



Brussels, 16 November 2020

## **Working approaches to the enforcement and implementation work of DG TRADE**

### **Introduction**

A more concentrated effort on enforcement and implementation is one of the political guidelines of the current Commission. President Ursula von der Leyen in her mission letter of 10 September 2019 stated, “*any legislation is only as good as its implementation*”, and underlined the importance of strengthening enforcement of EU rights, both at multilateral and bilateral level. This implies a more systematic use of our enforcement tools to eliminate trade barriers for EU companies abroad. This means a more effective, faster and streamlined enforcement process.

In this spirit, the College appointed a Chief Trade Enforcement Officer (CTEO) to drive forward and coordinate the enforcement activities, and created a new Enforcement Directorate with – inter alia – a new Single Entry Point (‘SEP’) for enforcement, market access and SMEs, and a new complaint system available to stakeholders.

The present notice focuses on enforcement actions, complements the notice on operating guidelines for the new SEP and complaints system, and sets out some further background information on how the Chief Trade Enforcement Officer’s actions and the renewed effort by DG Trade will be taken forward in close cooperation with other Commission services. It will be updated as work advances and experience is gained.

### **Strengthening enforcement and dispute settlement**

#### **Initiating investigations**

In addition to assessing complaints received through the Single Entry Point, **different avenues are available to trigger enforcement action** with respect to trade and/or Trade and Sustainable Development (TSD) and compliance with Generalised Scheme of Preferences (GSP) commitments. Some mechanisms exist already and new initiatives could complement them.

One existing tool for initiating investigations is the ‘**Trade Barriers Regulation**’ (TBR).<sup>1</sup> Following a complaint lodged by an EU company, industry or Member State

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<sup>1</sup> 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

about existing trade barriers in third countries, the Commission may decide to open an investigation procedure, which can include fact-finding activities, consultations and hearings. If the procedure concludes that action is necessary to ensure the respect of international trade rules and to remove the injury caused, appropriate measures can be taken, which may include the initiation of dispute settlement proceedings. So far 24 TBR examination procedures have been initiated with regard to trade practices of a wide range of trading partners (e.g. Brazil, Canada, Japan, Turkey).

To complement the TBR mechanism, the Commission may also **decide on its own** to initiate investigations with regard to possible infringements of market access or TSD commitments by third countries. This is not something which the Commission has previously done, but lies within its own prerogatives as to how it organises itself.

The main objective of such new procedures – which could generally be modelled upon the procedural framework of the TBR investigations – would be to collect relevant information before taking a decision on an enforcement action plan or a dispute settlement proceeding. This would be managed through calls for the submission of information (through the Official Journal and/or DG TRADE’s website), exchanges with Member States, consultations with stakeholders, hearings, fact-finding missions, etc. and tailored to the circumstances of each situation.

Resorting to such initiatives could usefully add to the Union’s arsenal for situations where individual stakeholders are not willing to request action for fear of retaliation by the third country concerned, or where practices are widespread but difficult to identify due to a lack of transparency or difficulty in acquiring information in the third country concerned. It would be used, potentially, both for trade barriers and for trade and sustainable development issues.

## **Dispute settlement**

Dispute Settlement mechanisms in international trade agreements are an essential tool at the Union’s disposal for ensuring that its partners play by the rules and respect their commitments. The Commission services will ensure that existing dispute settlement mechanisms are used in an efficient manner, but also remain effective and are improved where necessary.

### **Ensuring the efficient use of existing dispute settlement**

The very existence of Dispute Settlement mechanisms induces compliance with agreed rules and, in many cases, formal disputes can actually be avoided. However, where diplomatic interventions fail, the EU will use the applicable dispute settlement procedures at the World Trade Organization (“WTO”) or under other international trade agreements to which the Union is a party. The Commission would look increasingly to use such procedures to back-end the new system of complaint handling.

The Union has historically been a major user of the dispute settlement in the WTO. The Union has launched 104 disputes out of 596 brought in the WTO since 1995. In 2019 alone, the Union launched five new WTO disputes.<sup>2</sup> In recent past (since the end of

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<sup>2</sup> Against the United States on anti-dumping and countervailing duties on ripe olives from Spain (DS577); against Turkey on Pharmaceutical Products (DS583); against India on Tariff Treatment on Goods in the Information and Communications Technology Sector (DS582); against Colombia on anti-dumping duties on Frozen Fries from Belgium, Germany and the Netherlands (DS591), and against Indonesia on measures relating to raw materials for the production of stainless steel (DS592).

2018), the Union resorted for the first time to dispute settlement procedures under its bilateral trade agreements and has launched four new disputes under such agreements<sup>3</sup>. Among these disputes features the first dispute brought with respect to commitments under a Trade and Sustainable Development Chapter of a Free Trade Agreement.<sup>4</sup>

The European Commission represents the Union in dispute settlement proceedings under international trade agreements, pursuant to Article 335 TFEU, and decides on the launching and on the conduct of dispute settlement cases. The CTEO will lead work within the Commission in driving forward dispute settlement cases. This includes the coordination, streamlining and prioritisation of dispute settlement actions.

In that regard, the CTEO will ensure, in cooperation with relevant stakeholders that **dispute settlement actions** contribute to the objectives of the Union's implementation and enforcement policy, and form an integral and coherent part of that policy. In particular, dispute settlement activities will benefit from the establishment of the Single Entry Point and the complaints system and from the streamlining of internal processes to tackle trade barriers. They will be initiated, based on a **prioritisation**, from the cases, which are submitted to and handled via the complaints mechanism.

Dispute settlement cases will be prioritised based on

- i. legal soundness (i.e. the prospect of establishing a violation of applicable trade rules)
- ii. economic importance (i.e. economic impact of the measures on EU operators and jobs); and
- iii. systemic impact in terms of the broader implications of the case, for example in terms of driving change or having a real impact in the trading partner or the multilateral system more generally<sup>5</sup>.

Those that concern trade and sustainable development will follow a similar but slightly adjusted prioritisation

- i. legal soundness (i.e. the prospect of establishing a violation of applicable trade rules);
- ii. importance in terms of the nature of the commitment(s) at issue, the seriousness of their violation by the trading partner and the consequences for the environment or workers in the trading partner, as well as, where relevant, the economic consequences for EU operators trading with or investing in the trading partner; and
- iii. systemic impact of the broader implications of the case, for example in terms in terms of driving change or having a real impact in the trading partner.

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<sup>3</sup> Against Korea under the Trade and Sustainable Development chapter of the EU-Korea FTA with regard to workers' rights in Korea; against Ukraine under the dispute settlement mechanism of the EU-Ukraine Association Agreement with respect to the ban on export of wood; against the Southern African Customs Union (SACU) under the dispute settlement mechanism of the Economic Partnership Agreement between the EU and the Southern African Development Community (EU-SADC EPA) with regard to safeguards on poultry, and against Algeria under the EU-Algeria Association Agreement with regard to a number of trade restrictive measures.

<sup>4</sup> Dispute against Korea under the Trade and Sustainable Development chapter of the EU-Korea FTA with regard to workers' rights in Korea.

<sup>5</sup> See '[Trade for all - Towards a more responsible trade and investment policy](#)', p. 15. .

By way of illustration, in line with these criteria, the CTEO intends to focus in the near future on **existing barriers that are particularly harmful** to the Union's operators and that raise important systemic concerns, such as subsidies or discrimination of EU operators in important third country markets. The CTEO will also pay special attention to **enforcement in the context of the COVID-19 pandemic**, as a predictable trading environment will be crucial for the economic recovery. As regards trade and sustainable development and the Generalised Scheme of Preferences, the CTEO will prioritise enforcement action consistent with the overall focus of the von der Leyen Commission in these matters.

### **Ensuring the availability and effectiveness of dispute settlement mechanisms**

The Commission will also continue to work to protect the ability of the Union or Union actors to have access to effective dispute settlement. There are a number of dimensions to this. One is the continuation of **efforts to restore effective dispute settlement** in the WTO. Pending that, work will continue on the **Multi Party Interim Arrangement (MPIA)**, which provides for effective dispute settlement amongst its users for as long as the WTO dispute settlement is not effective.

The CTEO will also supervise work on providing for effective dispute settlement in the EU's bilateral agreements. The Commission will bring forward shortly a process to **professionalise the recruitment of arbitrators** to sit on rosters or tribunals established in EU agreements and in so doing will take utmost account of the gender and geographical diversity of the persons selected.

The Commission will also continue the work in modernising investment dispute settlement through the creation of a **Multilateral Investment Court**. This will take place through the first-ever multilateral process to reform investment dispute settlement in the United Nations Commission for International Trade Law (UNCITRAL), which has de facto been initiated by the Union's move to reform investment dispute settlement.

### **Updating the EU's arsenal**

Work will continue towards **updating and adjusting the EU's instruments** relating to enforcement and implementation. A priority here is the finalisation of the current legislative process on the update of the Enforcement Regulation, which will permit the Union to respond also to the situation where dispute settlement is blocked in the WTO or in bilateral agreements and which provides for a broader scope of action. The Commission will also bring forward a proposal for a legislative instrument, which will fill a gap in the Union's arsenal by permitting the Union to respond to coercive actions by third countries in a way, which will dissuade such actions and if necessary counteract them.

### **Partnership with EU Member States**

The partnership with the EU Member States is a one of the central elements of the renewed focus on enforcement and implementation.

The **Market Access Partnership** ('MAP') was launched in 2007, as a set of policy instruments designed to improve the effectiveness of the Market Access Strategy. The MAP acts an umbrella of coordinated actions of all stakeholders involved, through the Market Access Advisory Committee, sectorial working groups and market access teams in the EU Delegations in third countries.

The Partnership has worked well, with tangible benefits for EU companies and citizens: our work to remove barriers from 2014 until 2018 generated at least €8 billion additional exports in 2019. However, a renewed effort is necessary to unlock the full potential of

trade agreements and ensure access to third country markets. This requires an enhanced partnership with all actors involved, notably EU Member States, and more focused enforcement actions.

The 15-Point Action Plan on Trade and Sustainable Development of 2018 introduced cooperation with Member States as key action to revamp TSD implementation and enforcement. This includes cooperation at the level of capitals through the Commission's TSD Expert Group as well as through EU Delegations in partner countries. The same structure through the Commission's GSP Expert Group and the EU Delegations applies to monitoring compliance with the Generalised Scheme of Preferences. The Commission will conduct in 2021 a review of the 15-Point Action Plan and a comparative study of third-country practices, as announced by Executive Vice-President Valdis Dombrovskis before the European Parliament.

**Reinforced coordinated action** between the Commission and EU Member States is a key element in the process of resolution of trade barriers, including the early identification, evidence/information gathering and diplomatic actions. The existing tools and structures will be integrated into the single entry point and complaints mechanism to improve efficiency and effectiveness of our enforcement action.

Beyond the important work on market access barriers and TSD/GSP infringements, the Commission is also **partnering up with Member States** on a **broader range of issues pursued through implementing EU trade agreements**. The latter today account for more than 35 per cent of total EU external trade, i.e. more than the share of EU trade with its two largest trade partners, the United States and China, combined. Collaboration with partner countries on the TSD agenda can make an important contribution to EU and international objectives, whether labour, environment or climate-related. Making the most of these agreements will be more important than ever to drive economic recovery from Covid-19 and to ensure the recovery is sustainable.

EU trade agreements continue to make a **substantial contribution** to growing and facilitating EU external trade and investment, while strengthening economic relations with partner countries. Not only do they offer a regular platform for cooperation and information exchange on legislation and standards, with a view to preventing trade frictions, but they also offer channels towards greater convergence on a broader values agenda (e.g. protection of labour rights and the environment, strengthening of international conventions).

The Commission **annually reports on the performance** of the EU's major preferential agreements, providing updates on trade and investment flow and an account of how work is advancing in the various FTA committees and working groups. The third report covering 2018 was published on 14 October 2019<sup>6</sup>; the fourth issue was released on 12 November 2020.

Implementing EU trade agreements is clearly a **collective effort**. Member States' are closest to their constituencies and their role is vital when it comes to finding barriers faster, or when it comes to increasing uptake, in particular by SMEs. The Commission seeks to support Member States in doing their part. By launching the new [Access to Markets](#) portal (including rules of origin self-assessment, or 'RoSA'), the Commission provides access to more comprehensive and user-friendly information about trade agreements; by introducing the SEP, the Commission makes it easier to report and

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<sup>6</sup> [https://trade.ec.europa.eu/doclib/docs/2019/october/tradoc\\_158387.pdf](https://trade.ec.europa.eu/doclib/docs/2019/october/tradoc_158387.pdf)

follow-up on barriers and infringements. The ultimate success of these new tools and structures, however, will depend by no small measure on Member States promoting them at national, regional and local level, in close liaison with business and civil society.

While the roll-out of trade agreements is naturally linked to the situation in each Member State (no one-size-fits-all), the latter can rely on the **Commission/DG TRADE to take on a coordinating role**, leading efforts together and making them mutually enhancing and supportive. To this effect, the CTEO has engaged with Member States to listen to their views and experiences. Among the areas explored for **best-practice exchange** are the following:

- i) implementation roadmaps or matrices/implementation action plans supporting administrations when preparing for implementation;
- ii) ways of improving communication on EU trade agreements;
- iii) ways of involving business networks and trade promotion organisations, as well as regional and sectoral interests and civil society organisations, in the implementation of trade agreements;
- iv) dedicated online tools providing information on FTA benefits, and;
- v) an improved exploitation of implementation studies, including through cross-fertilisation of work done at EU and Member-State levels, respectively.

The enhanced partnership with the Member States will also play an important role in preparing and initiating dispute settlement proceedings in terms of both problem identification and evidence gathering. Dispute Settlement action often requires intensive fact-finding, and the CTEO will work with the Member States to ensure that they can effectively contribute to that effort, including through their resources in third countries.

### **Co-operation with third countries**

The Commission will further engage in **alliance building with third countries** to tackle trade barriers of common interest and generate synergies in the area of enforcement where appropriate.

This will vary from *ad hoc* co-operation to potentially more systemic co-operation.