Common commercial policy: aligning certain acts with the TFEU; procedures for the adoption of certain measures

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The Committee on International Trade adopted the report by Godelieve QUISTHOUDT-ROWOHL (EPP, DE) on the proposal for a regulation of the European Parliament and of the Council amending certain regulations relating to the common commercial policy as regards the procedures for the adoption of certain measures.

The committee recommended that the European Parliament's position in first reading following the ordinary legislative procedure should amend the Commission proposal as follows:

Addition of two Regulations to the proposal under consideration: whilst the Commission proposal is confined to the amendment of 24 regulations, this report adds two further regulations, these being **Council Regulation (EC) No 3448/93** laying down the trade arrangements applicable to certain goods resulting from the processing of agricultural products, and **Council Regulation (EC) No 1236/2005** concerning trade in certain goods which could be used for capital punishment, torture or other cruel, inhuman or degrading treatment or punishment.

The legal basis of these two regulations is Article 207 TFEU (ex Article 133 EC.) Its objectives focus on common commercial policy matters. Both regulations include provisions that provide the Commission, the Council and the Member States with implementing powers that should be aligned to the provisions of Articles 290 (delegated acts) and 291 TFUE as well as of Regulation (EU) No 182/2011.

Examination procedure or advisory procedure: the report confirms the Commission proposal to use the examination procedure in the application of implementing provisions in the vast majority of cases. Members consider that that the examination procedure is the appropriate procedure particularly where final anti-dumping, anti-subsidy and safeguard measures are concerned. This is already implied by the provisions of Regulation (EU) No 182/2011. In a departure from the Commission proposal, however, **the report recommends using the advisory procedure** in all cases where the Commission must consult Member States before taking a decision but in which the protracted decision-making involved in the examination procedure is an obstacle to arriving at a decision. This is the case with **provisional safeguard measures, surveillance measures and suspension measures** as part of trade policy defence instruments, when a quick, effective response from the Commission is called for.

In urgent cases, where temporary safeguard measures are adopted, **in addition to using the advisory procedure there must be provision for immediate measures to be adopted by means of implementing provisions that are immediately applicable.**

Written procedure: in accordance with Regulation (EU) n° 182/2011, the chair of an advisory or examination committee can order a written procedure in simple cases. The Regulation lays down that, except as otherwise provided, the written procedure may not be applied if a Member State objects. The report contains a different rule for all the regulations with which it is concerned. It stipulates that **the written procedure is to be terminated only if a qualified majority of Member States calls for this**. The report also contains an explicit reference to the written procedure, in order to encourage its use, in simple cases such as the termination of the procedure.

Delegated acts: the report confirms the introduction of delegated acts in all the fields proposed by the Commission. In addition, it provides for their application in the following regulations:

- Council Regulation (EC) No 3448/93 concerning trade arrangements applicable to certain goods resulting from the processing of agricultural products;

- Council Regulation (EC) No 427/2003 on a transitional product-specific safeguard mechanism for imports originating in the People's Republic of China and amending Regulation (EC) No 519/94 on common rules for imports from certain third countries;

- Council Regulation (EC° No 1236/2005 concerning trade in certain goods which could be used for capital punishment, torture or other cruel, inhuman or degrading treatment or punishment;

- Council Regulation (EC) No 732/2008 of 22 July 2008 applying a scheme of generalised tariff preferences for the period from 1 January 2009 to 31 December 2011 and amending Regulations (EC) No 552/97, (EC) No 1933/2006 and Commission Regulations (EC) No 1100/2006 and (EC) No 964/2007.

The report recommends the use of delegated acts in these regulations for the following purposes: (a) to amend or adapt one or more annexes to the regulation concerned, and (b) to adopt detailed provisions for the specific implementation of individual articles.

The special case of the Generalised System of Preferences (GSP): the GSP constitutes a special case in this report. The use of delegated acts and implementing provisions was already debated between the end of 2010 and beginning of 2011 in connection with Regulation (EU) No 512/2011 of the European Parliament and of the Council amending Council Regulation (EC) No 732/2008 applying a scheme of generalised tariff preferences for the period from 1 January 2009 to 31 December 2011. The report consistently takes up all the European Parliament's demands of March 2011.

More specifically, Members lay down **rules on delegated acts in the following cases**: (i) granting of special incentive arrangements for sustainable development and good governance; (ii) adoption of rules on the reduction of the Common Customs Tariff duties on the products of tariff heading 1701 and the abolition of the Common Customs Tariff duties on the products of tariff headings 1006 and 1701; (iii) deletion of a country from Annex I and amendment of all annexes on account of changes in the international status or classification of countries or territories, on account of the attainment in a country of the threshold values set or on account of the establishment of a final list of beneficiary countries.

Consultation procedures (anti-dumping and anti-subsidy): with regard to anti-dumping and anti-subsidy measures, rather than consultations when the procedure is initiated, the report requires the Commission to inform Member States and makes it possible for Member States to indicate their positions at an early stage. In none of the cases in question does the report replace the previous consultation procedures with an advisory procedure.

Time limits in the anti-dumping and anti-subsidy procedures: the Commission proposal provides for a possible extension of the deadlines for completing anti-dumping and anti-subsidy procedures to be incorporated in the anti-dumping and anti-subsidy regulation. Hitherto, a time limit of 15 months has applied to anti-dumping procedures and 13 months to anti-subsidy procedures. The Commission proposal now permits the time limits to be extended to a maximum of 18 months. This is also the maximum permitted under WTO rules.

The report contains the following amendments:

- the abolition of the consultation procedures makes it possible to reduce the regulatory procedure to **14 months** in anti-dumping cases and **12 months** in anti-subsidy cases;

- if, after the examination procedure has been completed without result, a decision is needed from the appeal committee, it must be possible to extend the time limit to **15 months** in anti-dumping cases and **13 months** in anti-subsidy cases, since otherwise it would be impossible to comply with the time limits;

- extensions of time limits should be possible **only where the appeal committee is asked** for a decision. It is therefore up to the Member States to indicate at an early stage in the procedure whether or not it will be necessary to seek a decision from the appeal committee.

Reports: in most of the regulations in question, the report recommends requiring the Commission to report to the European Parliament and to the public. All information that is not confidential must be set out in an annual or biennial report and published. This is necessary in order to supply information about fields which have been placed beyond the immediate reach of the European Parliament and hence of the public by adopting implementing provisions, thus facilitating scrutiny in accordance with Article 11 of Regulation (EU) No 182/2011.