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INFORMATION NOTE

from:	General Secretariat
to:	Permanent Representatives Committee/Council
Subject:	Proposal for a Regulation 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 - Outcome of the European Parliament's proceedings (Strasbourg, 21 to 24 October 2013)

I. INTRODUCTION

The Rapporteur, Mr Niccolo RINALDI (ALDE-IT), presented a report consisting of 35 amendments (amendments 1-35) to the proposal for a Regulation, on behalf of the Committee on International Trade. The Greens/EFA political group tabled three further amendments (amendments 36-38).

II. DEBATE

The Rapporteur opened the debate and

- noted that the European Union is party to a series of Free Trade Agreements and can therefore be exposed to unfair commercial practices and infringements of rules which have been established at bilateral or multilateral level.
- stressed that the Union needs to implement a dissuasive framework of possible retaliatory measures which it can use if trade partners do not respect the rules. Those measures should include, inter alia, provisions for the services area as that sector is expanding in international trade.
- pointed out that the proposed Regulation comes very late. Up to now the Union does not have adequate possibilities to react, it could take it up to 31 months to react with dissuasive measures while the trade partners need only a few weeks. The proposed Regulation is therefore very welcome and will improve the Union's position in trade disputes.
- asked for a structured dialogue, the so-called "enforcement dialogue", between the Commission and the European Parliament, so that the Commission can react effectively and rapidly, under the democratic control of the Parliament.

Commissioner Neven MIMICA

- stressed that the proposed Regulation will strengthen the Union's position and credibility in international trade negotiations. The proposal is based on the principle of international trade law that countries can take corrective or retaliatory measures only when authorised or entitled by an international dispute settlement body.
- underlined that the proposal will provide for the much-needed procedure to streamline the enforcement of the Union's rights under international trade agreements. The proposal will establish a speedy and effective system under which practical measures will be taken.
- noted that the Commission intends to start using such corrective or retaliatory measures in areas where it has gained experience and is sufficiently confident about the design and the implementation of the envisaged measures.

- pointed out that the inclusion of services in retaliatory measures is not envisaged. The Commission is aware of the importance of services and has internally considered the inclusion. The complexity of the services area is such that the inclusion would create more problems than it resolves and would go against the main objectives of the proposal.
- stressed that the Commission will involve the European Parliament through the standard channels, and that it is aware of the interests of all stakeholders concerned by the measures. On the other hand, the Commissioner stressed that the proposal seeks to provide for a balanced mechanism that preserves the prerogatives of the Commission as an executive body, subject to political control of the European Parliament and the Council.

Speaking on behalf of the EPP political group, Mr Franck PROUST (EPP-FR):

- welcomed the proposal as a big step forward in the international trade policy of the European Union. It will enable the EU to defend itself against countries which do not respect the international trade law.
- stressed that it is important to be able to react by using retaliation measures by way of a delegated act instead of going through the long codecision procedure. The possibility to react quickly will also have a dissuasive effect as regards the Union's trade partners.
- thanked the Rapporteur for the excellent cooperation which led to overwhelming approval in the Committee for International Trade. He supported in particular the inclusion of the services sector into retaliation measures as certain countries only engage in trade in services.
- asked further for the inclusion of intellectual property rights in the scope of the proposal.
- noted that the information of the European Parliament and transparency needs to be improved.
- stressed that this report will be a good basis for trilogue negotiations with the Council.

Speaking on behalf of the S&D political group, Mr Georges Sabin CUTAS (S&D-PT):

- supported the Commission proposal and stressed that, with the entry into force of the Treaty of Lisbon, the European Parliament received new responsibilities in the area of international trade through the codecision procedure. But this procedure is slow and ineffective. Therefore decisions on non-compliance with international trade rules should now be taken by way of delegated acts in order to be able to react swiftly.

- noted that the Union should have practical methods in place for dispute settlements and, when needed, also in the area of services. He stressed that those measures, of course, would only be used in a manner compatible with the WTO dispute resolution mechanism.
- asked for the creation of a dialogue platform between the European Parliament and the Commission where information on cases and possible measures could be exchanged. This is very important for the Parliament, taking into account the possible impact of such measures on European industry.

III. VOTE

When it voted on 23 October 2013, the Parliament adopted 35 amendments (amendments 1-35) the text of which is annexed to this note.

The vote on the legislative resolution was postponed to a later session, thereby not closing the first reading. The matter was referred back to the Committee on International Trade, pursuant to Rule 57(2) of the European Parliament's Rules of Procedure.

Application and enforcement of international trade rules ***I

1. Amendments adopted by the European Parliament on 23 October 2013 on the proposal for a regulation 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(2012)0773 – C7-0415/2012 – 2012/0359(COD))¹

(Ordinary legislative procedure: first reading)

Amendment 1

Proposal for a regulation Title

Text proposed by the Commission

Proposal for a REGULATION 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

Amendment

Proposal for a REGULATION 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 **and amending Council Regulation (EC) No 3286/94**

Amendment 2

Proposal for a regulation Recital 2

Text proposed by the Commission

(2) 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 trade restrictive 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

Amendment

(2) 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 trade restrictive 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

¹ The matter was referred back to the committee responsible for reconsideration pursuant to Rule 57(2), second subparagraph (A7-0308/2013).

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. The Union should therefore adopt legislation defining the framework for exercising the Union's rights in certain specific situations.

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. The Union should therefore adopt legislation defining the framework for exercising the Union's rights in certain specific situations, ***and provide adequate resources to ensure that the resources available are efficiently used for those instruments.***

Amendment 3

Proposal for a regulation Recital 2 a (new)

Text proposed by the Commission

Amendment

(2a) The measures aimed at ensuring the effective exercise of the Union's rights should be so selected as to take into account their capacity to encourage the third countries concerned to respect not only the rules of international trade but also their capacity to bring relief to those economic operators and Member States that have been most affected by the trade restrictive measures taken by third countries. The measures taken pursuant to this Regulation should not restrict the Union's access to raw materials vital to European industries.

Amendment 4

Proposal for a regulation Recital 3

Text proposed by the Commission

Amendment

(3) The WTO and other, including regional or bilateral, dispute settlement mechanisms aim at finding a positive solution to any disputes arising between the Union and the other party or parties to those agreements. The Union should, nevertheless, suspend concessions or other obligations, in accordance with those dispute settlement rules, when other avenues to find a positive solution to a dispute have proven unsuccessful. Action by the Union in such

(3) The WTO and other, including regional or bilateral, dispute settlement mechanisms aim at finding a positive solution to any disputes arising between the Union and the other party or parties to those agreements. The Union should, nevertheless, suspend concessions or other obligations, in accordance with those dispute settlement rules, when other avenues to find a positive solution to a dispute have proven unsuccessful. Action by the Union in such

cases serves the purpose of inducing compliance of the third country concerned with the relevant international trade rules, in order to restore a situation of reciprocal benefits.

cases serves the purpose of inducing compliance of the third country concerned with the relevant international trade rules, in order to restore a situation of reciprocal benefits. ***The Union should always use the most efficient dispute settlement mechanism available.***

Amendment 5

Proposal for a regulation

Recital 4

Text proposed by the Commission

(4) Under the WTO Agreement on Safeguards, a WTO member proposing to apply a safeguard measure or seeking the extension of a safeguard measure should endeavour to maintain a substantially equivalent level of concessions and other obligations between it and the exporting members, which would be adversely affected by such a safeguard measure. Similar rules apply in the context of other, including regional or bilateral international trade agreements concluded by the Union. The Union should take rebalancing measures by suspending concessions or other obligations in cases where the third country concerned implements no ***satisfactory*** adjustments. Action by the Union in such cases serves the purpose of inducing the introduction of trade-enhancing measures by third countries in order to restore a situation of reciprocal benefits.

Amendment

(4) Under the WTO Agreement on Safeguards, a WTO member proposing to apply a safeguard measure or seeking the extension of a safeguard measure should endeavour to maintain a substantially equivalent level of concessions and other obligations between it and the exporting members, which would be adversely affected by such a safeguard measure. Similar rules apply in the context of other, including regional or bilateral international trade agreements concluded by the Union. The Union should take rebalancing measures by suspending concessions or other obligations in cases where the third country concerned implements no ***adequate and proportionate*** adjustments. Action by the Union in such cases serves the purpose of inducing the introduction of trade-enhancing measures by third countries in order to restore a situation of reciprocal benefits.

Amendment 6

Proposal for a regulation

Recital 5

Text proposed by the Commission

(5) Article XXVIII of the GATT 1994 and the related Understanding govern the modification or withdrawal of concessions established in the tariff schedules of WTO Members. WTO members affected by any such modification are entitled, under

Amendment

(5) Article XXVIII of the GATT 1994 and the related Understanding ***and Article XXI of the General Agreement on Trade in Services (GATS) and related procedures for its implementation*** govern the modification or withdrawal of concessions

certain conditions, to withdraw substantially equivalent concessions. The Union should adopt rebalancing measures in such cases, unless compensatory adjustments are agreed. Action by the Union would be aimed at inducing third countries to implement *trade-enhancing* measures.

and commitments established in the tariff schedules *and the schedule of specific commitments* of WTO Members. WTO members affected by any such modification are entitled, under certain conditions, to withdraw substantially equivalent concessions *or commitments*. The Union should adopt rebalancing measures in such cases, unless compensatory adjustments are agreed. Action by the Union would be aimed at inducing third countries to implement measures *restoring reciprocal advantages and enhancing trade*.

Amendment 7

Proposal for a regulation

Recital 6

Text proposed by the Commission

(6) *The Union should have* the possibility to enforce its rights in the area of government procurement *in view of the fact that* the WTO Agreement on Government Procurement *states that any dispute arising thereunder shall not result in the suspension of concessions or other obligations under any other covered agreement of the WTO*.

Amendment

(6) *It is essential for the Union to have* the possibility to *swiftly* enforce its rights in the area of government procurement *when a party fails to respect its commitments under* the WTO Agreement on Government Procurement *or under any bilateral or regional binding agreements. The Union's action should be aimed at ensuring the maintenance of a substantially equivalent level of concessions in the field of government procurement*.

Amendment 8

Proposal for a regulation

Recital 7

Text proposed by the Commission

(7) This Regulation should *focus on those measures where* the Union *has experience in their design and application*; the possibility to extend *the scope of this Regulation to the sectors of services and intellectual property rights* should be *assessed in due time with regard to the specificities of each area*.

Amendment

(7) This Regulation should *make it possible for the Union to establish a complete and effective framework to enable measures to be taken without delay. However,* the possibility to extend *its scope with new measures covering new trade areas, such as* intellectual property rights, should be *considered as part of a study carried out at the same time as the*

evaluation report on the functioning of this Regulation referred to in Article 10, and should be presented to the European Parliament .

Amendment 9

Proposal for a regulation Recital 9

Text proposed by the Commission

(9) The Commission should evaluate the functioning of this Regulation no later than **three** years after the first instance of **its implementation** with a view to assessing and, if necessary, improving its efficiency.

Amendment

(9) The Commission should evaluate the functioning of this Regulation no later than **five** years after the first instance of **adoption of an implementing act under this Regulation** with a view to assessing its implementation and, if necessary, improving its efficiency. **The Commission should include in its reports on the Europe 2020 Strategy an analysis of the relevance of this Regulation, particularly as regards its ability to remove barriers to trade.**

Amendment 10

Proposal for a regulation Recital 9 a (new)

Text proposed by the Commission

Amendment

(9a) The Commission should regularly inform the European Parliament when it intends to implement commercial policy measures pursuant to this Regulation. That information should entail a detailed description of the specific case and of the envisaged measures, of the damage incurred by Union industry, the justification for and the possible impact of the envisaged measures. After the measures have been taken, the Commission should inform the European Parliament of the actual impact of the measures.

Amendment 11

Proposal for a regulation

Recital 9 b (new)

Text proposed by the Commission

Amendment

(9b) When assessing the Union's general interest in respect of the adoption of enforcement measures, while pursuing a balanced approach, the Commission should take particular account of the situation of the Union's producers. The Commission should inform the European Parliament of how it has determined the Union's general interest on a case-by-case basis.

Amendment 12

Proposal for a regulation

Recital 10 a (new)

Text proposed by the Commission

Amendment

(10a) The Commission should keep the European Parliament regularly informed, particularly when the Union has referred a matter to a dispute settlement body. After each decision by a dispute settlement body authorising the Union to take measures, the Commission should appear before the European Parliament's committee responsible for international trade to give an account of its intention to take or withhold from taking such measures. If the Union decides to take measures, the Commission should appear before the European Parliament to give an account of the measures selected.

Amendment 13

Proposal for a regulation

Recital 13 a (new)

Text proposed by the Commission

Amendment

(13a) At the request of the European Parliament, the Commission should regularly participate in the Dispute Settlement and Enforcement Dialogue provided for in this Regulation.

Amendment 14

Proposal for a regulation Article 1 - introductory part

Text proposed by the Commission

This Regulation 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:

Amendment

This Regulation lays down rules and procedures in order to ensure an effective **and timely** exercise of the Union's rights to suspend or withdraw concessions or other obligations under international trade agreements, with the aim of:

Amendment 15

Proposal for a regulation Article 1 – point a

Text proposed by the Commission

(a) 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.

Amendment

(a) 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 **that provides relief to the affected economic operators of the Union.**

Amendment 16

Proposal for a regulation Article 1 – point b

Text proposed by the Commission

(b) rebalancing concessions or other obligations in the trade relations with third countries, when the **import** treatment accorded to goods from the Union is altered.

Amendment

(b) rebalancing concessions or other obligations in the trade relations with third countries, when the treatment accorded to goods **or services** from the Union is altered.

Amendment 17

Proposal for a regulation Article 2 - point b

Text proposed by the Commission

(b) "concessions or other obligations" means tariff concessions or any other benefits that the Union committed to apply

Amendment

(b) "concessions or other obligations" means tariff concessions, **specific commitments in the field of services** or

in its trade with third countries by virtue of international trade agreements to which it is a party,

any other benefits that the Union committed to apply in its trade with third countries by virtue of international trade agreements to which it is a party,

Amendment 18

Proposal for a regulation

Article 3 - paragraph 1 - point d

Text proposed by the Commission

(d) in cases of modification of concessions by a WTO member under Article XXVIII of the General Agreement on Tariffs and Trade 1994, where no compensatory adjustments have been agreed.

Amendment

(d) in cases of modification of concessions ***or commitments*** by a WTO member under Article XXVIII of the General Agreement on Tariffs and Trade 1994 ***or Article XXI of the GATS***, where no compensatory adjustments have been agreed.

Amendment 19

Proposal for a regulation

Article 4 – paragraph 1

Text proposed by the Commission

1. Where action is necessary to safeguard the interests of the Union in the cases referred to in Article 3(1), the Commission shall adopt an implementing act determining the appropriate commercial policy measures. Such implementing act shall be adopted in accordance with the examination procedure referred to in Article 8(2).

Amendment

1. Where action is necessary to safeguard the interests of the Union in the cases referred to in Article 3(1), the Commission shall adopt an implementing act determining the appropriate commercial policy measures. Such implementing act shall be adopted in accordance with the examination procedure referred to in Article 8(2). ***The Commission shall duly justify to the European Parliament the choice of commercial policy measures provided for in Article 5.***

Amendment 20

Proposal for a regulation

Article 4 - paragraph 2 - point d

Text proposed by the Commission

(d) Concessions withdrawn in the trade with a third country in connection with Article XXVIII of the GATT 1994 and the related Understanding shall be substantially equivalent to the concessions

Amendment

(d) Concessions ***or commitments modified or*** withdrawn in the trade with a third country in connection with Article XXVIII of the GATT 1994 and the related Understanding ***or Article XXI of the GATS***

modified or withdrawn by that third country, in accordance with the terms established in Article XXVIII of the GATT 1994 and the related Understanding.

and related implementing procedures 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 GATS and related implementing procedures*.

Amendment 21

Proposal for a regulation

Article 4 – paragraph 3 – point b

Text proposed by the Commission

(b) potential of the measures to provide relief to economic operators within the Union affected by third country measures;

Amendment

(b) potential of the measures to provide relief to **Member States and** economic operators within the Union affected by third country measures;

Amendment 22

Proposal for a regulation

Article 4 – paragraph 3 – point c

Text proposed by the Commission

(c) 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;

Amendment

(c) availability of alternative sources of supply for the products **or services** concerned, in order to avoid or minimise any negative impact on downstream industries or final consumers within the Union;

Amendment 23

Proposal for a regulation

Article 4 – paragraph 3 a (new)

Text proposed by the Commission

Amendment

3a. The Commission shall outline in its proposal for an implementing act how it has determined the Union's general interest in the specific case in question.

Amendment 24

Proposal for a regulation Article 5 - point b a (new)

Text proposed by the Commission

Amendment

(ba) the suspension of the application of obligations and specific commitments in the area of trade in services, with respect to the GATS or any bilateral and regional agreements;

Amendment 25

Proposal for a regulation Article 5 – point c – point i

Text proposed by the Commission

Amendment

(i) the exclusion from public procurement of tenders the total value of which is made up for more than 50% of goods or services originating in the third country concerned; and/or

(i) the exclusion from public procurement of tenders the total value of which is made up for more than 50% of goods or services originating in the third country concerned; ***implementing acts may set thresholds, according to the characteristics of the goods or services concerned, above which the exclusion is to apply, taking into account the provisions of Article 4(3), including considerations regarding administrative capacity, and the level of nullification or impairment;*** and/or

Amendment 26

Proposal for a regulation Article 5 – paragraph 1 a (new)

Text proposed by the Commission

Amendment

The Commission shall duly justify to the European Parliament the choice of the specific commercial policy measures adopted pursuant to this Article.

Amendment 27

Proposal for a regulation

Article 7 - paragraph 1

Text proposed by the Commission

1. Where, subsequently to the adoption of an implementing act pursuant to Article 4(1), the third country concerned accords **satisfactory** compensation to the Union in the cases referred to in Article 3(1)(a) and (b), the Commission may suspend the application of that implementing act for the duration of the compensation period. The suspension shall be decided in accordance with the examination procedure referred to in Article 8(2).

Amendment

1. Where, subsequently to the adoption of an implementing act pursuant to Article 4(1), the third country concerned accords **adequate and proportionate** compensation to the Union in the cases referred to in Article 3(1) (a) and (b), the Commission may suspend the application of that implementing act for the duration of the compensation period. The suspension shall be decided in accordance with the examination procedure referred to in Article 8(2).

Amendment 28

Proposal for a regulation

Article 7 - paragraph 2 - point b

Text proposed by the Commission

(b) in cases of rebalancing of concessions or other obligations following the adoption by a third country of a safeguard measure, when the safeguard measure is withdrawn or expires, or when the third country concerned accords **satisfactory** compensation to the Union subsequently to the adoption of an implementing act under Article 4(1);

Amendment

(b) in cases of rebalancing of concessions or other obligations following the adoption by a third country of a safeguard measure, when the safeguard measure is withdrawn or expires, or when the third country concerned accords **adequate and proportionate** compensation to the Union subsequently to the adoption of an implementing act under Article 4(1);

Amendment 29

Proposal for a regulation

Article 7 - paragraph 2 - point c

Text proposed by the Commission

(c) in cases of modification of concessions by a WTO member under Article XXVIII of the *General Agreement on Tariffs and Trade* 1994, when the third country concerned accords satisfactory compensation to the Union subsequently to the adoption of an implementing act under

Amendment

(c) in cases of **withdrawal or** modification of concessions **or commitments** by a WTO member under Article XXVIII of the *GATT* 1994 **or Article XXI of the GATS**, when the third country concerned accords **adequate and proportionate** compensation to the Union subsequently to the adoption

Article 4(1).

of an implementing act under Article 4(1).

Amendment 30

Proposal for a regulation

Article 7 – paragraph 4 a (new)

Text proposed by the Commission

Amendment

4a. The Commission shall duly justify to the European Parliament when it envisages suspending, modifying or terminating a measure provided for in Article 5.

Amendment 31

Proposal for a regulation

Article 9 - paragraph 1

Text proposed by the Commission

Amendment

1. The Commission shall seek information and views regarding the Union's economic interests in specific products or sectors, in the application of this Regulation, through a notice in the Official Journal of the European Union or other suitable public communication means.

1. The Commission shall seek information and views regarding the Union's economic interests in specific products, ***services*** or sectors, in the application of this Regulation, through a notice in the Official Journal of the European Union or other suitable public communication means ***and shall take those views into account.***

The notice shall indicate the period within which the information is to be submitted. That period shall not exceed two months.

Amendment 32

Proposal for a regulation

Article 9 – paragraph 2

Text proposed by the Commission

Amendment

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

2. Information received pursuant to this Regulation shall be used only for the purpose for which it was requested. ***The Commission shall duly inform the European Parliament of the outcome of such information gathering and how it intends to take account of the information when determining the Union's general interest.***

Amendment 33

Proposal for a regulation

Article 9 - paragraph 4

Text proposed by the Commission

4. The supplier of information may request that information supplied be treated as confidential. In such cases, it shall be accompanied by a non-confidential summary or a statement of the reasons why the information cannot be summarised.

Amendment

4. The supplier of information may request that information supplied be treated as confidential. In such cases, it shall be accompanied by a non-confidential summary ***which presents the information in a generalised form*** or a statement of the reasons why the information cannot be summarised.

Amendment 34

Proposal for a regulation

Article 9 a (new)

Text proposed by the Commission

Amendment

Article 9a

Dispute settlement and enforcement dialogue

The Commission shall regularly participate in an exchange of views with the European Parliament's Committee responsible for international trade on the management of trade disputes, including ongoing cases, effects on Union industries, envisaged measures, justification and impact of the envisaged measures, and on the implementation of commercial policy measures pursuant to this Regulation.

Amendment 35

Proposal for a regulation

Article 10

Text proposed by the Commission

No later than ***three*** years after the first instance of adoption of an implementing act under this Regulation, the Commission shall review its implementation and report to the European Parliament and the

Amendment

No later than ***five*** years after the first instance of adoption of an implementing act under this Regulation, the Commission shall review its implementation and report to the European Parliament and the

Council.

Council.