



Council of the  
European Union

Brussels, 10 July 2014  
(OR. fr)

11674/14

---

---

**Interinstitutional File:**  
**2014/0174 (COD)**

---

---

CODIF 18  
CODEC 1589  
ECO 86  
INST 326  
MI 538  
PARLNAT 203

## PROPOSAL

---

From:	Secretary-General of the European Commission, signed by Mr Jordi AYET PUIGARNAU, Director
date of receipt:	10 June 2014
To:	Mr Uwe CORSEPIUS, Secretary-General of the Council of the European Union
No. Cion doc.:	COM(2014) 341 final
Subject:	Proposal for a REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL laying down Union procedures in the field of the common commercial policy in order to ensure the exercise of the Union's rights under international trade rules, in particular those established under the auspices of the World Trade Organization (codification)

---

Delegations will find attached document COM(2014) 341 final.

In accordance with the method approved on 10 June 2003, delegations are invited to send their comments on the codification proposal by 15 September 2014 to the following addresses:

SECRETARIAT.Codification@consilium.europa.eu **AND** sj-codification@ec.europa.eu

---

Encl.: COM(2014) 341 final



Brussels, 10.6.2014  
COM(2014) 341 final

2014/0174 (COD)

Proposal for a

**REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL**

**laying down Union procedures in the field of the common commercial policy in order to ensure the exercise of the Union's rights under international trade rules, in particular those established under the auspices of the World Trade Organization (codification)**

## EXPLANATORY MEMORANDUM

1. In the context of a people's Europe, the Commission attaches great importance to simplifying and clarifying the law of the Union so as to make it clearer and more accessible to citizens, thus giving them new opportunities and the chance to make use of the specific rights it gives them.

This aim cannot be achieved so long as numerous provisions that have been amended several times, often quite substantially, remain scattered, so that they must be sought partly in the original instrument and partly in later amending ones. Considerable research work, comparing many different instruments, is thus needed to identify the current rules.

For this reason a codification of rules that have frequently been amended is also essential if the law is to be clear and transparent.

2. On 1 April 1987 the Commission decided<sup>1</sup> to instruct its staff that all acts should be codified after no more than ten amendments, stressing that this is a minimum requirement and that departments should endeavour to codify at even shorter intervals the texts for which they are responsible, to ensure that their provisions are clear and readily understandable.
3. The Conclusions of the Presidency of the Edinburgh European Council (December 1992) confirmed this<sup>2</sup>, stressing the importance of codification as it offers certainty as to the law applicable to a given matter at a given time.

Codification must be undertaken in full compliance with the normal procedure for the adoption of acts of the Union.

Given that no changes of substance may be made to the instruments affected by codification, the European Parliament, the Council and the Commission have agreed, by an interinstitutional agreement dated 20 December 1994, that an accelerated procedure may be used for the fast-track adoption of codification instruments.

4. The purpose of this proposal is to undertake a codification of 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<sup>3</sup>. The new Regulation will supersede the various acts incorporated in it<sup>4</sup>; this proposal fully preserves the content of the acts being codified and hence does no more than bring them together with only such formal amendments as are required by the codification exercise itself.

---

<sup>1</sup> COM(87) 868 PV.

<sup>2</sup> See Annex 3 to Part A of the Conclusions.

<sup>3</sup> Entered in the legislative programme for 2014.

<sup>4</sup> See Annex I to this proposal.

5. The codification proposal was drawn up on the basis of a preliminary consolidation, in 22 official languages, of Regulation (EC) No 3286/94 and the instruments amending it, carried out by the Publications Office of the European Union, by means of a data-processing system. Where the Articles have been given new numbers, the correlation between the old and the new numbers is shown in a table set out in Annex II to the codified Regulation.

Proposal for a

**REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL**

**laying down ~~the~~ Union ~~and~~ procedures in the field of the common commercial policy in order to ensure the exercise of the ~~the~~ Union's ~~and~~ rights under international trade rules, in particular those established under the auspices of the World Trade Organization (codification)**

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty ~~of~~ on the Functioning of the European Union ~~and~~, and in particular Article ~~of~~ 207(2) ~~of~~ thereof,

Having regard to the proposal from the European Commission,

After transmission of the draft legislative act to the national Parliaments,

Having regard to the opinion of the European Economic and Social Committee<sup>5</sup>,

Acting in accordance with the ordinary legislative procedure,

Whereas:



- (1) Council Regulation (EC) No 3286/94<sup>6</sup> has been substantially amended several times<sup>7</sup>. In the interests of clarity and rationality, that Regulation should be codified.



- (2) The common commercial policy must be based on uniform principles, in particular with regard to commercial defence.

---

<sup>5</sup> OJ C [...], [...], p. [...].

<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> See Annex I.

---

↓ 3286/94 recital 4 (adapted)

- (3) It appears necessary to ☒ provide for Union ☒ procedures to ensure the effective exercise of the rights of the ☒ Union ☒ under international trade rules.
- 

↓ 3286/94 recital 5 (adapted)

- (4) International trade rules are primarily those established under the auspices of the ☒ World Trade Organization ☒ ('WTO') and laid down in the Annexes to the WTO Agreement, but they can also be those laid down in any other agreement to which the ☒ Union ☒ is a party and which sets out rules applicable to trade between the ☒ Union ☒ and third countries. It is appropriate to give a clear idea of the types of agreements to which the term 'international trade rules' refers.
- 

↓ 3286/94 recital 6 (adapted)

- (5) The abovementioned ☒ Union ☒ procedures should be based on a legal mechanism under ☒ Union ☒ law which ☒ is ☒ fully transparent, and ☒ ensures ☒ that the decision to invoke the ☒ Union's ☒ rights under international trade rules is taken on the basis of accurate factual information and legal analysis.
- 

↓ 3286/94 recital 7 (adapted)

- (6) This mechanism aims to provide procedural means to request that the ☒ Union ☒ institutions react to obstacles to trade adopted or maintained by third countries which cause injury or otherwise adverse trade effects, provided that a right of action exists, in respect of such obstacles, under applicable international trade rules.
- 

↓ 3286/94 recital 8 (adapted)

- (7) The right of Member States to resort to this mechanism should be without prejudice to their possibility to raise the same or similar matters through other existing ☒ Union ☒ procedures, and in particular before the committee established by Article ☒ 207(3) ☒ of the Treaty.
- 

↓ 3286/94 recital 9 (adapted)

- (8) Regard should be paid to the institutional role of the committee established by Article ☒ 207(3) ☒ of the Treaty in formulating advice for the institutions of the ☒ Union ☒ on all issues of commercial policy. Therefore, ☒ that ☒ committee should be kept informed of the development of individual cases, in order to enable it to consider their broader policy implications.
- 

↓ 3286/94 recital 11 (adapted)

- (9) It is appropriate to ☒ provide ☒ that the ☒ Union ☒ must act in compliance with its international obligations and, where such obligations result from agreements, maintain the balance of rights and obligations which it is the purpose of those agreements to establish.

---

↓ 3286/94 recital 12 (adapted)

- (10) It is also appropriate to provide that any measures taken under the procedures in question should also be in conformity with the Union's international obligations, as well as being without prejudice to other measures in cases not covered by this Regulation which might be adopted directly pursuant to Article 207 of the Treaty.
- 

↓ 3286/94 recital 13 (adapted)

- (11) The rules of procedures to be followed during the examination procedure provided for in this Regulation should also be laid down, in particular as regards the rights and obligations of the Union authorities and the parties involved, and the conditions under which interested parties may have access to information and may ask to be informed of the essential facts and considerations resulting from the examination procedure.
- 

↓ 3286/94 recital 14 (adapted)

- (12) In acting pursuant to this Regulation, the Union has to bear in mind the need for rapid and effective action through the application of the decision-making procedures provided for in this Regulation.
- 

↓ 3286/94 recital 15 (adapted)

- (13) It is incumbent on the Commission to act in respect of obstacles to trade adopted or maintained by third countries, within the framework of the Union's international rights and obligations, only when the interests of the Union call for intervention. When assessing such interests, the Commission should give due consideration to the views of all interested parties in the proceedings.
- 

↓ 37/2014 Art. 1 and Annex .4  
(adapted)

- (14) The implementation of the examination procedures provided for in this Regulation requires uniform conditions for the adoption of decisions on the conduct of those examination procedures and measures resulting therefrom. Those measures should be adopted in accordance with Regulation (EU) No 182/2011 of the European Parliament and of the Council<sup>8</sup>.
- (15) The advisory procedure should be used for the suspension of ongoing examinations given the effects of such measures and their sequential logic in relation to the adoption of measures.
- 

<sup>8</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 Member States of the Commission's exercise of implementing powers \(OJ L 55, 28.2.2011, p. 13\).](#)

- (16) The European Parliament and the Council should be kept informed of the developments under this Regulation, in order to enable them to consider their broader policy implications.
- (17) Moreover, in cases where an agreement with a third country appears to be the most appropriate means of resolving a dispute arising from an obstacle to trade, negotiations to this end should be conducted in accordance with the procedures established in Article 207 of the Treaty,

↓ 3286/94 (adapted)

HAVE ADOPTED THIS REGULATION:

### *Article 1*

#### ⊗ Subject matter ⊗

This Regulation ⊗ provides for Union ⊗ procedures in the field of the common commercial policy in order to ensure the exercise of the ⊗ Union's ⊗ rights under international trade rules, in particular those established under the auspices of the World Trade Organization ⊗ ('WTO') ⊗ which, subject to compliance with existing international obligations and procedures, are aimed at:

- (a) responding to obstacles to trade that have an effect on the market of the ⊗ Union ⊗, with a view to removing the injury resulting therefrom;
- (b) responding to obstacles to trade that have an effect on the market of a third country, with a view to removing the adverse trade effects resulting therefrom.

These procedures shall be applied in particular to the initiation and subsequent conduct and termination of international dispute settlement procedures in the area of common commercial policy.

### *Article 2*

#### **Definitions**

1. For the purposes of this Regulation, ⊗ the following definitions shall apply ⊗ :

- (a) 'obstacles to trade' ⊗ means ⊗ any trade practice adopted or maintained by a third country in respect of which international trade rules establish a right of action; such a right of action exists when international trade rules either prohibit a practice outright, or give another party affected by the practice a right to seek elimination of the effect of the practice in question;
- (b) 'the ⊗ Union's ⊗ rights' ⊗ means ⊗ those international trade rights of which ⊗ the Union ⊗ may avail itself under international trade rules; in this context, 'international trade rules' are primarily those established under the auspices of the WTO and laid down in the Annexes to the WTO Agreement, but they can also be those laid down in any other agreement to which the ⊗ Union ⊗ is a party and

which sets out rules applicable to trade between the  Union  and third countries;

- (c) ‘injury’  means  any material injury which an obstacle to trade causes or threatens to cause, in respect of a product or service, to a  Union  industry on the market of the  Union  ;
- (d) ‘adverse trade effects’  means  those  adverse effects  which an obstacle to trade causes or threatens to cause, in respect of a product or service, to  Union  enterprises on the market of any third country, and which have a material impact on the economy of the  Union  or of a region of the  Union  , or on a sector of economic activity therein; the fact that the complainant suffers from such adverse effects shall not be considered sufficient to justify, on its own, that the  Union  institutions proceed with any action;
- (e) ‘  Union  industry’  means :
- (i) all  Union  producers or providers:
- of products or services identical or similar to the product or service which is the subject of an obstacle to trade, or
  - of products or services competing directly with that product or service, or
  - who are consumers or processors of the product or consumers or users of the service which is the subject of an obstacle to trade;
- or
- (ii) all those producers or providers whose combined output constitutes a major proportion of total  Union  production of the products or services in question; however:
- when producers or providers are related to the exporters or importers or are themselves importers of the product or service alleged to be the subject of obstacles to trade, the term ‘  Union  industry’ may be interpreted as referring to the rest of the producers or providers,
  - in particular circumstances, the producers or providers within a region of the  Union  may be regarded as the  Union  industry if their collective output constitutes the major proportion of the output of the product or service in question in the Member State or Member States within which the region is located provided that the effect of the obstacle to trade is concentrated in that Member State or those Member States;
- (f) ‘  Union  enterprise’  means  a company or firm formed in accordance with the law of a Member State and having its registered office, central administration or principal place of business within the  Union  ,  that is  directly concerned by the production of goods or the provision of services which are the subject of the obstacle to trade;

- (g) ‘services’ means those services in respect of which international agreements can be concluded by the Union on the basis of Article 207 of the Treaty.

2. For the purposes of this Regulation, the notion of ‘providers of services’ in the context of both the term ‘Union industry’ as defined in paragraph 1(e), and the term ‘Union enterprise’ as defined in paragraph 1(f), is without prejudice to the non-commercial nature which the provision of any particular service may have according to the legislation or regulation of a Member State.

### *Article 3*

#### **Complaint on behalf of the Union industry**

1. Any natural or legal person, or any association not having legal personality, acting on behalf of a Union industry which considers that it has suffered injury as a result of obstacles to trade that have an effect on the market of the Union may lodge a written complaint.

2. The complaint shall contain sufficient evidence of the existence of the obstacles to trade and of the injury resulting therefrom. Evidence of injury shall be given on the basis of the illustrative list of factors indicated in Article 11, where applicable.

### *Article 4*

#### **Complaint on behalf of Union enterprises**

---

↓ 125/2008 Art. 1 (adapted)

1. Any Union enterprise, or any association, having or not legal personality, acting on behalf of one or more Union enterprises, which considers that such Union enterprises have suffered adverse trade effects as a result of obstacles to trade that have an effect on the market of a third country may lodge a written complaint.

---

↓ 3286/94 (adapted)

2. The complaint shall contain sufficient evidence of the existence of the obstacles to trade and of the adverse trade effects, resulting therefrom. Evidence of adverse trade effects shall be given on the basis of the illustrative list of factors indicated in Article 11, where applicable.

### *Article 5*

#### **Complaint procedures**

1. The complaint referred to in Articles 3 and 4 shall be submitted to the Commission, which shall send a copy thereof to the Member States.

2. The complaint may be withdrawn, in which case the procedure may be terminated unless such termination would not be in the interests of the  Union  .

---

↓ 37/2014 Art. 1 and Annex .4(1)  
(adapted)

3. Where it becomes apparent that the complaint does not provide sufficient evidence to justify initiating an investigation, the complainant shall be so informed.

The Commission shall inform the Member States  where it decides  that the complaint does not provide sufficient evidence to justify initiating an investigation.

---

↓ 3286/94 (adapted)

4. The Commission shall take a decision as soon as possible on the opening of a  Union  examination procedure following any complaint made in accordance with Articles 3 or 4. The decision shall be taken within 45 days of the lodging of the complaint.  That  period may be suspended at the request, or with the agreement, of the complainant, in order to allow the provision of complementary information which may be needed to fully assess the validity of the complainant's case.

#### *Article 6*

#### **Request by a Member State**

1. Any Member State may ask the Commission to initiate the procedures referred to in Article 1.

2.  The Member State  shall supply the Commission with sufficient evidence to support its request, as regards obstacles to trade and of any effects resulting therefrom. Where evidence of injury or of adverse trade effects is appropriate, it  shall  be given on the basis of the illustrative list of factors indicated in Article 11, where applicable.

3. The Commission shall notify the other Member States of the requests without delay.

---

↓ 37/2014 Art. 1 and Annex .4(2)  
(adapted)

4. Where it becomes apparent that the request does not provide sufficient evidence to justify initiating an investigation, the Member State shall be so informed.

The Commission shall inform the Member States  where it decides  that the  request  does not provide sufficient evidence to justify initiating an investigation.

---

↓ 3286/94 (adapted)

5. The Commission shall take a decision as soon as possible on the opening of a  Union  examination procedure following any  request  by a Member State made in accordance with  this  Article. The decision shall be taken within 45 days of the  request  .  That  period may be suspended at the request, or with the agreement, of the referring

Member State, in order to allow the provision of complementary information which may be needed to fully assess the validity of the case presented by the referring Member State.

---

↓ 37/2014 Art. 1 and Annex .4(3)  
(adapted)

#### Article 7

#### **Committee procedure**

1. The Commission shall be assisted by the Trade Barriers Committee ('the Committee'). That Committee shall be a committee within the meaning of Regulation (EU) No 182/2011.
2. Where reference is made to this paragraph, Article 4 of Regulation (EU) No 182/2011 shall apply.
3. Where reference is made to this paragraph, Article 5 of Regulation (EU) No 182/2011 shall apply.

#### ⊗ Article 8 ⊗

#### ⊗ **Information to the European Parliament and to the Council** ⊗

The Commission shall refer to the European Parliament and to the Council information provided pursuant to this Regulation, to allow them to consider any wider implications for the common commercial policy.

---

↓ 3286/94 (adapted)

#### Article 9

#### ⊗ **Union** ⊗ **examination procedure**

---

↓ 37/2014 Art. 1 and Annex . 4(4)  
(adapted)

1. Where it is apparent to the Commission that there is sufficient evidence to justify initiating an examination procedure and that it is necessary in the interest of the Union, the Commission shall:
  - (a) announce the initiation of an examination procedure in the *Official Journal of the European Union*; such announcement shall indicate the product or service and the countries concerned, give a summary of the information received, and provide that all relevant information is to be communicated to the Commission; it shall state the period within which interested parties may apply to be heard orally by the Commission in accordance with paragraph 5;
  - (b) officially notify the representatives of the country or countries which are the subject of the procedure, with whom, where appropriate, consultations may be held;

- (c) conduct the examination at Union level, acting in cooperation with the Member States.

The Commission shall inform the Member States  where it decides  that the complaint provides sufficient evidence to justify initiating an investigation.

---

↓ 3286/94 (adapted)

2.  Where  necessary, the Commission shall:

- (a) seek all the information it deems necessary and attempt to check this information with the importers, traders, agents, producers, trade associations and organisations, provided that the undertakings or organisations concerned give their consent;
- (b) carry out investigations in the territory of third countries, provided that the governments of the countries have been officially notified and  raised  no objection within a reasonable  time .

The Commission shall be assisted in its investigation by officials of the Member State in whose territory the checks are carried out, provided that the Member State in question so requests

3. Member States shall supply the Commission, upon request, with all information necessary for the examination, in accordance with the detailed arrangements laid down by the Commission.

4. The complainants and the exporters and importers concerned  and  the representatives of the country or countries concerned may:

- (a) inspect all information made available to the Commission except for internal documents for the use of the Commission and the administrations, provided that such information is relevant to the protection of their interests and not confidential within the meaning of Article 10 and that it is used by the Commission in its examination procedure; the persons concerned shall address a reasoned request in writing to the Commission, indicating the information required;
- (b) ask to be informed of the principal facts and considerations resulting from the examination procedure.

5. The Commission may hear the parties concerned. It shall hear them if they have, within the period prescribed in the notice published in the *Official Journal of the European Union* , made a written request for a hearing showing that they are a party primarily concerned by the result of the procedure.

6. The Commission shall, on request, give the parties primarily concerned an opportunity to meet, so that opposing views may be presented and any rebuttal argument put forward. In providing this opportunity the Commission shall take account of the wishes of the parties and of the need to preserve confidentiality. There shall be no obligation on any party to attend a meeting and failure to do so shall not be prejudicial to that party's case.

7.  Where  the information requested by the Commission is not supplied within a reasonable time or where the investigation is significantly impeded, findings may be made on the basis of the facts available.

8. When it has concluded its examination the Commission shall report to the Committee. The report  shall  be presented within five months of the announcement of initiation of the procedure, unless the complexity of the examination is such that the Commission extends the period to seven months.

#### *Article 10*

### **Confidentiality**

1. Information received pursuant to this Regulation shall be used only for the purpose for which it was requested.

---

↓ 37/2014 Art. 1 and Annex .4(5)

2. The Commission and the Member States, including the officials of either, shall not reveal any information of a confidential nature received pursuant to this Regulation, or any information provided on a confidential basis by a party to an examination procedure, without specific permission from the party submitting such information.

---

↓ 3286/94 (adapted)

Each request for confidential treatment shall indicate why the information is confidential and shall be accompanied by a non-confidential summary of the information or a statement of the reasons why the information is not susceptible of such summary.

3. Information  shall  be considered to be confidential if its disclosure is likely to have a significantly adverse effect upon the supplier or the source of such information.

4.  Where  it appears that a request for confidentiality is not warranted 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.

5. This Article shall not preclude the disclosure of general information by the  Union  authorities and in particular of the reasons on which decisions taken pursuant to this Regulation are based. Such disclosure  shall  take into account the legitimate interest of the parties concerned that their business secrets  shall  not be divulged.

#### *Article 11*

### **Evidence**

1. An examination of injury shall involve, where applicable, the following factors:

- (a) the volume of  Union  imports or exports concerned, notably where there has been a significant increase or decrease, either in absolute terms or relative to production or consumption on the market in question;

- (b) the prices of the  Union  industry's competitors, in particular in order to determine whether there has been, either in the  Union  or on third country markets, significant undercutting of the prices of the  Union  industry;
- (c) the consequent impact on the  Union  industry and as indicated by trends in certain economic factors such as: production, capacity  utilisation , stocks, sales, market share, prices (that is depression of prices or prevention of price increases which would normally have occurred), profits, return on capital, investment, employment.

2. Where a threat of injury is alleged, the Commission shall also examine whether it is clearly foreseeable that a particular situation is likely to develop into actual injury. In this regard, account may also be taken of factors such as:

- (a) the rate of increase of exports to the market where the competition with  Union  products is taking place;
- (b) export capacity in the country of origin or export, which is already in existence or will be operational in the foreseeable future, and the likelihood that the exports resulting from that capacity will be to the market referred to in point (a).

3. Injury caused by other factors which, either individually or in combination, are also adversely affecting  the Union  industry must not be attributed to the practices under consideration.

4. Where adverse trade effects are alleged, the Commission shall examine the impact of such adverse effects on the economy of the  Union  or of a region of the  Union  , or on a sector of economic activity therein. To this effect, the Commission may take into account, where relevant, factors of the type listed in paragraphs 1 and 2. Adverse trade effects may arise, *inter alia*, in situations in which trade flows concerning a product or service are prevented, impeded or diverted as a result of any obstacle to trade, or from situations in which obstacles to trade have materially affected the supply or inputs  , for example  parts and components or raw materials, to  Union  enterprises. Where a threat of adverse trade effects is alleged, the Commission shall also examine whether it is clearly foreseeable that a particular situation is likely to develop into actual adverse trade effects.

5. The Commission shall also, in examining evidence of adverse trade effects, have regard to the provisions, principles or practice which govern the right of action under relevant international rules referred to in Article 2(1)(a).

6. The Commission shall further examine any other relevant evidence contained in the complaint or in the  request  . In this respect, the list of factors and the indications given in paragraphs 1 to 5 are not exhaustive, nor can one or several of such factors and indications necessarily give decisive guidance as to the existence of injury or of adverse trade effects.

*Article 12*

**Termination and suspension of the procedure**

1. When it is found, as a result of the examination procedure conducted pursuant to Article 9, that the interests of the Union do not require any action to be taken, the procedure shall be terminated by the Commission acting in accordance with the examination procedure referred to in Article 7(3).

2. When, after an examination procedure conducted pursuant to Article 9, the third country or countries concerned take(s) measures which are considered satisfactory, and therefore no action by the Union is required, the procedure may be suspended by the Commission acting in accordance with the advisory procedure referred to in Article 7(2).

The Commission shall supervise the application of  those  measures, where appropriate on the basis of information supplied at intervals, which it may request from the third countries concerned and check as necessary.

Where the measures taken by the third country or countries concerned have been rescinded, suspended or improperly implemented or where the Commission has grounds for believing this to be the case or, where information  requested  by the Commission  pursuant to  the second subparagraph has not been  provided  , the Commission shall inform the Member States, and where necessary and, justified by the results of the investigation and the new facts available, any measures shall be taken in accordance with Article 14(2).

3. Where, either after an examination procedure conducted pursuant to Article 9, or at any time before, during or after an international dispute settlement procedure, it appears that the most appropriate means of resolving a dispute arising from an obstacle to trade is the conclusion of an agreement with the third country or countries concerned which may change the substantive rights of the Union and of the third country or countries concerned, the procedure shall be suspended by the Commission acting in accordance with the advisory procedure referred to in Article 7(2), and negotiations shall be carried out in accordance with the provisions of Article 207 of the Treaty.

*Article 13*

**Adoption of commercial policy measures**

1. Where it is found, as a result of the examination procedure, unless the factual and legal situation is such that an examination procedure may not be required, that action is necessary in the interests of the  Union  in order to ensure the exercise of the  Union's  rights under international trade rules, with a view to removing the injury or the adverse trade effects resulting from obstacles to trade adopted or maintained by third countries, the

appropriate measures shall be determined in accordance with the procedure  laid down  in Article 14.

2. Where the  Union's  international obligations require the prior discharge of an international procedure for consultation or for the settlement of disputes, the measures referred to in paragraph 3 shall only be decided on after that procedure has been terminated, and taking account of the results of the procedure. In particular, where the  Union  has requested an international dispute settlement body to indicate and authorise the measures which are appropriate for the implementation of the results of an international dispute settlement procedure, the  Union  commercial policy measures which may be needed in consequence of such authorisation shall be in accordance with the recommendation of such international dispute settlement body.

3. Any commercial policy measures may be taken which are compatible with existing international obligations and procedures, notably:

- (a) suspension or withdrawal of any concession resulting from commercial policy negotiations;
- (b) the raising of existing customs duties or the introduction of any other charge on imports;
- (c) the introduction of quantitative restrictions or any other measures modifying import or export conditions or otherwise affecting trade with the third country concerned.

4. The corresponding decisions shall state the reasons on which they are based and shall be published in the *Official Journal of the European  Union* . Publication shall also be deemed to constitute notification to the countries and parties primarily concerned.

↓ 37/2014 Art. 1 and Annex .4(7)  
(adapted)

#### Article 14

### Decision-making procedures

1. Where the Union, as a result of a complaint pursuant to Article 3 or Article 4, or of a  request  pursuant to Article 6, follows formal international consultation or dispute settlement procedures, decisions relating to the initiation, conduct or termination of such procedures shall be taken by the Commission.

The Commission shall inform the Member States  where it decides  to initiate, conduct or terminate formal international consultations or dispute settlement procedures.

2. Where the Union, having acted in accordance with Article 13(2), has to take a decision on the measures of commercial policy to be adopted pursuant to the third subparagraph of Article 12(2) or Article 13, it shall act, without delay, in accordance with Article 207 of the Treaty and, as appropriate, any  other  applicable procedures.

---

↓ 37/2014 Art. 1 and Annex .4(8)

*Article 15*

**Report**

The Commission shall include information on the implementation of this Regulation in its annual report on the application and implementation of trade defence measures presented to the European Parliament and to the Council pursuant to Article 22a of Council Regulation (EC) No 1225/2009<sup>9</sup>.

---

↓ 3286/94 (adapted)

*Article 16*

**General provisions**

This Regulation shall not apply in cases covered by other existing rules in the common commercial policy field. It shall operate by way of complement to:

- (a) the rules establishing the common organisation of agricultural markets and their implementing provisions, and
- (b) the specific rules adopted pursuant to Article ~~352~~ of the Treaty, applicable to goods processed from agricultural products.

It shall be without prejudice to other measures which may be taken pursuant to Article ~~207~~ of the Treaty, as well as to ~~Union~~ procedures for dealing with matters concerning obstacles to trade raised by Member States in the committee established by Article ~~207~~ of the Treaty.

---

↓ 356/1995 Art. 1 (adapted)

*Article 17*

~~Repeal~~

Regulation (EC) No ~~3286/94~~ is repealed.

References to the repealed Regulation shall be construed as references to this Regulation ~~and shall be read in accordance with the correlation table in Annex II~~.

---

<sup>9</sup> Council Regulation (EC) No 1225/2009 of 30 November 2009 on protection against dumped imports from countries not members of the European Community (OJ L 343, 22.12.2009, p. 51).

*Article 18*

**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,

*For the European Parliament*  
*The President*

*For the Council*  
*The President*