

European Communities

EUROPEAN PARLIAMENT

Working Documents

1983 - 1984

1 June 1983

DOCUMENT 1-376/83

REPORT

drawn up on behalf of the Committee on External
Economic Relations

on the proposal from the Commission of the European
Communities to the Council (Doc. 1-64/83 - COM(83) 87 final)
for a regulation on the strengthening of the common
commercial policy with regard in particular to protection
against unfair commercial practices

Rapporteur: Mr E. BLUMENFELD

By letter of 17 March 1983 the President of the Council of the European Communities (optionally) requested the European Parliament to deliver an opinion, pursuant to Articles 113 and 235 of the EEC Treaty, on the proposal from the Commission of the European Communities to the Council for a regulation on the strengthening of the common commercial policy with regard in particular to protection against unfair commercial practices.

On 11 April 1983 the President of the European Parliament referred this proposal to the Committee on External Economic Relations as the committee responsible and to the Committee on Agriculture, the Committee on Economic and Monetary Affairs and the Legal Affairs Committee for an opinion.

At its meeting of 24 March 1983 the Committee on External Economic Relations appointed Mr Blumenfeld rapporteur.

The committee considered the Commission's proposal and the draft report at its meetings of 20 April 1983 and 26 May 1983.

At the last meeting, the committee decided by 14 votes with 3 abstentions to recommend to Parliament that it approve the Commission's proposal with the following amendments.

The committee then adopted the motion for a resolution as a whole by 16 votes with 1 abstention.

The following took part in the vote : Mrs Wieczorek-Zeul (acting chairman), Mr Seal (vice-chairman), Mr Blumenfeld, (rapporteur), Mr Alavanos, Mr Fellermaier (deputizing for Mr Radoux), Mr Gauthier (deputizing for Mr Bord), Miss Hooper, Mr Lemmer, Mr Mommersteg, Mr Nielsen (deputizing for Mr Pruvot), Mr Nikolaou (deputizing for Mr Pelikan), Mrs Phlix (deputizing for Mr Majonica), Mrs Poirier, Mr Rieger, Mr Seeler, Sir Jack Stewart-Clark and Mr Ziagas.

The report was submitted on 27 May 1983.

The opinions of the Committee on Agriculture, the Committee on Economic and Monetary Affairs and the Legal Affairs Committee are attached.

CONTENTS

	Page
1. Proposal for a Council Regulation (EEC)	5
2. Motion for a resolution	8
3. Opinion of the Committee on Agriculture	10
4. Opinion of the Committee on Economic and Monetary Affairs	11
5. Opinion of the Legal Affairs Committee	13

The Committee on External Economic Relations hereby submits to the European Parliament the following amendments and motion for a resolution:

Proposal for a
COUNCIL REGULATION (EEC)

on the strengthening of the common commercial policy with regard
in particular to protection against unfair commercial practices

Preamble

TEXT PROPOSED
BY THE COMMISSION

AMENDMENTS PROPOSED
BY THE EUROPEAN PARLIAMENT

First, second and third paragraphs
unchanged.

Add:
'and the opinion of the European
Parliament,'

Fourth and fifth paragraphs
unchanged

Insert a new sixth paragraph
'whereas the European Parliament has
already called for improvements in
the area of trade protection in its
resolution of 16 December 1982 on
the Community's anti-dumping
activities¹

¹ OJ C 11, 18 January 1982, p.39

Remainder of preamble unchanged.

Article 1

AIMS
(unchanged)

Article 2

DEFINITIONS

1. (unchanged)

2. For the purposes of this Regulation,
unfair commercial practices shall
be any practices attributable to
third countries which are incom-
patible with international law or
the rules commonly accepted by the
Community's principal partners
regarding commercial policy.

2. For the purposes of this Regulation,
unfair commercial practices shall
be any practices attributable to
third countries which are incom-
patible with international law
_____ regarding
commercial policy.

3. (unchanged)

4. (unchanged)

Article 3

COMPLAINT ON BEHALF
OF COMMUNITY PRODUCERS

1. (unchanged)
2. (unchanged)
3. (unchanged)

After paragraph 3, insert the following
new paragraph 3 (a):

'3 (a) The Commission may reject,
prior to the opening of the consul-
tation procedure, any complaint
which is not adequately substantiated'.

Article 4

REFERRAL BY A MEMBER STATE
(unchanged)

Article 5

CONSULTATION PROCEDURE

1. -5. (unchanged)

Insert a new paragraph 6.

'6. Where it becomes apparent
after consultation that the complaint
does not provide sufficient evidence
to justify initiating an investiga-
tion, then the complainant shall be
so informed.

Article 6

COMMUNITY EXAMINATION PROCEDURE

1. -7. (unchanged)

8. The Commission shall take a decision
as soon as possible on the opening of
a Community examination procedure
following any complaint or request
made in accordance with Articles 3 and
4; the decision shall normally be taken
taken within 45 days of referral.

8. The Commission shall take a decision
as soon as possible on the opening
of a Community examination procedure
following any complaint or request
made in accordance with Articles 3
and 4; the decision shall normally
be taken within 60 days of referral.

9. -10. (unchanged)

Article 7

CONFIDENTIALITY
(unchanged)

Article 8

EXAMINATION OF INJURY

1. (unchanged)
2. Where a threat of injury is alleged, the Commission should also examine whether a particular situation is likely to develop into actual injury. In this regard, account may also be taken of factors such as:
 - (a) the rate of increase of exports to the market where the competition with Community products is taking place;
 - (b) export capacity in the country of origin or export, which is already in existence or will be operational in the foreseeable future, and the likelihood that the exports resulting from that capacity will be to the market referred to in point (a).
2. Where a threat of injury is alleged, the Commission shall also examine whether a particular situation is likely to develop into actual injury. (deletion)
 - (a) deleted
 - (b) deleted
3. Injury caused by other factors which, either individually or in combination, are also adversely affecting Community industry, must not be attributed to the practices under consideration.
3. Injury caused by ----- factors which, either individually or in combination, are also adversely affecting Community industry and are not covered by paragraph 2 should not be taken into account.

Articles 9 - 14
(unchanged)

After Article 14, add the following new Article 14 (a):

'14 (a) Every six months a report shall be submitted to the European Parliament on the procedures carried out pursuant to this Regulation.'

Article 15
(unchanged)

MOTION FOR A RESOLUTION

closing the procedure for consultation of the European Parliament on the proposal from the Commission of the European Communities to the Council for a regulation on the strengthening of the common commercial policy with regard in particular to protection against unfair commercial practices

The European Parliament,

- having regard to the proposal from the Commission to the Council (COM (83) 87 final),¹
 - having been consulted by the Council pursuant to Articles 113 and 235 of the EEC Treaty (Doc. 1-64/83),
 - having regard to the report of the Committee on External Economic Relations and the opinions of the Committee on Agriculture, the Committee on Economic and Monetary Affairs and the Legal Affairs Committee (Doc. 1-376/83),
 - having regard to the votes on the Commission's proposal,
 - (a) with reference to the damage inflicted on the economy of the Community by unfair commercial practices,
 - (b) emphasizing the need to strengthen the instruments available to the Community to protect it against such practices,
 - (c) having regard to the report of the Committee on External Economic Relations on the Community's anti-dumping activities (Doc. 1-422/31),
1. Welcomes in principle the consultation by the Council on this proposal for a regulation, the text of which however is still not available in the final form;
 2. Urges that in future more appropriate deadlines should be set for consultation procedures on such important proposals for regulations, allowing time for adequate consideration; limits its assessment of the proposal for a regulation therefore to the following general observations:

¹ OJ No C 83, 26 March 1983, p. 6

3. Welcomes the common commercial policy objectives pursued through the proposal for a regulation and the fact that the latter embodies a number of proposals contained in Parliament's resolution of 16 December 1981¹ on the Community's anti-dumping activities;
4. Is thus convinced of the need for the Community to have more effective commercial policy instruments at its disposal, but which must be fully compatible with its international legal obligations, particularly under GATT.
5. Stresses that the measures needed to strengthen the EEC's internal market should not be linked with the adoption of the present proposal for a regulation;
6. Fears that the vagueness of the legal terms in the proposal for a regulation may lead to a cumbersome procedure and confuse industry;
7. Instructs its President to forward to the Council and Commission, as Parliament's opinion, the Commission's proposal as voted by Parliament and the corresponding resolution.

¹ OJ C 11 of 18.1.1982

OPINION OF THE COMMITTEE ON AGRICULTURE

Letter from Mr David Curry, chairman of the Committee on Agriculture, to Sir Fred Catherwood, chairman of the Committee on External Economic Relations.

Brussels, 26 May 1983

Dear Sir Fred,

At its meeting of 26/27 May 1983 the Committee on Agriculture¹ considered the proposal for a Council Regulation (EEC) on the strengthening of the common commercial policy with regard in particular to protection against unfair commercial practices (Doc. 1-64/83).

It considers that the Commission proposal is very important for the agricultural sector. As the Community is becoming increasingly dependent on the export of agricultural products it is vital to protect these exports effectively, i.e. by acting against third countries which obstruct or hinder Community exports through unfair commercial practices.

The Committee on Agriculture therefore approves the Commission's draft regulation.

Yours sincerely,

David CURRY

¹Present: Mr Curry, chairman; Mr Colleselli and Mr Delatte, vice-chairmen; Mr Clinton, Mr Dalsass, Mr Helms, Mrs Herklotz, Mr Klepsch (deputizing for Mr Früh), Mr Papapietro (deputizing for Miss Barbarella), Mr Vernimmen, Mr Vgenopoulos and Mr Vitale.

OPINION OF THE COMMITTEE ON ECONOMIC AND MONETARY AFFAIRS



UROPA-PARLAMENTET
 UROPÄISCHES PARLAMENT
 ΕΥΡΩΠΑΪΚΟ ΚΟΙΝΟΒΟΥΛΙΟ
 EUROPEAN PARLIAMENT
 PARLEMENT EUROPÉEN
 PARLAMENTO EUROPEO
 EUROPEES PARLEMENT

Commission économique et monétaire
 Président

Sir Fred CATHERWOOD
 Chairman
 Committee on External Economic Relations
 European Parliament
 Plateau du Kirchberg
 LUXEMBOURG

Dear Mr Chairman,

At its meeting of 29 April 1983 the Committee on Economic and Monetary Affairs considered the proposal from the Commission for a Council Regulation on the strengthening of the Common Commercial Policy with regard in particular to protection against unfair commercial practices (Doc. 1-64/83). The Committee on Economic and Monetary Affairs welcomes this proposal and notes that it responds exactly to the request expressed by Parliament in paragraphs 13 and 14 of its resolution on anti-dumping (Doc. 1-422/81) and referred to in paragraph 20 of the explanatory statement.

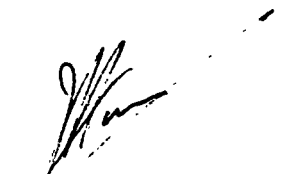
The Committee takes the view that, while it is absolutely correct for the Community to have prepared mechanisms to enforce its rights as established by international agreements, the definition of an unfair commercial practice as contained in article 2, paragraph 2 of the proposal, is too open-ended; consequently it welcomes the Commission's statement that this article is to be redrafted.

The Committee recognises that there is an obvious connection between the Commission's proposals for strengthening the internal market and this proposal to ensure full exercise of the

../.

Community's rights in compliance with existing international obligations; however it takes the view that each of these lines of action can be justified on its own merits and that the one should not, therefore, be conditional on the other. With these observations, this letter may be regarded as the favourable opinion of the Committee on Economic and Monetary Affairs.

Yours sincerely,



Jacques P. MOREAU
Chairman

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- (1) Voted and adopted unanimously
Present: Mr MOREAU, chairman, Mr DELEAU, vice-chairman; Mr WELSH, drafts-
man;
Mr PAPANTONIOU, Mr von BISMARCK, Mr HERMAN, Mr BEAZLEY,
Mr LEONARDI, Mr DELOROZOY, Mr van MINNEN

OPINION OF THE LEGAL AFFAIRS COMMITTEE

Draftsman: Mr SIEGLERSCHMIDT

At its meeting of 23/24 March 1983 the Legal Affairs Committee appointed Mr SIEGLERSCHMIDT draftsman of the opinion.

The Committee considered the draft opinion at its meeting of 20/21 April 1983. It adopted the conclusions (IV) on 25 May 1983 by 10 votes to 1 with 1 abstention.

The following took part in the vote: Mrs VEIL (chairman); Mr CHAMBEIRON (vice-chairman), Mr SIEGLERSCHMIDT (draftsman), Mr BOOT, Mr D'ANGELOSANTE, Mr DONNEZ, Mr GEURTSSEN, Mr GONTIKAS, Mr GOPPEL, Mr MEGAHY, Mr TYRRELL and Mr VIE.

I. Introduction

- (1) The regulation proposed by the Commission aims to provide the Community with a new trade protection instrument. With the further opening up of the internal market and the consequent removal of barriers within the European Community, a means is to be provided for taking more effective action against unfair commercial practices by third countries.
- (2) Until now, possibilities for counter-measures against disruptive practices on the part of third countries have existed chiefly in the USA, which with the US TRADE ACTS (Section 301) created machinery that empowers the President to take action against any 'unjustifiable, unreasonable or discriminatory' practice by the government of another country which was damaging to US trade. However, given the virtual absence of any definition, these terms inevitably introduce an arbitrary element into commercial policy and could in certain circumstances come into conflict with the GATT.
- (3) The Commission has therefore proposed a regulation which lays down a global approach consistent with international law, but does not enumerate the instances in which the provisions could be applied.
- (4) As part of this policy of enforcing trade protection measures, Council Regulation (EEC) No. 3017/79 on protection against dumped or subsidized goods from non-Community countries, and certain other regulations governing imports have so far been adopted in the Community.

II. Legal basis

- (5) The legal basis for this new regulation is provided by Article 113 of the EEC Treaty, which calls for the implementation of a common commercial policy. Paragraph 1 of this Article allows trade protection measures of the kind provided for in the proposal for a regulation.

III. Comments on individual provisions

(6) In conformity with the global approach, the regulation establishes commercial policy procedures aimed at

- (a) responding to any unfair commercial practice and removing the injury resulting from such practice, and
- (b) ensuring full exercise of the Community's rights.

The procedures covered by (b) relate primarily to recourse to the GATT dispute settlement procedures under Article XXIII and requests for compensation under Article XIX.

The procedures covered by (a) presuppose that commercial practices are to be regarded as 'unfair' when they are incompatible with the commitments of the relevant third country to the Community and inadmissible under international law.

(7) In addition, Article 2 of the proposal for a regulation defines as 'unfair' any commercial practices which are incompatible with the rules commonly accepted by the Community's principal partners regarding commercial policy. This definition is too vague to allow a convincing interpretation. It is more likely to give rise to excessive employment of the procedure and result in differences in treatment by the various authorities. A more restrictive wording, focussing solely on incompatibility with international law, is therefore sufficient.

(8) In complaints of unfair commercial practices, any natural or legal person acting on behalf of Community industry, or any Member State, is entitled to apply directly to the Commission for the initiation of the procedure. However, such a request must be supported by sufficient evidence of the existence of such practices and of significant injury to the complainant (Articles 3 and 4).

(9) The aim of these (internal) deliberations is to ensure that each Member State is promptly informed and has the opportunity to comment on the practices and measures which have given cause for

complaint. It therefore seems appropriate, in the interests of clarification, to add the stipulation that such deliberations should be compulsory.

- (10) The Community examination procedure is initiated following deliberations in a Committee formed by representatives of each Member State and chaired by a representative of the Commission. In Article 5 of the proposal for a regulation, the word 'consultations' should be replaced by 'deliberations', since the same term is used in a different sense in Article 6. This could be a source of confusion, because Article 5 refers to internal consultations among the Member States, while Article 6 provides for external consultations with third countries. 'Consultations' should therefore be prescribed only in Article 6, since its application in this context corresponds to international usage, including that of the GATT.
- (11) The examination is conducted by the Commission in cooperation with the Member States and the third countries concerned, in accordance with the criteria and time limits set out in detail in Articles 6 and 8. If necessary, investigations may be carried out into the records of the interested parties, undertakings, traders or producers, even on the territory of the third country, provided that its consent has been obtained.

The Commission may also hear the interested parties and request any information of relevance to the subject under examination.

The complainant may, on application, inspect the documents which have been made available to the Commission, with the exception of Commission documents. It is essential in this respect that only internal documents intended for the use of the Commission be restricted, since all others - given the tenor and purpose of the provision - should be available for inspection.

- (12) Information received in the course of the procedure may on application be treated as confidential (Article 7). In the case of an unwarranted request, the information concerned may be disregarded and excluded from the procedure. For clarification,

paragraph 4 of Article 7 should be expanded to specify that if the informant refuses to make information available to the other side, i.e. to the interested party, then such information may be disregarded for the purposes of the procedure.

- (13) During the procedure, the third countries concerned may undertake to remove the unfair commercial practices and thereby bring about the termination of the procedure (Article 10).
- (14) Should, however, action be deemed necessary on completion of the procedure, the regulation (Article 11) proposes, in general terms, various commercial policy measures.

Under the rules of the GATT, Contracting Parties are obliged to employ the international dispute settlement procedure. It should therefore be specified with respect to the proposed measures that the GATT rules are to be observed where applicable.

- (15) The proposal for a regulation allows the Commission to take provisional protective measures. The committee responsible will need to decide whether the inclusion of such measures is appropriate.

If the provision is necessary, the Commission must be required to initiate the Community examination procedure pursuant to Article 6, in order at least to guarantee a thorough investigation into the alleged unfair commercial practices. It follows that the measures referred to in Article 6 should be expressly described as 'provisional'.

IV. CONCLUSIONS

- (16) The Legal Affairs Committee recommends the following course of action with respect to the proposal for a Council Regulation:
 - (a) 6th recital: delete from 'whereas where such obligations ...' to the end.
 - (b) Amend Article 2(2) to read as follows:

'2. For the purposes of this Regulation, unfair commercial practices shall be any practices attributable to third countries which are incompatible with the obligations of that third country vis-à-vis the Community or incompatible with international law.

(c) Unlike the original French version, the German version of Article 2(4) is barely comprehensible. The committee responsible should obtain an intelligible translation before it begins its final deliberations.

(d) For the German text only. Amend the relative clause beginning in line 3, Article 3(1) to read as follows:

'... der sich durch unlautere Handelspraktiken für geschädigt hält, ...'

(e) Amend Article 3(5), first phrase to read as follows:

'Where it becomes apparent after the deliberations detailed in Article 5 ...'

(f) Amend Article 3 (5) by the addition of the words at the end: 'giving reasons'

(g) Amend Article 4 (3) to read as follows:

'3. The Commission shall notify the other Member States of the requests without delay.'

(h) In Article 5, of the Dutch and German versions, replace the references to 'consultation' with 'deliberation'. The title should consequently be amended to read 'Deliberation procédure'. Paragraph 1 is to read as follows:

'1. For the purposes of deliberations pursuant to this Regulation, a Committee (6 words deleted) is hereby set up and shall consist of representatives of each Member State, with a representative of the Commission as chairman.'

The modification recommended above also applies to paragraphs 4 and 5 and possibly Article 13 (2).

(i) Add the following new paragraph 6 to Article 5:

'6. The deliberations provided for in this Article - and to which due reference is made in other Articles - shall be compulsory.'

(j) In Article 6 (1), first sentence, delete the words 'to the Commission'.

(k) In Article 6 (2), point (c), after the words 'are carried out', insert the words 'pursuant to point (a)'.

(l) (Does not concern the English text.)

(m) To Article 6 (c) (i) (cc) add at the end the words 'which period shall be extended if suitable cause is shown'.

(n) Amend Article 7 (4) to read as follows:

'4. However, if it appears that a request for confidentiality is not warranted and if the supplier is unwilling either to disclose the information to the other side or to authorize its disclosure in generalized or summary form, the information in question may be disregarded for the purposes of the procedure.'

(o) Amend Article 11 (2), point (a) to read as follows :

'a. mandatory recourse to international dispute settlement procedures in cases covered by such procedures,

(p) In Article 12 the following modifications are regarded as essential:

(aa) Insert the word 'provisional' before the words 'protective measures'.

(bb) Add the following as a second sentence: 'It shall at the same time initiate the Community examination procedure pursuant to Article 6.'

(q) Delete the second sentence of Article 13 (1).

(r) Delete Article 13 (2)

(s) Alter Article 14 insert a new Article 14 a:

'The Commission shall make an annual report to the European Parliament setting out the action taken under this Regulation.'