to promote and streamline its interactions with the European Parliament and the Council to the mutual benefit.

In particular, the Commission undertakes to examine, as part of its enhanced enforcement monitoring system, alleged violations of the Union's international trade agreements when raised by the Parliament, its Members, or its Committees, or by the Council on the understanding that such requests be accompanied by supporting evidence. The Commission will keep the Parliament and the Council informed of the output of its enhanced enforcement work.

The Commission will continue to 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. In this context, the Commission will continue its reporting practice by providing periodically a state of play on all pending disputes and instant information for major developments in relation to disputes



at the same time such information is shared with Member States. This reporting and information sharing will take place through the responsible committees in the Council and in the Parliament.

At the same time, the Commission will continue keeping the Parliament and the Council regularly informed of international developments that may lead to situations requiring the adoption of measures under the Regulation.

Finally, the Commission reaffirms its commitments to promptly transmit to the Parliament and to the Council draft implementing acts that it submits to the committee of Member States as well as final draft implementing acts following the delivery of opinions in the committee. This is managed via the comitology register.

#### Cluster 4

##### Declaration of the Parliament, Council and Commission

The Union remains committed to a multilateral approach to international dispute settlement, rules-based trade, and international cooperation to achieve the Sustainable Development Goals of the United Nations. The Union ~~insists on the primacy of international trade law, as administered by the WTO and enforced under Article 23 of the WTO Agreement,~~ and will cooperate in all endeavours aiming to reform the WTO Dispute Settlement Mechanism which can ensure the effective functioning of the WTO's Appellate Body.

[original text from EP amendments]

##### Declaration of the Commission

In deploying the enhanced enforcement system, the Commission will pay equal attention to alleged breaches of the trade and sustainable development provisions of EU trade agreements as it pays to alleged breaches of market access systems. The processing of alleged breaches of trade and sustainable provisions will be fully integrated into the system. The Commission will prioritise those cases which are particularly serious in terms of their effect on workers or the environment in a trade context, which have systemic importance and which are legally sound.

##### Commission declaration on International Law (unchanged from version in 4 column document)

###### 1. 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 the 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.

---