# Regulation (EU) 2015/1843 of the European Parliament and of the Council of 6 October 2015 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)

## REGULATION (EU) 2015/1843 OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL

of 6 October 2015

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)

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,

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

Having regard to the opinion of the European Economic and Social Committee[(1)],

Acting in accordance with the ordinary legislative procedure[(2)],

Whereas:

(1) Council Regulation (EC) No 3286/94[(3)] has been substantially amended several times[(4)]. In the interests of clarity and rationality, that Regulation should be codified.

(2) It is necessary that the common commercial policy be based on uniform principles, in particular with regard to commercial defence.

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

(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 include rules laid down in any other agreement to which the Union is a party and which are 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.

(5) Union procedures to ensure the effective exercise of the rights of the Union under international trade rules 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

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international trade rules is taken on the basis of accurate factual information and legal analysis.

(6) Such a mechanism should aim to provide procedural means for requesting that the Union institutions react to obstacles to trade that are adopted or maintained by third countries and 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.

(7) The right of Member States to resort to such a mechanism should be without prejudice to the possibility for Member States 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.

(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.

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

(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.

(11) The rules of procedure 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.

(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.

(13) It is incumbent on the Commission to act in respect of obstacles to trade that are 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.

(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[(5)].

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(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.

(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,

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, aim to:

(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.

The procedures referred to in the first paragraph 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 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 the 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;

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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 the 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 in the Union; the fact that the complainant suffers from such adverse effects shall not be considered sufficient to justify, on its own, the Union institutions proceeding with any action;

e 'Union industry' means either:

(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;

— 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' and the term 'Union enterprise' 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.

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*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 set out in Article 11, where applicable.

*Article 4*

**Complaint on behalf of Union enterprises**

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.

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 set out in Article 11, where applicable.

*Article 5*

**Complaint procedures**

1 The complaints 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.

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

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

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 Article 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 for the provision of complementary information which may be needed to fully assess the validity of the complainant’s case.