

EUROFER PROPOSALS FOR UPGRADING THE EU ENFORCEMENT REGULATION

Introduction

EUROFER welcomes the Commission's proposal to upgrade the EU Enforcement Regulation as part of a new priority to strengthen enforcement of the EU's right under international trade rules (WTO/FTAs). The European steel industry needs an effective dispute settlement/arbitration system including the possibility to appeal.

Why is it important for the EU steel industry?

Effective EU enforcement is critical for the European steel industry often facing situations whereby foreign steel producing exporting countries do not respect the fundamental obligations they have taken under WTO and FTA commitments, for example:

1. **Indonesia's stainless raw materials export restrictions:** The EU has recently initiated a WTO dispute settlement against these restrictions. If losing at the WTO Panel, Indonesia could easily escape from a binding WTO Appeal ruling simply by lifting the dispute at the non-functioning Appeal Body;
2. **Algeria's steel import restrictions:** Algeria has imposed severe import restrictions having cut traditional EU steel imports of around 1 million tonnes. Algeria is blocking dispute settlement foreseen under the FTA with the EU;
3. **Turkey is reluctant to adopt the regulations and establish the organisation/administration to implement effective domestic state aid control** to which it committed under the customs union & trade agreements with the EU.

The European Commission's Proposal

The current EU Enforcement Regulation relates to the situation where the EU has obtained the rights to take rebalancing trade measures (retaliation) adjudicated under WTO/bilateral FTA dispute settlement procedures.

On 12 December 2019, the Commission proposed an amendment to this Regulation extending its scope to allow for action in a situation of dispute settlement procedures that are blocked. The main focuses of the proposed amendment are to address:

1. Situations where, after the Union has succeeded in obtaining a **favourable ruling from a WTO Panel**, the process is blocked because the other party appeals the Panel report "into the void" (because the Appeal Body is blocked) and has not agreed to interim appeal arbitration under Article 25 of the WTO DSU;

2. Similar situations that may arise under other international trade agreements, in particular regional or bilateral agreements, when a third country does not cooperate, as necessary, for dispute settlement to function.

EUROFER Proposal for additional improvements

However, EUROFER sees the need for additional improvements:

1. **Already upon initiation** of a dispute settlement/arbitrage procedure by the EU, **interim measures should be possible in case of manifest violation of international trade rules putting at stake the commercial interests of the EU** (see flowchart below).
2. Also, in the current Commission's proposal, the possibility for the EU to impose countermeasures is linked to whether the EU will finally win or lose a case. However, the EU should not be prevented from adopting interim countermeasures even when a WTO panel ruling disagrees, when appeal is not functioning because the counterparty does not allow final adjudication. This would be contrary to the principle that the appeal can overturn the decision.

In light of the blocking of the WTO Appellate Body, the Commission's proposal first of all targets U.S. unilateral actions considered to be WTO-incompatible. However, as the above steel situations show, the scope of countries manifestly disrespecting their international trade commitments is indeed worldwide; in fact, much more wide-spread in emerging economies than the developed countries. Therefore, amendments further strengthening the enforcement capacity of the EU should not be weighed against possible interference in ongoing negotiations with one or another WTO partner (such as with the US).

