

EUROPEAN PARLIAMENT

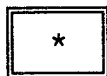


session documents

ENGLISH EDITION

25 February 1993

A3-0072/93



REPORT

of the Committee on External Economic Relations

on the proposal from the Commission to the Council for a regulation on the harmonization and streamlining of decision-making procedures for Community instruments of commercial defence and modification of the relevant Council Regulations (SEC(92)1097 - C3-0322/92)

Rapporteur: Mr Gijs M. DE VRIES

PE 203.195/fin.
Or. EN

Consultation procedure requiring a single reading
| Cooperation procedure (first reading)

**|| Cooperation procedure (second reading) requiring the votes of a majority of the current Members of Parliament
*** Parliamentary assent requiring the votes of a majority of the current Members of Parliament

DA DE GR **EN** ES FR IT NL PT

C O N T E N T S

	<u>Page</u>
Procedural page	3
A. Amendments to the Commission proposal	4
DRAFT LEGISLATIVE RESOLUTION	10
B. EXPLANATORY STATEMENT	11
ANNEX I	21
ANNEX II	22
- Opinion of the Committee on Economic and Monetary Affairs and Industrial Policy ..	23

By letter of 22 July 1992 the Council consulted the European Parliament, pursuant to Article 113 of the EEC Treaty in connection with the Solemn Declaration on the European Union, on the proposal from the Commission to the Council for a regulation on the harmonization and streamlining of decision-making procedures for Community instruments of commercial defence and modification of the relevant Council Regulations.

At the sitting of 14 September 1992 the President of Parliament announced that he had referred this proposal to the Committee on External Economic Relations as the committee responsible and to the Committee on Economic and Monetary Affairs and Industrial Policy and the Committee on Institutional Affairs for their opinions.

At its meeting of 22 September 1992 the Committee on External Economic Relations appointed Mr DE VRIES rapporteur.

At its meetings of 15/16 February 1993 and 24/25 February 1993 it considered the Commission proposal and draft report.

At the latter meeting it adopted the draft legislative resolution unanimously.

The following took part in the vote: CANO PINTO, acting chairman; STAVROU, vice-chairman; DE VRIES, rapporteur; HINDLEY, MELANDRI (for ARCHIMBAUD), MIRANDA DE LAGE, MOORHOUSE, PEIJS, ROSSETTI, SONNEVELD (for PRICE), SUAREZ GONZALEZ and TITLEY (for MARTIN, D.).

The opinion of the Committee on Economic and Monetary Affairs and Industrial Policy is attached. The Committee on Institutional Affairs decided not to deliver an opinion.

The report was tabled on 25 February 1993.

The deadline for tabling amendments will appear on the draft agenda for the part-session at which the report is to be considered.

A.

Proposal for a Council regulation on the harmonization and streamlining of decision-making procedures for Community instruments of commercial defence and modification of the relevant Council Regulations

Commission text¹

Amendments

(Amendment No 1)

Recital 3, subparagraph 5a (new)

Council Regulation (EEC) No 2603/69 of 20 December 1969 (2) establishing common rules for exports,

(2) OJ No L 324, 27.12.1969, p. 590

(Amendment No 2)

Recital 7a (new)

Whereas beside streamlining the decision-making process other steps in the application of commercial policy defence measures as for instance inquiries and consultation procedures shall be revised in order to reduce the time necessary for the application of those measures,

(Amendment No 3)

TITLE I, ARTICLE 1, PARAGRAPH -1 (new)

(-1) Article 6, paragraph 3, of Council Regulation (EEC) No 2423/88 of 11 July 1988 is amended as follows:

"3. Where possible consultation shall be in writing only; in such case the Commission shall notify the Member States and shall specify a period not exceeding 20 days within which they shall be entitled to express their opinions."

(Amendment No 4)

TITLE I, ARTICLE 1, PARAGRAPH 1

1. The last sentence of Article 11, paragraph 1, of Council Regulation (EEC) No 2423/88 of 11 July 1988 is amended as follows:

1. Article 11, paragraph 1, of Council Regulation (EEC) No 2423/88 of 11 July 1988 is amended as follows:

¹ OJ No C 181, 17.07.1992, p. 9

"In such cases, release of the products concerned for free circulation in the Community shall be conditional upon the provision of security for the amount of provisional duty, definitive collection of which shall be determined subsequently pursuant to Article 12 (2) of this regulation."

"1. Where preliminary examination shows that dumping or a subsidy exists and that there is sufficient evidence of injury caused thereby and the interest of the Community call for intervention to prevent injury be caused during the proceeding, the Commission, acting at the request of a Member State or in its own initiative shall impose, not later than 9 months after the initiation of the proceeding, a provisional anti-dumping or countervailing duty. In such cases, release of the products concerned for free circulation in the Community shall be conditional upon the provision of security for the amount of provisional duty, definitive collection of which shall be determined subsequently pursuant to Article 12 (2) of this regulation."

(Amendment No 5)

TITLE I, ARTICLE 1, PARAGRAPH 1a (new)

1a. The first sentence of Article 11, paragraph 2, of Council Regulation (EEC) No 2423/88 of 11 July 1988 is amended as follows:

"2. The Commission shall take such provisional action after consultation according to article 6 (3) or, in cases of extreme urgency, after informing the Member States."

(Amendment No 6)

TITLE I, ARTICLE 1, PARAGRAPH 6

Article 12 bis, paragraph 5 (Regulation (EEC) 2423/88)

5. In that event, the Commission shall defer application of the measures which it has decided for a period of twenty days from the date of communication.

5. In that event, the Commission may defer application of the measures which it has decided for a period of twenty days from the date of communication.

(Amendment No 7)

TITLE I ARTICLE 1 PARAGRAPH 6a (new)

6a. After Article 18 of Council Regulation (EEC) No 2423/88 of 11 July 1988 the following Article 18 bis is inserted:

"Article 18 bis

Annual report

The Commission shall submit to the European Parliament an annual report on its anti-dumping and anti-subsidy policy which contains information about the impact of dumping on the Community industry as well as the effect of measures applied against dumping and subsidization. This report shall be transmitted not later than 6 months after the reference period."

(Amendment No 8)

TITLE II, ARTICLE 2, PARAGRAPH -1 (new)

-1. After the first indent of the third recital, of Council Regulation (EEC) No 2641/84 of 17 September 1984 the following new indent is inserted:

"- to respond to any other unnecessary trade obstacles attributable to third countries and harmful to Community trade or investment interests,"

(Amendment No 9)

TITLE II, ARTICLE 2, PARAGRAPH -1a (new)

-1a. After subparagraph a) of Article 1, of Council Regulation (EEC) No 2641/84 of 17 September 1984 the following new subparagraph aa) is inserted:

"aa) responding to any other unnecessary trade obstacles attributable to third countries and harmful to Community trade or investment interests,"

(Amendment No 10)

TITLE II, ARTICLE 2, PARAGRAPH 2

Article 11, paragraph 5 (Regulation (EEC) No 2641/84)

5. In that event, the Commission shall defer application of the measures which it has decided for a period of twenty days from the date of communication.

5. In that event, the Commission may defer application of the measures which it has decided for a period of twenty days from the date of communication.

(Amendment No 11)
TITLE III, ARTICLE 3, PARAGRAPH 4
Article 16, paragraph 5 (Regulation (EEC) No 288/82)

5. In that event, the Commission shall defer application of the measures which it has decided for a period of twenty days from the date of communication.
5. In that event, the Commission may defer application of the measures which it has decided for a period of twenty days from the date of communication.

(Amendment No 12)
TITLE III, ARTICLE 4, PARAGRAPH 4
Article 12 paragraph 5 (Regulation (EEC) No 1765/82)

5. In that event, the Commission shall defer application of the measures which it has decided for a period of twenty days from the date of communication.
5. In that event, the Commission may defer application of the measures which it has decided for a period of twenty days from the date of communication.

(Amendment No 13)
TITLE III, ARTICLE 5, PARAGRAPH 4
Article 12, paragraph 5 (Regulation (EEC) No 1766/82)

5. In that event, the Commission shall defer application of the measures which it has decided for a period of twenty days from the date of communication.
5. In that event, the Commission may defer application of the measures which it has decided for a period of twenty days from the date of communication.

(Amendment No 14)
TITLE IIIa (new)

TITLE IIIa

Common rules on export

Article 5a

1. Article 4, paragraph 1, of Council Regulation (EEC) No 2603/69 of 20 December 1969 is amended as follows:

"1. Consultation shall take place within the committee provided for in article 12 bis."

2. Article 6, paragraph 1, of Council Regulation (EEC) No 2603/69 of 20 December 1969 is amended as follows:

"1. In order to prevent a critical situation from arising on account of a shortage of essential products, or to remedy such a situation, and where

Community interests call for immediate intervention, the Commission, acting at the request of a Member State or on its own initiative, and taking account of the nature of the products and of the other particular features of the transactions in question, may make the export of a product subject to the production of an export authorization, the granting of which shall be governed by such provisions and subject to such limits as the Commission shall lay down pending definitive action which shall be determined subsequently pursuant to article 12 bis of this regulation."

3. Article 6, paragraph 6, of Council Regulation (EEC) No 2603/69 of 20 December 1969 is amended as follows:

"6. Where the Commission acted pursuant to paragraph 1, it shall not later than 12 working days following the entry into force of the measure it has taken, make a proposal to the committee provided for in article 12 bis on appropriated measures as provided for in article 7."

4. The first sentence of Article 7, paragraph 1, of Council Regulation (EEC) No 2603/69 of 20 December 1969 is amended as follows:

"1. Where the interests of the Community so require, appropriate measures may be adopted according to the provisions of article 12 bis of this regulation:"

5. Article 10 of Council Regulation (EEC) No 2603/69 of 20 December 1969 is amended as follows:

"Article 10

Until such time as common rules in respect of the products listed in the annex to this Regulation have been introduced according to the provisions of article 12 bis, the principal of freedom of export from the Community as laid down in article 1 shall not apply to those products."

6. After Article 12 of Council Regulation (EEC) No 2603/69 of 20 December 1969 the following Article 12 bis is inserted:

"Article 12 bis

Decision making procedure

1. The decisions referred to in articles 6 and 7 shall be adopted in accordance with the following provisions.

2. The Commission shall be assisted by a committee composed of representatives of the Member States and chaired by the representative of the Commission.

3. The representative of the Commission shall submit to the committee a draft of the measures to be taken. The committee shall deliver its opinion on the draft within a time limit which the chairman may lay down according to the urgency of the matter. The opinion shall be delivered by the majority laid down in Article 148 (2) of the Treaty in the case of decisions which the Council is required to adopt on a proposal from the Commission. The votes of the representatives of the Member States within the committee shall be weighted in the manner set out in that Article. The chairman shall not vote.

4. The Commission shall adopt measures which shall apply immediately. However, if these measures are not in accordance with the opinion of the committee, they shall be communicated by the Commission to the Council forthwith.

5. In that event, the Commission may defer application of the measures which it has decided for a period of twenty days from the date of communication.

6. The Council, acting by a qualified majority, may take a different decision within the time limit referred to in the previous paragraph."

DRAFT LEGISLATIVE RESOLUTION

embodying the opinion of the European Parliament on the proposal from the Commission to the Council for a regulation on the harmonization and streamlining of decision-making procedures for Community instruments of commercial defence and modification of the relevant Council Regulations

The European Parliament,

- having regard to the Commission proposal to the Council (SEC(92) 1097 final)¹,
 - having been consulted by the Council (C3-0322/92),
 - having regard to the report of the Committee on External Economic Relations and the opinion of the Committee on Economic and Monetary Affairs and Industrial Policy (A3-0072/93),
1. Approves the Commission proposal subject to Parliament's amendments and in accordance with the vote thereon;
 2. Calls on the Commission to amend its proposal accordingly, pursuant to Article 149(3) of the EEC Treaty;
 3. Calls on the Council to notify Parliament should it intend to depart from the text approved by Parliament;
 4. Asks to be consulted again should the Council intend to make substantial modifications to the Commission proposal;
 5. Instructs its President to forward this opinion to the Council and Commission.

¹ OJ No C 181, 17.07.1992, p. 9

B.

EXPLANATORY STATEMENT

I. INTRODUCTION

The political importance of this proposal

1. In the opinion of your rapporteur, there are three reasons why the proposal to adapt the Community's decision making procedures in the area of trade policy is an important one.

First, unless this proposal is adopted, there is little chance that the Council of Ministers will agree to lift or harmonize national import restrictions on non-EC goods from state-run economies such as the former Soviet Union. A Commission proposal to replace these national restrictions with EC quotas has been blocked in Council for months, notwithstanding the fact that national quotas on trade with third countries are clearly incompatible with the logic of the single market.

Secondly, the European Community needs more effective decision-making procedures in order to manage its trade relations with the United States. In recent years, the US Administration has taken a number of unilateral trade policy decisions, several of which affected EC industries. President BUSH did, however, oppose the twenty-odd protectionist trade policy proposals tabled by Members of the previous Congress. President CLINTON, though personally committed to free trade, could be obliged to be more flexible on trade policy in order to obtain Congressional support for his domestic priorities. The EC, therefore, must improve its capacity to respond to unilateral US trade policy measures. Not only by securing a balanced compromise to end the Uruguay Round, but also by enabling itself to act speedily and decisively.

Thirdly, the EC will not arrive at a credible common foreign policy unless it agrees first to a common trade policy. A divided Community is a weak Community. As long as the Member states allow themselves to be played off against one another by important trading nations such as Japan and the US, the EC will remain an economic giant, but a political dwarf.

2. The amendments tabled by your rapporteur have a triple purpose. A number of amendments seek to modify the comitology procedure in accordance with the European Parliament's long-standing opposition to Type III or Type II b Committees. A second set of amendments aims at speeding up the EC's anti-dumping procedures. Finally, some improvements are being proposed to the New Commercial Policy Instrument. The amendments are discussed below.

Background

3. Trade policy is since the end of the transitional period an exclusive competence of the EC. Article 113 of the Rome Treaty stipulates that common commercial policy shall be based on uniform principles. It is the Council who decides on the guidelines by qualified majority. The Commission is conducting and executing the common commercial policy and, assisted by a special committee composed of representatives of Member States, negotiating with third countries and international organizations on behalf of the EC on the basis of directives of the Council who is signing and concluding those

agreements. The EP is in principle not involved neither in the definition nor in the conduct and execution of commercial policy. Only when the EC is negotiating on the basis of article 235 (Trade and Cooperation Agreements) or of article 238 (Association agreements) the EP is consulted at the end of negotiations and after signature by the Council on the decision to conclude such an agreement.

4. This unsatisfactory situation as laid down 1957 in the Rome Treaty has somewhat changed since then. EP has obtained greater possibilities to be informed about negotiations and agreements (Luns-Westerterp-Procedure). The Council undertook to consult Parliament on a facultative basis on any agreement based on Art. 113 if this agreement is of an international significant importance (Solemn Declaration of Stuttgart). For association agreements (and for treaties on accession) the EP must give its assent by absolute majority of its effective members (Single European Act). The revision of the EC treaties as agreed upon in Maastricht will extend the assent procedure to all international agreements with important budgetary implications or establishing a specific institutional framework or entailing amendments of an act adopted under the cooperation procedure (article 189(b) EC Treaty). On the other hand, EP shall give its assent by voting with simple majority (article 228(3) EC Treaty revised). Finally a new article 228A foresees that actions to interrupt or to reduce economic relations with a third country (sanctions) shall be adopted by Council by a qualified majority on a proposal by the Commission. Up to now those proposals have been based on article 113 and regularly submitted to the EP for consultation.
5. It is, therefore, the Commission and the Council who are the major actors of the Common Commercial Policy (CCP) of the EC. This is particularly true as concerns the execution of specific policy measures, as for instance anti-dumping or safeguard measures, where the EP has little or no institutional part to play. But for the EP it is important, which of the other two institutions are responsible for the trade policy measures. This is so because the EP has quite a close grip on Commission which is politically responsible to the EP and can be dismissed by a motion of censure carried by a two-third majority of the EP (article 144 EC Treaty).
6. Article 145(3) as introduced by the Single European Act clearly stipulates that the Council transfers to the Commission the power to implement acts adopted by Council. It may impose certain requirements in respect of the exercise of these powers and also reserve the right, in specific cases, to exercise implementing powers itself. This means that it is generally the Commission which implements Community Policy, and only in specific circumstances the Council. This would as well improve the EP's power to control the Commission.
7. Article 145(3) foresees that the transferral of implementation powers may be submitted to certain modalities. The Commission, therefore, presented a draft regulation establishing three types of committees to assist it in implementing Community policies ("comitology"), the advisory committee, the management committee and the regulation committee. Common to all three was that the Commission could take implementing measures which could be changed by Council only by a qualified majority within specific time limits.
8. EP has been consulted on this proposal and gave its opinion (reports HÄNSCH - A2-78/86 and A2-238/86) in the form of concrete amendments and several resolutions. In order to secure its legislative powers the EP requested to

be consulted on every draft proposal the Commission will submit to such a committee. It asked for the conciliation procedure with Council on any new draft legislation establishing a committee procedure and for a revision of existing legislation in order to adapt it to the new comitology rules. Finally it rejected the regulation committee because it would increase unduly the Council's influence on Commission implementing measures and is, therefore, in contradiction with the spirit and the letter of the new Treaty provision. It recalled as well the engagement of the Representatives of the Member States given at the conclusion of the Intergovernmental Conference, that the advisory committee should be used as the general form of assistance of Member States.

9. The final decision taken by Council on July 1987 did not only ignore all these requests of the EP, but introduced completely new types of committees, on which the EP was not consulted and which were in full contradiction with the position of the EP. More precisely, the Council

- introduced a voting procedure in the advisory committee (Type 1) increasing so the political importance of the opinion of such a committee;
- introduced a second variant of the management committee procedure (Type 2b) which foresees that in case of disagreement between the Commission and the committee the measures proposed shall be suspended until the Council has taken a different decision within a time limit not exceeding three month;
- maintained the regulation committee (Type 3) and introduced a second variant (Type 3b) which foresees that Council can revoke the measures proposed by the Commission by a simple majority;
- introduced a completely new procedure concerning safeguard measures, again with two variants where the second foresees that the decision of the Commission is deemed to be revoked if Council has not taken any decision during a specific period of time.

10. The EP attacked this decision before the European Court of Justice. It based its request for annulation on article 173 EC Treaty. Its main substantial arguments were:

- Violation of article 145(3): The committee procedures, namely Type 2b and 3b, are in contradiction with the new provisions of article 145(3) EC Treaty. By the establishment of committee procedures of these types the transferral of implementation powers will become meaningless. Instead of being the exception that Council keeps these powers it will be the rule;
- infringement of essential procedural requirements by not having reconulted the EP on the substantially changed decision on comitology. The EP has had no possibility to give its opinion to the new elements introduced by the Council. In addition Council must have been aware of the fact that these changes run against the spirit of the amendments the EP had voted on the original proposal of the Commission.

Without considering the substantial arguments of the EP the Court ruled the request of the EP down as inadmissible according to a demand from the Council. Article 173(1) provides for active legitimation only for Member States, Council and Commission but not for the EP. The request of the EP

could neither be based on the fact that a request for annulment could be introduced against legal acts of the EP itself (passive legitimation), nor is the EP a moral person in the sense of article 173(2). The legal system of the EC gives the role of guardian of the Treaty to the Commission which itself did not act against the Council's decision on comitology¹.

11. The Commission acted up to now only against the application of some committee procedures in the context of the execution of the Community budget. It tabled an appeal for annulment against a programme on coordination and promotion of research in the sector of fisheries. This regulation provided for a management committee of Type 2a mainly to decide on the attribution of research contracts. The Commission argued that the possibilities given to the Council by this committee procedure would be in contradiction with the power of the Commission to implement the EC budget as laid down in article 205 EC Treaty. The EP joined the complaint of the Commission before the European Court of Justice. The Court did not follow the arguments of the Commission and the EP. In its ruling the Court stressed that the Council when using the possibilities of article 145(3) EC Treaty in transferring implementation power to the Commission according to one of the modalities laid down in its decision on comitology does not infringe the powers of the Commission to implement the budget if it adopts individual decisions with financial consequences. It should be distinguished between the power to take an administrative decision, even if this involves necessarily payments from the EC budget, and the power to bind these expenditures. Only for the latter article 205 applies².
12. In a recent case pending before the European Court of Justice on the legal base of a directive on waste, introduced by the Commission, the EP intervened to support the Commission. The intervention of the EP does not only concern the question of the appropriate legal base (article 100A on harmonization of law in the context of the internal market or article 130S on environment) but attacks also the committee procedure foreseen in this directive (regulation committee Type 3a) on the same grounds put forward in its own request on the comitology decision of the Council. The prospects to obtain a positive ruling from the Court on comitology are again not very promising. In his conclusions the Advocate-General pointed out that the Court has not to rule on the subject of the committee procedure. The intervention of the EP could concern only those subjects raised by the Commission. Therefore, as long as the Commission itself does not request a ruling on the conformity of the decision of the Council on comitology or concerning the choice of a certain committee type made by the Council there will be no possibility to obtain a final ruling on comitology. The EP may consider the possibility to use its influence to persuade the Commission to take the necessary steps before the Court. As the Commission has pointed out at several occasions it is quite disappointed about the way in which the Council applies its decision on comitology. Instead of giving a clear preference to the advisory committees the Council continues to favour the other two types and to reverse implementing powers for itself. This tendency the Commission believes as well is in contradiction with article 145(3) and puts into risk the effectiveness of Community actions (see f. i. Report on Activities of the EC 1991, p. 398).

¹ Case 302/87, Report of Cases before the Court, 1988, p. 5818

² Case 16/88, Report of Cases before the Court, 1989, p. 3457

13. Not having the necessary access to the jurisdictional system of the EC and given the fact that the Commission is up to now reluctant to undertake such actions against the Council, the EP is limited to its legislative powers either in the consultation or in the cooperation procedure to promote its position on comitology. This is of crucial importance especially in the context of commercial policy defence measures. These measures are very often taken by Council on the base of regulations which itself had not been submitted to the EP as for instance the regulations on anti-dumping (2423/88) on import arrangements for products originating in State-trading countries (1765/82, 1766/82, 3420/83) and on common rules for exports (2603/69). In accordance with the Single European Act the EP was and still is in favour to strengthen the implementation powers of the Commission. This is one of the main objective of the Commission's proposal under consideration which seems to be highly controversial between Member States. Therefore, the question whether or not to strengthen these powers should be answered positively by the EP. By doing so it would not only help to achieve the goals of the Single European Act but as well protect and strengthen its own powers to control the activities of the Commission which will after the ratification of the Maastricht Treaty come under an even greater political responsibility vis-à-vis the EP (vote of approval according to article 158 rev.).
14. The remaining questions for the examination of the proposal of the Commission, therefore, are:
- Is the justification brought forward by the Commission for its initiative, namely the introduction of a two stage jurisdictional process, valid?
 - Does the Commission proposal cover all commercial policy instruments?
 - Is the committee procedure proposed by the Commission in line with the position of the European Parliament on comitology?
 - Are there, beside the streamlining of the decision making process on commercial policy defence measures, other institutional changes not envisaged by the Commission, but asked for by the EP, as for instance concerning anti-dumping measures?

II. THE PROPOSAL OF THE COMMISSION

a) Background and justification

15. With the installation of the European Court of First Instance a two-tiered mechanism of jurisdictional control over Community instruments of commercial defence has been established by the extension of those competences to the newly created Court. The Community instruments concerned by this extension are mainly anti-dumping and Anti-Subsidy measures as laid down in Council Regulation No 2423/88, the New Instrument of Commercial Policy against illicit commercial practices of third countries as laid down in Council Regulation No 2641/84, as well as several regulations enabling the adoption of safeguard measures as laid down, for instance, in Council Regulation No 288/82 on common rules for imports and No 1765/82 on common rules for imports from State-trading countries.
16. In its decision of 18 March 1992, giving its opinion on the extension of the competences of the Court of First Instance, the Commission has decided to subject its favourable opinion on this question to the parallel improvement

of the decision-making mechanism of the various Community instruments of commercial defence.

17. The regulations on commercial policy instruments as they stand generally provide for definitive actions to be decided upon by the Council acting by qualified majority on a proposal submitted by the Commission (see e. g. Article 12 of the anti-dumping Regulation). If Safeguard measures have to be taken in case of an upsurge of imports from third countries which cause or threatens to cause substantial injury to Community producers, any protective measure decided by the Commission shall be confirmed, amended or revoked by the Council acting by qualified majority (see e. g. Article 15(6) of the regulation on common rules on import).
18. These decision-making procedures are of great complexity and length. In some cases they do not even guarantee any decision at all, namely in the case of safeguard measures being revoked after a period of three months due to the lack of a decision from the Council. In order to compensate for the additional time needed for the two-tiered jurisdictional control the Commission considers it necessary to streamline and harmonize the decision-making procedures.
19. As pointed out before it is not so much the additional time involved in the extended jurisdictional control on commercial policy defence measures which urges a streamlining of decision-making procedures. The main argument in favour flows out of the revision of the Treaty of Rome made by the Single European Act providing for a general transferral of implementing powers to the Commission. The justification of the Commission's proposal is in this respect misleading. The most time consuming part of these measures is not the decision-making process but the inquiries necessary before any action as well as the need for repeated consultation between the Commission and Member States. The fact that the Commission applies additional tests which are optional according to the GATT anti-dumping code as for instance the "lesser duty test" and the "Community interest test" is causing further delay.
20. According to informations given by the responsible services of the Commission it takes an average period of 18 months from the start of an antidumping inquiry up to the decision on provisional measures. If the Commission wants to speed up the decision on such defence measures it should concentrate its efforts to reduce the length of the inquiries. The EP has supported the Commission to obtain the budgetary and human resources it needs to reinforce the services of the Commission dealing with commercial policy defence measures.

In its report on the anti-dumping Policy of the EC the EP itself made a link between the establishment of a two stage procedure for jurisdictional control and the speeding up of the whole process of applying anti-dumping measures (paragraph 19 of its resolution of 28 November 1990, report A3-336/90). It called on the Commission to propose amendments to the anti-dumping regulation which would speed up the decision-making procedures between Commission and Council. This is the very objective of the present Commission proposal. Even if the decision-making procedure is only partly responsible for the long delays in taking commercial policy defence measures, the proposed streamlining will certainly be helpful. Anyway, the most important argument in favour of the Commission's proposal is to adapt the balance of powers between Commission and Council in order to take into account the recent institutional developments of the Community.

b) The Coverage of commercial policy measures

21. The most important regulations on the Common Commercial Policy are:

- 21.1. Common Customs Tariff (2886/89)
- 21.2. Common Rules on Imports (288/82)
- 21.3. Common Rules on Imports from State Trading Countries (1765/82, 1766/82, 3420/83)
- 21.4. Common Rules on Imports from the Peoples Republic of China (1766/82)
- 21.5. Common Procedure for Administering of Quantitative Quotas (1023/70)
- 21.6. New Commercial Policy Instrument (2641/84)
- 21.7. Common Rules on Export (2603//88)
- 21.8. Regulation on anti-dumping and Anti-subsidy Measures (2423/88)
- 21.9. Generalized System of Preferences (3831/90 - 3835/90).

The Commission proposal covers regulations b), c) (partially), d), f) and h). It must, therefore, be examined whether the remaining points (a), c) (partially), e), g) and i)) should be included in the Commission proposal.

22. Ad a)

This regulation (article 10) provides already for a management committee (Type 2b) as proposed by the Commission for the commercial policy defence measures. Measures to be taken according to this committee procedure are defined in articles 9 and 11. They concern mainly the application and adaptation of the Common Customs Nomenclature as well as the conditions for preferential import schemes. Not included are decisions on the level of tariff rates, on agricultural import levies and export restitutions and quantitative restrictions. The regulation, therefore, does not provide for any defence measure. It is appropriate not to include it in the present Commission proposal.

23. Ad c) (partially)

Whereas the Commission proposal includes regulations 1765/82 and 1766/82 concerning the liberalised imports from State Trading Countries, it does not cover regulations 3420/83 on imports from State Trading Countries subject to quantitative restrictions. This regulation states that the Council shall fix according to article 113 EEC Treaty annual import quotas to be opened by Member States (article 3). The EP will not be consulted on the subject. The quotas may be changed in the course of the year due to a request from a Member State (article 7). Those changes may be decided by the Commission (article 9(1)) which may consult before an advisory committee (article 8). The Commission may as well submit a draft decision to the Council which shall decide by qualified majority (article 9(6)). If the Council does not take any decision during a two-month period the measures proposed by the Commission become effective (article 9(8)). The risk of having no decision at all is, therefore, excluded. It is left to the Commission whether or not to consult Council (article 9(4)). The power of the Commission to implement Community measures is not unduly limited. In addition, due to the nearly complete abolition of quantitative restrictions for imports from State Trading Countries in Central and Eastern Europe and in the former USSR this regulation has lost most of its practical significance. It is applied only in respect to State Trading countries in East Asia. A revision does not seem necessary.

24. Ad e)

This regulation establishes a common system for the administration of contractual as well as autonomous quantitative restrictions on import and export. It focuses on the allocation and administration of such quotas between the different Member States. Article 11 provides for a regulation committee to decide mainly on the criteria to be used for the allocation of quotas between Member States. Anyway, such an allocation has been found incompatible with free competition inside the Community by the European Court of Justice in its ruling of 27 September 1988. The regulation has not been applied since. It is to be revised in the context of the completion of the Internal Market. The Commission has presented on 20 July 1992 a proposal for such a regulation (COM(92) 374) which intends to replace the system of quota allocation by a procedure to administer Community quotas.

The Council has not yet submitted this proposal to Parliament and apparently will not do so at all since the basic regulation 288/82 was according to the wording of article 113 of the EEC Treaty not submitted to the EP either. But since that time the Member States have engaged in the Solemn Declaration of Stuttgart to consult Parliament on international agreements based on that article if they were of a significant international importance. This engagement should be applied to all measures based on article 113 which are of a significant importance not only to international agreements alone. The EP should, therefore, by using the procedure provided in rule 34 of its Rules of procedures, insist to be consulted on this draft regulation. During such a consultation specific attention should be paid to any committee procedure proposed. As concerns the decision-making mechanism the Commission proposes the same procedure of a management committee (Type IIb). For reasons of coherence, the EP should insist on a procedure of Type IIa. For the time being, this proposal is as well as that concerning the policy defence measures, blocked by several Member States in the Council not only because of the proposed shift of decision-making powers from the Council to the Commission but also because of the proposed elimination of most of the existing national import restrictions and quotas in the context of the completion of the internal market.

Given the fact that measures taken under this regulation will not be subject to jurisdictional control of the European Court of First Instance, principle argument for the Commission proposal under consideration, it seems nevertheless appropriate to deal with the regulation on import and export quotas in a separate proposal.

25. Ad g)

This regulation deals with situations of a shortage of essential products in the EC. In order to guarantee sufficient supplies of those products (e. g. energy resources) quantitative export restrictions may be applied. The Commission may take provisional decisions with immediate effects (article 6) which must be submitted within 12 working days to Council for definite approval. If the Council does not decide within 6 weeks the provisional measures taken by the Commission are revoked (article 7). The Commission is being assisted by an advisory committee without any decision-making powers (article 4).

This regulation which has up to now never been applied provides for measures establishing quantitative restrictions which may infringe the rights of

individuals (e. g. exporters). These measures could be qualified as commercial policy defence measures against which economic agents could file a request for annulation according to article 173(2) EC Treaty. Such a request would come under the competence of the European Court of First Instance. Furthermore, in leaving the final decision to the Council the regulation dating from 1969 limits the implementation power of the Commission to a degree incompatible with the present situation of the Internal Market and the institutional development of the Community (Single European Act, Treaty of Maastricht). Therefore, it seems for reasons of coherence, not so much for those of practical considerations, appropriate to include it in the present proposal of the Commission on harmonization and streamlining the decision-making process on commercial policy defence measures. Even when the Commission has not included this regulation in its proposal the EP can do so by amending it. This would not be in contradiction with the exclusive competence of the Commission for legislative initiatives, since the amendment only applies the same concept as the Commission had used to other regulations.

26. Ad i)

This regulation provides for the decision and for internal procedures to administer autonomous customs preferences in favour of developing countries (GSP). The GSP which is in fact an exception to the GATT principle of Most Favoured Nation Treatment is founded multilaterally on an engagement given by the industrialized countries during the UNCTAD conference in 1970 as well as on Part IV of GATT. Apart from the decision which countries should be included in the GSP the regulation provides for preferential margins and quotas. The implementation power is with the Commission. It has to reintroduce the normal tariff rate as soon as the preferential tariff quotas have been reached at Community level (article 7) and may do so after an appropriate exchange of views and information with the Member States in cases where the preferential imports cause or threaten to cause economic difficulties in the Community or in one of its regions (article 8). This should be done by means of a regulation. These regulations are taken by the Commission alone without consultation of the EP and without any involvement of the Council. The mechanism, therefore, leaves the powers of implementation with the Commission even without providing for a formal committee procedure which is completely in line with article 145(3) of the EEC Treaty. Given the fact that the more general decisions on the list of beneficiary countries, the preferential margins and quotas are taken by the adoption of an annual regulation by Council after consultation of the EP, this procedure is satisfactory. The regulation should thus not be included in the Commission proposal under consideration.

c) The Commission proposal and comitology

27. The Commission proposes that any decision to adopt definitive measures of commercial defence shall be taken in accordance with procedures for the exercise of implementing powers conferred on the Commission, as already provided for in certain existing instruments. The Commission proposes to establish in general the "management committee-procedure" as laid down in the Council Regulation on comitology. It has chosen the form of a management Committee of Type II b (see Council decision of 18 July 1987, article 2) which foresees that if the measures proposed by the Commission are not in accordance with the opinion of the management committee, delivered by qualified majority, the Commission shall defer their application for a

certain time not exceeding three months. During this period the Council may take a different decision acting by qualified majority. If the Council takes no decision the measures proposed by the Commission shall apply. The Commission proposes a 20 day period for the Council's consideration.

28. As regards safeguard actions the Commission proposes to replace Variant (b) (see Article 3 of Council decision of 18 July 1987) by Variant (a). According to this formula, if a Member State refers the Commission's decision to Council, the Council may take a different decision acting by qualified majority during a specified period of time for which the Commission proposes one month. During this period the safeguard measures continue to be applied which holds true as well in the case that Council does not take any decision at all. By this a decision vacuum can be avoided.
29. The proposed form of a management Committee composed of representatives of the Member States and chaired by a representative of the Commission will allow the Commission to exercise its decision making power in a timely and efficient way. The fact that, in case of disagreement between the Commission and the management committee, where definitive actions shall be deferred for twenty days has no practical consequences for an immediate reaction by the Commission, as in nearly all cases provisional measures can be taken by the Commission alone waiting for a final decision on definitive measures. Therefore, in terms of comitology, the choice of the committee Type II b could be accepted by the European Parliament as well as the proposed improvements concerning the safeguard measures. But in order to be in line with the position of the EP on comitology as mentioned above your rapporteur proposes to amend the Commission proposal by introducing the management committee procedure of Type IIa. This means definitive measures taken by the Commission would continue to apply during the period of 20 days provided for a Council decision.

Proposed amendments on anti-dumping measures

30. In its resolution on EC anti-dumping Policy of 28 November 1990 the EP put forward several proposals to improve the institutional ramification of Common Commercial Policy:
 - 30.1. Any important trade legislation should require the assent from the EP (para. 15).
 - 30.2. The EP should be consulted on any proposal to revise the EC anti-dumping regulation (para 16).
 - 30.3. The annual report of the Commission on its anti-dumping Policy should be transmitted to Parliament no later than three months following the period covered by the report (para. 17).
 - 30.4. According to the increasingly global nature of competition in industry and services anti-dumping regulations should be accompanied by a global code on competition (para. 18).
 - 30.5. The decision-making process on anti-dumping measures should be speeded up (para 19), not only as concerns definitive actions but also at various stages of the anti-dumping proceedings such as opening an inquiry or fixing provisional duties (para. 26), which should be

imposed no later than six month after the filing of the notice that a proceeding has been opened (para. 28).

- 30.6. The New Commercial Policy Instrument which has been of little effect to protect European industry against illicit trade practices of third countries (para. 30) should be revised notably in triggering the GATT dispute settlement mechanism (para. 31) and be applied in cases where non-EC governments tolerate systematic anticompetitive activities which deny fair and equitable access to EC suppliers of goods and services (para. 32).

To take all these recommendations into account would certainly exceed the limited scope of the Commission's proposal, some of them implying revisions of the EC Treaty or multilateral negotiations. The subjects raised under point b) and e) are more or less covered by the proposal of the Commission. The request for a fixed time limit to adopt provisional measures and to publish the annual report on EC anti-dumping Policy as well as for the improvement of the New Commercial Policy Instrument could be added to the Commission proposal without infringing the Commission's power for initiative.

Antidumping measures	Present situation	Commission proposal
Provisional duties	Commission decides after consultation with Member State	Commission decides after consultation with Member State
Definitive duties	Council acts by qualified majority (3 Member States can block)	Commission decides by Procedure II (b) (Management Committee): - Commission submits draft measures - Committee delivers its opinion by qualified majority a) in accordance: measures become definitive b) in disaccordance: measures suspended for a period up to 20 days during which Council may take a different decision by qualified majority (7 Member States required to block measures envisaged by the Commission)
Safeguard measures	Present situation	Commission proposal
Surveillance measures ----- Protective measures	Commission decides by safeguard procedure, Type IV (b): One Member State can refer the matter to the Council. Council requires qualified majority to maintain the Commission decision (3 Member States can block). If no decision by Council, the Commission decision automatically lapses. ----- Council decides by qualified majority (3 Member States can block).	Commission decides with a Type IV(a) - Safeguard procedure: One Member State can refer the matter to the Council. Council requires qualified majority to alter the Commission decision. If no decision by Council, the Commission decision becomes definitive. ----- Commission decides by Procedure II (b) (Management Committee): - Commission submits draft measures - Committee delivers its opinion by qualified majority a) in accordance: measures become definitive b) in disaccordance: measures suspended for a period up to 20 days during which Council may take a different decision by qualified majority (7 Member States required to block measures envisaged by the Commission)

ON COMITOLGY

ANNEX II

Procedure	Committee	Decision making process	Position of EP
I	Advisory Committee	Commission submits draft measures, committee delivers its opinion, if necessary by a vote on simple majority. Commission decides taking the utmost account of the opinion of the committee. No possibility for Member States to refer the Commission decision to Council.	In favour. Prefers that no vote should be foreseen in the advisory committee. This procedure shall be used generally for the transferral of implementing powers.
II A/B	Management Committee	Commission submits draft measures. Committee delivers its opinion by voting with qualified majority. If in accordance with the opinion Commission decision becomes definitive. If in disaccordance, they are referred to Council, which may within a period not exceeding one month take a different decision by a qualified majority. During this period the application of the measures taken by the Commission may be deferred (Variant A) or shall be deferred (Variant B).	In favour of Variant A, if the decisions to be taken are not of a purely technical nature but of a certain political significance. Against Variant B, because this could unduly delay application of measures.
III A B	Regulation Committee	Commission submits draft measures. Committee delivers its opinion by voting with qualified majority. If in accordance with the opinion Commission decision becomes definitive. If in disaccordance or if no opinion, Commission shall submit draft measures to Council which decides by qualified majority within a period no longer than three month. If no decision by Council, proposed measures shall be adopted by Commission (Variant A), or shall be adopted only if Council has not rejected them by simple majority (Variant B).	Against Regulation Committee, because it provides no real transferral of implementing powers to the Commission. A minority of Member States can block a Commission proposal in committee and seven Member States can vote them down in Council which would lead to no decision at all at the end of the procedure.
IV A B	Safeguard measures	Commission decides after consultation with Member States. Any Member State may refer these measures to the Council within a certain time limit. Council may change the Commission decision - by qualified majority (Variant A). If no decision by Council Commission decision is deemed to be revoked (Variant B).	In favour of Variant A, but against Variant B, because it does not assure any decision at the end of the procedure.

OPINION

(Rule 120 of the Rules of Procedure)

of the Committee on Economic and Monetary Affairs and Industrial Policy
for the Committee on External Economic Relations

Draftsman: Mr Ejner Hovgård CHRISTIANSEN

At its meeting of 16 October 1992 the Committee on Economic and Monetary Affairs and Industrial Policy appointed Mr Christiansen draftsman.

At its meetings of 27-28 January and 17-18 February 1993 it considered the draft opinion.

At the last meeting it adopted the conclusions as a whole unanimously.

The following took part in the vote: Beumer, chairman; Fuchs, vice-chairman; Patterson, vice-chairman; Caudron, Delcroix (for Metten), Donnelly, Grund (for Geraghty), Herman, Hoppenstedt, Lulling, Merz, Siso Cruellas, Thyssen.

I. Presentation of the Commission proposal

1. The proposal wants to improve the decision-making mechanisms of the various Community instruments on commercial defence. The Community instruments to be modified are: the anti-dumping and anti-subsidy Regulation, the Regulation concerning safeguard measures and the "New Instrument of Commercial Policy".

The instruments of commercial defence in particular those, which enable the Community to react against unfair trade practices, are a necessary element of an open market and a fair trading system.

2. The proposal is due to the fact, that the competences of the Court of First Instance are to be extended to include measures of commercial defence. The necessarily time consuming two-tiered mechanism of jurisdictional control makes it imperative to simplify and streamline the decision-making procedures for the adoption of commercial defence measures.
3. The procedure proposed has been chosen within the framework of the Comitology Decision introducing a Management Committee, except for the special procedures applicable to urgent safeguard measures. By virtue of the procedure II(b) of Article 2 in the Comitology Decision¹, the Commission adopts the defence measure after due consultation of the Member States; if the Member States want to overturn the Commission decision they do need a qualified majority in the Council.

II. Conclusions

1. The Committee on Economic and Monetary Affairs and Industrial Policy approves the Commission proposal, as it accelerates and simplifies the adoption of measures of commercial defence at Community level.
2. The Committee welcomes the fact that the proposal contributes to improve the decision-making procedures, as the competences of the Court of First Instance are extended to guarantee the jurisdictional control of the decision-making.
3. The measures of commercial defence are specially needed, to protect the Community industries against dumped or subsidized imports.

¹ OJ N° L 197, 18.7.1987, p. 33.

DA

DE

GR

EN

ES

FR

IT

NL

PT