

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))

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
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,			
		<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,			

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Acting in accordance with the ordinary legislative procedure,			
Whereas:			
(1) Regulation (EU) No 654/2014 of the European Parliament and of the Council ¹ 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 Union¹ provided clarity regarding the question of competences covered by comprehensive trade agreements. That opinion clarifies, inter alia, that provisions covered by Trade 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			

¹ Regulation (EU) No 654/2014 of the European Parliament and of the Council of 15 May 2014 concerning the exercise of the Union's rights for the application and enforcement of international trade rules 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).

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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.			
		<p><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 Regulation (EU) No 654/2014. The Commission should make proposals to strengthen the enforcement of sustainable development commitments.</i></p>	
<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>			

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<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 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</i></p>	

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		<i>order to ensure the appropriate functioning of the WTO's Appellate Body.</i>	

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		<p><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></p>	
<p>(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.</p>			
		<p><i>(5b) 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></p>	
<p>(6) In the face of blockage of dispute settlement, the Union will be unable to enforce international trade agreements. Therefore, it is appropriate to extend the scope of Regulation (EU) No 654/2014 to such situations.</p>			

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<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><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</i></p>	

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		<i>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>	
(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.			
	<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</u>		

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	<u>and when the developments in other fields support an 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 renewed for another five-year period and should <u>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.	
(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:			
		<i>(-1) in Article 1, point (b) is replaced by the following:</i>	
		(b) rebalancing concessions or other obligations in the trade relations with third countries, when the treatment accorded to	

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		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>	
		(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;	Enumeration not ideal and not exhaustive. Better formulation: “concessions or other obligations” means concessions, commitments or other obligations or benefits in the field of trade in goods or services, or concerning trade-related aspects of intellectual property rights, that the Union has committed itself to applying ...]

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(1) Article 3 is amended as follows:			
(a) the following point (aa) is inserted:			
<p><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></p>			
(b) the following point (bb) is inserted:			
<p><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></p>		<p><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 delaying the proceedings or is not taking the steps that are necessary for a dispute settlement procedure to function;”</i></p>	

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		<i>(1a) in Article 3, point (d) is replaced by the following:</i>	
		(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.	<p>Formulation is technically not correct enough (because under GATS non-agreement is not sufficient for the right to retaliate).</p> <p>["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 GATS."]</p>
		<i>(1b) in Article 3, the following point is added:</i>	
		<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 body.</i>	
(2) In Article 4 (2), the following point			

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(bb) is inserted:			
<p>“(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;”</p>		<p>(bb) where measures are taken to restrict the trade with a third country in situations under Article 3(aa), Article 3(bb) or Article 3[(da)], such measures shall 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;”</p>	<p>Marker: it would be ideal to make more precise: “shall be commensurate”:</p> <p>“where measures are taken to restrict the trade with a third country in situations under Article 3(aa), Article 3(bb) or Article 3[(da)], the level of such measures shall not exceed the level of nullification or impairment of the Union’s commercial interests caused by the measures of that third country;”</p>
		<p>(2a) in Article 4, paragraph 2, point (d) is replaced by the following:</p>	
		<p>(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 Understanding², 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</p>	

² Understanding "Interpretation and Application of Article XXVIII".

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		<i>GATS and the related implementing procedures.</i>	
		<i>(2b) the following article shall be inserted :</i>	
		<i>Article 4a</i>	
		<i>Request by the European Parliament and/or the Council</i>	
		<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>	
		<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>	
		<i>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.</i>	
		<i>(2c) in Article 5(1), the following point is inserted:</i>	

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		<i>(ba) the suspension of commitments or other obligations in the field of services;</i>	
		<i>(2d) in Article 5(1), the following point is inserted:</i>	
		<i>(bb) the suspension of obligations regarding trade-related aspects of intellectual property rights;</i>	
		<i>(2e) in the first subparagraph of Article 7(2), point (c) is replaced by the following:</i>	
		(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>	
		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	

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		communication means, indicating the period within which input is to be submitted. The Commission shall take the input received into account.	
(3) Article 10 is amended as follows:			
(a) paragraph 1 is replaced by the following:			

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<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>“By 1 March 2025 at <u>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,</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. <i>That review shall include proposals to strengthen the enforcement of sustainable development commitments.</i></p>	
<p>(b) paragraph 2 is amended as follows:</p>		<p><i>deleted</i></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”.³</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 <u>other the fields such as</u> of trade in services <u>and trade-related intellectual property rights.</u>”</p>		
	<p><u>(ii) in the first subparagraph of paragraph 2 letter (a) is replaced by the</u></p>		

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

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	<u>following:</u>		
	<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>		
	<u>(iii) in the first subparagraph of paragraph 2 letter (b) is replaced by the following:</u>		

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	<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> .			

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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: center;"><u>ANNEX</u></p> <p style="text-align: center;"><u>Statements by the Commission</u></p> <p>1. Commission declaration on compliance with international law</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”), as long as the Appellate Body is unable to fully resume its functions in accordance with Article 17 of the DSU.</p>		

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	<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 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>2. Commission declaration on other possible measures</p> <p>The Commission takes note of Member States' concerns as to the practices of certain</p>		

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	<p>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 international law. It shall do so within a year of the adoption of the revisions of the Enforcement Regulation.</p> <hr style="width: 20%; margin-left: auto; margin-right: auto;"/>		