EUROPEAN
COMMISSION

Brussels, 12.12.2019
COM(2019) 639 final

REPORT FROM THE COMMISSION TO THE EUROPEAN PARLIAMENT AND THE COUNCIL

Review of the scope of the Regulation No 654/2014 of the European Parliament and of the Council of 15 May 2014

REPORT FROM THE COMMISSION TO THE EUROPEAN PARLIAMENT AND THE COUNCIL

Review of the scope of the Regulation No 654/2014 of the European Parliament and of the Council of 15 May 2014

1. INTRODUCTION

This report concerns Regulation (EU) No 654/2014 of the European Parliament and of the Council of 15 May 2014 (the Enforcement Regulation)[1], which 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 agreement. It also empowers the Commission to rebalance obligations in accordance with Article 8 of the WTO Agreement on Safeguards or with provisions on safeguards in other international agreements, and to respond to modifications of concessions applied by other WTO members as provided for in Article XXVIII of the GATT.

The suspension or withdrawal of obligations can lead to EU commercial policy measures enacted through an implementing act following the examination procedure. These measures include (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.

2. REVIEW REQUIREMENT

In Article 10 of the Enforcement Regulation, the European Commission was tasked to review the scope of the Regulation, in particular the commercial policy measures that may be adopted, and its implementation, and to report its findings to the European Parliament and the Council. Following the initial review (Article 10(2) of the Regulation), which took place in July 2017, the review pursuant to Article 10(1) of the Regulation was scheduled for 18 July 2019.

At the time the review was conducted, it emerged that there was a need to amend the Regulation. Accordingly, the report on the review is now presented together with a legislative proposal for the amendment of the Regulation.

[1] Regulation (EU) No 654/2014 of the European Parliament and of the Council of 15 May 2014 concerning the exercise of the Union's rights for the application and enforcement of international trade rules (OJ L 189 27.6.2014, p. 50).

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

3.1. Scope of the Regulation

Article 3 of the Enforcement Regulation provides for situations in which the Enforcement Regulation applies and the EU has the right to apply countermeasures. The EU can apply these only (1) following a binding adjudication of a trade dispute, in favour of the EU, (2) for the purpose of EU rebalancing measures in reaction to a safeguard measure imposed by another country as foreseen under applicable international trade rules, or (3) when a WTO member modifies or withdraws its concessions under Article XXVIII of the GATT 1994 and no compensatory adjustment is agreed.

3.1.1. Following a binding adjudication of trade dispute in favour of the EU

The first situation in which the Enforcement Regulation can be applied is when a dispute settlement procedure in the WTO or under other international trade agreements resulted in binding adjudication of the trade dispute, and gives rise to an EU right to suspend obligations because of non-implementation by the losing party.

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[2] 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[3] 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.

While the EU developed contingency measures in the form of an "interim arrangement", which aims at replicating the WTO appellate mechanism through the arbitration proceedings provided under Article 25 of the WTO Dispute Settlement Understanding, this arrangement is not automatic and the EU has no guarantee that the other party will agree to it.

The review of the scope of the Enforcement Regulation concerning other international trade agreements identified another challenge. A similar situation of a blocked dispute settlement may arise also under other trade agreements, including regional and bilateral

---

[2] United States — Measures Affecting Trade in Large Civil Aircraft — Second Complaint (DS353).

[3] WTO Boeing dispute: EU issues preliminary list of U.S. products considered for countermeasures; https://ec.europa.eu/commission/presscorner/detail/fi/ip_19_2162

ones, when a third country does not cooperate, as necessary, for binding dispute settlement mechanism to function. For instance, when the other party does not appoint an arbitrator and no fall-back mechanism remedies that situation, the EU would not be able to obtain a binding ruling that can be enforced.

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.

3.1.2. Rebalancing measures in response to a third country's safeguard

The second situation in which the Enforcement Regulation can be applied covers rebalancing measures when a third country imposes a safeguard measure without agreeing with the EU on compensation.

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 US[4]. 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. It can therefore be concluded that the Enforcement Regulation proved to be of great utility and a crucial part of the EU's reaction to the US steel and aluminium measures.

3.1.3. Modification of concessions under Article XXVIII of the GATT 1994

The third situation for the application of the Enforcement Regulation is another WTO member's modification of concessions under Article XXVIII of the GATT 1994 without having agreed on compensation with the EU. 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.

3.2. Commercial Policy measures and implementation so far

Article 5 of the Enforcement Regulation provides a list of countermeasures, so called commercial policy measures, which can be used when the EU has the right to react to trade barriers of the other party. The list provides for three types of EU measures, namely (a) the suspension of tariff concessions and the imposition of new or increased customs duties; (b) the introduction or increase of quantities restrictions on imports or exports of goods; and (c) the suspension of concessions in the area of public procurement.

[4] These measures were introduced through Commission Implementing Regulation (EU) 2018/724 of 16 May 2018 on certain commercial policy measures concerning certain products originating in the United States of America (OJ L 122, 17.5.2018, p. 14–28) and Commission Implementing Regulation (EU) 2018/886 of 20 June 2018 on certain commercial policy measures concerning certain products originating in the United States of America and amending Implementing Regulation (EU) 2018/724 (OJ L 158, 21.6.2018, p. 5–18).

The review of this part of the Regulation took particular account of the use of the Enforcement Regulation so far. In the case of US additional import duties on steel and aluminium, the EU replied to the US measures in the form of increased imports tariffs on a number of products imported from the US. The Regulation proved to be very effective both in terms of timing, namely by responding quickly to the US measure as well as meeting the tight WTO deadlines for the adoption of the implementing act and in respect of the range of measures that were at the EU's disposal. The EU imposed countermeasures in the amount of the total value of the US measures subject to rebalancing, with however the application of a significant part of the EU rebalancing measures postponed to three years after the introduction of the US duties, as required by Article 8.3 of the WTO Agreement on Safeguards. This re-established, to the extent permitted by the WTO Agreement, the balance of reciprocal concessions and benefits in the trade relations between the US and the EU. This also confirmed the effectiveness, suitability and importance of the Enforcement Regulation for the EU's ability to react and defend its economic interests in a prompt and efficient manner.

The other two types of measures allowed by the Enforcement Regulation – the introduction or increase of quantitative restrictions on imports or exports of goods and the suspension of concessions in the area of public procurement, have not yet been tested but remain available for future use.

Further to that, while the Regulation does not cover other possible measures, especially in the area of services or intellectual property, the Commission considers that its evaluation in its early assessment in 2017 pursuant to Article 10(2) of the Regulation remains valid at this stage. This review concerned specifically commercial policy measures that can be adopted under the Regulation. At this moment the Commission does not see the need and utility of an expansion of the Regulation in this respect. That is in particular the case because the review has shown that, for the time being, and based on the use of the Regulation to date, there is a sufficient range of effective measures at the disposal of the EU to protect the EU's interests also in future cases of application of the Regulation. It also needs to be recalled that two other types of measures are possible under the Regulation and so far have not been used, but remain available in the future. The Commission considers it important to continue monitoring and reviewing the range of measures available and their utility. Such review should be based on both future cases of application, and other developments that may have implications on the effectiveness of the Enforcement Regulation in the wider context.

4. CONCLUSION

In conclusion, while so far used only once, the Enforcement Regulation proved to be an essential instrument for protecting the EU's economic interests in reaction to trade barriers imposed by third countries. Although limited, the practice has shown that the EU can react swiftly and effectively, thanks to the existence of the Regulation. The Commission considers that, 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 limited use of the Regulation in the review period could, in part, be attributed to the procedural stage at which trade disputes were. The enforcement stage is a very advanced phase in a trade dispute, which only few disputes reach given that most are satisfactorily resolved much earlier.

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. In line with the proposal for amendment, the Commission will continue to monitor the overall use and utility of the Regulation.