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

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This report concerns 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. It provides the rules and procedures to ensure an effective and timely exercise of the European Union’s rights under international trade agreements.

The Enforcement Regulation enables the European Union to suspend or withdraw obligations under the World Trade Organization (WTO) Agreement and other international trade agreements, including regional and bilateral agreements following the adjudication of trade disputes under respective agreements.

The suspension or withdrawal of obligations can lead to EU commercial policy measures including (i) the suspension of tariff concessions and the imposition of new or increased customs duties; (ii) the introduction or increase of quantitative restrictions on imports of goods through quotas, import or export licences or other measures; and (iii) the suspension of concessions regarding goods, services or suppliers in the area of public procurement.

Situations in which the Regulation may be applied

The Enforcement Regulation provides that the EU is entitled to apply countermeasures only in three situations:

(1) Following a binding adjudication of a trade dispute in favour of the EU

In the period subject to review, no such case occurred, however, following the adoption of the Appellate Body report on compliance in the ongoing Boeing dispute at the WTO in April 2019, which confirmed that the United States’ subsidies to Boeing continue to cause significant harm to Airbus, the Commission launched a public consultation on a preliminary list of products from the United States on which the Union may take countermeasures. WTO arbitration on the level of countermeasures is currently ongoing. Public consultations are the first step towards the imposition of commercial policy measures under the Enforcement Regulation.

As is well known, the WTO Appellate Body is in a crisis situation. The Regulation has been designed, as far as the WTO is concerned, on the premise of a fully functioning dispute settlement mechanism, including WTO Appellate Body review, which leads to a final and binding adjudication. Over the last two years, this certainty has come under increasing threat by the blockage of the appointment of new Appellate Body members. The WTO Appellate Body cannot work on appeals with fewer than three members. As of 11 December 2019, the number of Appellate Body members is down to one. Upcoming panel reports can then be appealed “into the void”, which would deprive the parties of a definitive, binding and enforceable decision.

As the Enforcement Regulation can only be used following binding adjudication, the objective of the Regulation, which is to equip the EU with the instruments necessary to react effectively and swiftly to illegal measures of third countries and to protect the EU’s economic interests, cannot be achieved. This gap needs to be addressed and the Regulation updated so as to face these challenges.

(2) Rebalancing measures in response to a third country’s safeguard

So far, the Regulation has been used once for this purpose, namely in response to the import duties on steel and aluminium imposed by the United States in 2018. The EU introduced rebalancing measures in the form of additional tariffs on a number of products imported from the US4. Procedurally, the adoption of the implementing act imposing rebalancing measures took in total two months, which was the deadline imposed by the WTO Agreement. Owing to the Enforcement Regulation, the EU was able to swiftly respond to the US safeguard measures and defend the EU's economic interests.

(3) Modification of concessions under Article XXVIII of the GATT 1994

In the reviewing period, no such case occurred. The regulation may nevertheless have played a role in this area because the mere existence of the Regulation signals to other WTO members that the EU is capable of availing itself of its rebalancing rights under Article XXVIII if no compensation is agreed, for which a strict deadline applies as well.

Need to review the scope of the Regulation

The Commission considered that although limited, the practice has shown that the EU can react swiftly and effectively, thanks to the existence of the Regulation. Beyond the Regulation's application so far, the mere existence of the Regulation is having an important impact, as it is sending a strong message of the EU's ability to defend its rights.

The emerging challenges surrounding the institutional crisis at the WTO in relation to dispute settlement as well as possible weaknesses of dispute resolution under other international trade agreements raise concerns as to the effectiveness of the Regulation as currently set up.

The Commission therefore considers it necessary to amend the scope of the situations in which the Enforcement Regulation can be used, so as to ensure that the EU can effectively defend its economic interests also in the future. Accordingly, the report on the review is now presented together with a legislative proposal for the amendment of the Regulation. In line with the proposal for amendment, the Commission will continue to monitor the overall use and utility of the Regulation.