Regulation (EU) No 654/2014 of the European Parliament and of the Council of 15 May 2014 concerning the exercise of the Union's rights for the application and enforcement of international trade rules and amending Council Regulation (EC) No 3286/94 laying down Community procedures in the field of the common commercial policy in order to ensure the exercise of the Community's rights under international trade rules, in particular those established under the auspices of the World Trade Organization

REGULATION (EU) No 654/2014 OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL

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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,

Acting in accordance with the ordinary legislative procedure[(1)],

Whereas:

(1) The Union has concluded a number of multilateral, regional and bilateral international trade agreements creating rights and obligations for the mutual benefit of the parties.

(2) It is essential that the Union possess 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 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. There is therefore a need for rules defining the framework for exercising the Union's rights in certain specific situations.

(3) The dispute settlement mechanisms set up by the Agreement establishing the World Trade Organization (WTO) and by other international trade agreements, including regional or bilateral agreements, 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, be able to suspend concessions or other obligations, in

accordance with those dispute settlement mechanisms, when other avenues to find a positive solution to a dispute have proven unsuccessful. Action by the Union in such cases should serve 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.

(4) Under the WTO Agreement on Safeguards, a WTO member proposing to apply a safeguard measure or seeking an extension of a safeguard measure has to endeavour to maintain a substantially equivalent level of concessions and other obligations between it and the exporting Members, which would be affected by such a measure. Similar rules are laid down in other international trade agreements concluded by the Union, including regional or bilateral agreements. 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 should serve the purpose of inducing the introduction of trade-enhancing measures by third countries in order to restore a situation of reciprocal benefits.

(5) Article XXVIII of the General Agreement on Tariffs and Trade 1994 (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 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 should be aimed at inducing third countries to implement trade-enhancing measures.

(6) The Union should have the possibility to enforce its rights in the area of public procurement when a trade partner fails to respect its commitments under the WTO Agreement on Government Procurement (GPA) or other international trade agreements. The GPA states that any dispute arising thereunder is not to result in the suspension of concessions or other obligations under any other covered agreement of the WTO. The Union's action should be aimed at ensuring the maintenance of a substantially equivalent level of concessions, as laid down in the relevant international trade agreements.

(7) Member States should ensure the application within their respective territories of commercial policy measures in the field of public procurement in the manner that is best suited to their administrative structures and practices, while respecting Union law.

(8) Commercial policy measures adopted under this Regulation should be selected and designed on the basis of objective criteria, including the effectiveness of the measures in inducing compliance of third countries with international trade rules, their potential to provide relief to economic operators within the Union affected by third country measures, and the aim of minimising negative economic impacts on the Union, including with regard to essential raw materials.

(9) This Regulation should focus on those measures in respect of which the Union has experience in design and application. The possibility to extend its scope in order to provide for the adoption of measures in the sector of intellectual property rights and additional measures concerning services should be assessed as part of the review on the functioning of this Regulation, with due regard to the specificities of each area.

(10) When enforcing the Union's rights, the origin of a good should be determined in accordance with Council Regulation (EEC) No 2913/92[(2)]. When enforcing the Union's rights following dispute settlement in the area of public procurement, the origin of a service should be determined on the basis of the origin of the natural or legal person providing it. Contracting authorities or entities should apply normal precautions and exercise due diligence when assessing information and guarantees provided by tenderers as regards the origin of goods and services.

(11) The Commission should review the scope, functioning and efficiency of this Regulation, including possible measures in the sector of intellectual property rights and additional measures concerning services, no later than three years after the first instance of its implementation or no later than five years from its date of entry into force, whichever is the earlier. The Commission should report on its assessment to the European Parliament and the Council. The review may be followed up by appropriate legislative proposals.

(12) It is important to ensure an effective communication and exchange of views between the Commission on the one hand and the European Parliament and the Council on the other, in particular on disputes under international trade agreements that may lead to the adoption of measures under this Regulation.

(13) Council Regulation (EC) No 3286/94[(3)] should be amended in order to refer to this Regulation with regard to the implementation of commercial policy measures.

(14) In order to ensure uniform conditions for the implementation of this Regulation, implementing powers should be conferred on the Commission. Those powers should be exercised in accordance with Regulation (EU) No 182/2011 of the European Parliament and of the Council[(4)].

(15) In light of the high complexity involved in the examination of the multiple impacts that commercial policy measures adopted under this Regulation may have, and with a view to allowing sufficient opportunities to achieve the widest possible support, implementing acts should not be adopted by the Commission where, exceptionally, the committee referred to in this Regulation delivers no opinion on the draft implementing act presented by the Commission.

(16) In order to safeguard the Union's interests, the Commission should adopt immediately applicable implementing acts where, in duly justified cases relating to the need to adapt commercial policy measures to the behaviour of the third party concerned, imperative grounds of urgency so require.

(17) This Regulation is without prejudice to the possible adoption of commercial policy measures on the basis of other relevant Union acts or of the provisions of the Treaty on the Functioning of the European Union, while respecting the applicable provisions in international trade agreements on the suspension or withdrawal of concessions or other obligations,

HAVE ADOPTED THIS REGULATION:

Changes to legislation: *There are currently no known outstanding effects for the Regulation (EU) No 654/2014 of the European Parliament and of the Council. (See end of Document for details)*

Article 1

Subject matter

This Regulation lays down rules and procedures 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 intention of:

(a) responding to breaches by third countries of international trade rules which affect the Union's interests, with a view to seeking a satisfactory solution that restores benefits for the Union's economic operators;

(b) rebalancing concessions or other obligations in the trade relations with third countries, when the treatment accorded to goods from the Union is altered in a way that affects the Union's interests.

Article 2

Definitions

For the purposes of this Regulation the following definitions apply:

(a) "country" means any State or separate customs territory;

(b) "concessions or other obligations" means tariff concessions or any other benefits that the Union has committed itself to applying in its trade with third countries by virtue of international trade agreements to which it is a party;

(c) "level of nullification or impairment" means the degree to which the benefits accruing to the Union under an international trade agreement are affected. Except as otherwise defined in the relevant agreement, it includes any adverse economic impact resulting from a third country measure;

(d) "mandatory price penalty" means an obligation on contracting authorities or entities conducting public procurement procedures to increase, subject to certain exceptions, the price of services and/or goods originating in certain third countries that have been offered in contract award procedures.

Article 3

Scope

This Regulation applies:

(a) following the adjudication of trade disputes under the WTO Understanding on Rules and Procedures Governing the Settlement of Disputes (WTO Dispute Settlement Understanding), when the Union has been authorised to suspend concessions or other obligations under the multilateral and plurilateral agreements covered by the WTO Dispute Settlement Understanding;

(b) following the adjudication of trade disputes under other international trade agreements, including regional or bilateral agreements, when the Union has the right to suspend concessions or other obligations under such agreements;

(c) for the rebalancing of concessions or other obligations, to which the application of a safeguard measure by a third country may give right pursuant to Article 8 of the WTO Agreement on Safeguards, or to the provisions on safeguards included in other international trade agreements, including regional or bilateral agreements;

(d) in cases of modification of concessions by a WTO member under Article XXVIII of the GATT 1994, where no compensatory adjustments have been agreed.

Article 4

Exercise of the Union's rights

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

2 Implementing acts adopted pursuant to paragraph 1 shall meet the following conditions:

a where concessions or other obligations are suspended following the adjudication of a trade dispute under the WTO Dispute Settlement Understanding, their level shall not exceed the level authorised by the WTO Dispute Settlement Body;

b where concessions or other obligations are suspended following the discharge of an international dispute settlement procedure under other international trade agreements, including regional or bilateral agreements, their level shall not exceed the level of nullification or impairment as a result of the third country measure concerned, as determined by the Commission or through recourse to arbitration, as the case may be;

c in the case of rebalancing of concessions or other obligations under provisions on safeguards in international trade agreements, the Union's action shall be substantially equivalent to the level of concessions or other obligations affected by the safeguard measure, in accordance with the conditions of the WTO Agreement on Safeguards or of the provisions on safeguards in other international trade agreements, including regional or bilateral agreements, under which the safeguard measure is applied;

d where concessions are withdrawn in the trade with a third country in connection with Article XXVIII of the GATT 1994 and the related Understanding[(5)], they shall be substantially equivalent to the concessions modified or withdrawn by that third country, in accordance with the terms established in Article XXVIII of the GATT 1994 and the related Understanding.

3 Commercial policy measures referred to in paragraph 1 shall be determined on the basis of the following criteria, in light of available information and of the Union's general interest:

a effectiveness of the measures in inducing compliance of third countries with international trade rules;

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

c availability of alternative sources of supply for the goods or services concerned, in order to avoid or minimise any negative impact on downstream industries, contracting authorities or entities, or final consumers within the Union;

d avoidance of disproportionate administrative complexity and costs in the application of the measures;