# Exercise of the Union's rights for the application and enforcement of international trade rules

2012/0359(COD) - 18/12/2012 - Legislative proposal

PURPOSE: to propose a new framework to enhance the EU's ability to enforce its rights in the international trading system.

PROPOSED ACT: Regulation of the European Parliament and of the Council.

BACKGROUND: 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.

The Union may be called on to take unilateral measures to enforce and defend its rights and interests under international trade agreements. This is the case under the dispute settlement rules of the World Trade Organisation (WTO), as well as under bilateral or regional dispute settlement mechanisms.

**The Union currently does not have a common legislative framework** to enforce its rights under international trade agreements. However, it is essential that the Union possesses 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 restrictive trade 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.

Prior to the entry into force of the Lisbon Treaty, the Union approached enforcement in an ad hoc manner in the form of Regulations adopted by the Council on the basis of a Commission proposal. **After the entry into force of the Treaty of Lisbon, the Council and the European Parliament are co-legislators** under the ordinary legislative procedure in relation to the measures defining the framework for implementing the common commercial policy. Enforcement of rights under international trade agreements is a **typical executive function** that may require adopting and implementing measures within strict deadlines. It is appropriate for the Council and the European Parliament to establish a clear and predictable framework for the adoption of any such acts.

The present proposal reflects the Union's priority to enforce effectively its trade rights. This objective was set out in the Commission Communication on "Trade, growth and world affairs" and endorsed in the Council conclusions of 21 December 2010.

IMPACT ASSESSMENT: no impact assessment was carried out.

LEGAL BASIS: Article 207 of the Treaty on the Functioning of the European Union (TFEU). The Regulation must be adopted at Union level. The common commercial policy is an exclusive competence of the Union.

CONTENT: this draft Regulation proposes the **creation of a common legislative framework to enforce the Union's rights under international trade agreements**, in line with the Treaty of Lisbon. It lays down rules and procedures in order to ensure an effective exercise of the Union's rights to suspend or withdraw concessions or other obligations under international trade agreements, with the aim of:

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- responding to breaches by third countries of international trade rules which affect the interests of the Union, with a view to seeking a satisfactory solution;
- rebalancing concessions or other obligations in the trade relations with third countries, when the import treatment accorded to goods from the Union is altered.

Its objective is **efficient and swift implementation** with a view to safeguarding the Union's interest. Accordingly, on the basis of Article 207 of the TFEU, it proposes to empower the Commission to adopt, suspend, modify or terminate implementing acts to enforce the Union's rights within the structure of the Treaty of Lisbon, i.e. in accordance with Article 291 of the TFEU. The scope of the Regulation extends to the adoption, suspension, modification and termination of implementing acts with regard to:

- enforcement of the Union's rights under binding multilateral and bilateral dispute settlement rules;
- rebalancing measures under multilateral and bilateral safeguard rules;
- rebalancing measures in cases of modifications by a third country of its concessions under Article XXVIII GATT 1994.

**Conditions and criteria**: implementing acts shall respect the rule that the level of countermeasures should not exceed the level of nullification and impairment, generally intended as the adverse impact on the Union resulting from the third country measure, as defined in the relevant agreement.

In determining the scope of the implementing act to be adopted, the Commission shall also rely on various criteria, such as: (i) the effectiveness of the measures in inducing compliance of third countries with international trade rules; (ii) the potential of the measures to provide relief to economic operators within the Union affected by third country measures; (iii) availability of alternative sources of supply for the products concerned, in order to avoid or minimise any negative impact on downstream industries or final consumers within the Union.

**Types of measures**: under the present draft Regulation, the Commission may adopt the following types of commercial policy measures: customs duties, quantitative restrictions on imports or exports of goods, and measures in the area of **public procurement**.

Due to the particularities of public procurement, in particular the existence of an administrative procedure that regulates and determines access to specific calls for tenders, it is possible to envisage action as regards the procurement of both goods and services. In this regard, the type of commercial policy measures that may be enacted concern the exclusion from public procurement of tenders the total value of which represents more than 50% of goods or services originating in the third country concerned.

**A review clause** provides that the Commission shall assess the operation of this Regulation three years after the first instance of its implementation occurred. The Commission shall issue a report and, if the circumstances so warrant, may propose appropriate measures to improve the Regulation’s efficiency. In this context, consideration can be given to the range of commercial policy measures under the Regulation such as trade in services and intellectual property rights, in addition to goods.