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REPORT

on the proposal for a Council decision establishing the Community position within the EC-Mexico Joint Council with a view to the adoption of a decision implementing Articles 6, 9, 12(2)(b) and 50 of the Economic Partnership, Political Coordination and Cooperation Agreement
(COM(2000)739 – C5-0698/2000 – 2000/0296(CNS))

Committee on Industry, External Trade, Research and Energy

Rapporteur: Caroline Lucas

Symbols for procedures

- * Consultation procedure
majority of the votes cast
- **I Cooperation procedure (first reading)
majority of the votes cast
- **II Cooperation procedure (second reading)
*majority of the votes cast, to approve the common position
majority of Parliament's component Members, to reject or amend
the common position*
- *** Assent procedure
*majority of Parliament's component Members except in cases
covered by Articles 105, 107, 161 and 300 of the EC Treaty and
Article 7 of the EU Treaty*
- ***I Codecision procedure (first reading)
majority of the votes cast
- ***II Codecision procedure (second reading)
*majority of the votes cast, to approve the common position
majority of Parliament's component Members, to reject or amend
the common position*
- ***III Codecision procedure (third reading)
majority of the votes cast, to approve the joint text

(The type of procedure depends on the legal basis proposed by the Commission)

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PROCEDURAL PAGE

By letter of 8 December 2000 the Council consulted Parliament, pursuant to Article 300(3), first subparagraph, of the EC Treaty, on the proposal for a Council decision establishing the Community position within the EC-Mexico Joint Council with a view to the adoption of a decision implementing Articles 6, 9, 12(2)(b) and 50 of the Economic Partnership, Political Coordination and Cooperation Agreement (COM(2000)739 - 2000/0296 (CNS)).

At the sitting of 15 December 2000 the President of Parliament announced that she had referred this proposal to the Committee on Industry, External Trade, Research and Energy as the committee responsible and the Committee on Foreign Affairs, Human Rights, Common Security and Defence Policy and the Committee on Development and Cooperation for their opinions (C5-0698/2000).

The Committee on Industry, External Trade, Research and Energy had appointed Caroline Lucas rapporteur at its meeting of 19 September 2000.

It considered the Commission proposal and draft report at its meetings of 9 and 24 January 2001.

At the last meeting the draft legislative resolution was adopted unopposed, with 1 abstention.

The following were present for the vote: Carlos Westendorp y Cabeza (chairman), Renato Brunetta, Nuala Ahern and Peter Michael Mombaur, (vice-chairmen), Ward Beysen (for Willy C.E.H. De Clercq), Guido Bodrato, Yves Butel, Massimo Carraro, Gérard Caudron, Giles Bryan Chichester, Nicholas Clegg, Claude J.-M.J. Desama, Harlem Désir, Garrelt Duin (for Glyn Ford pursuant to Rule 153(2)), Concepció Ferrer, Christos Folias, Per Gahrton (for Yves Piétrasanta), Norbert Glante, Michel Hansenne, Malcolm Harbour (for Werner Langen), Roger Helmer, Philippe A.R. Herzog, Hans Karlsson, Wolfgang Kreissl-Dörfler (for Elena Valenciano Martínez-Orozco pursuant to Rule 153(2)), Rolf Linkohr, Eryl Margaret McNally, Marjo Tuulevi Matikainen-Kallström, Angelika Niebler, Reino Kalervo Paasilinna, Elly Plooi-j-van Gorsel, John Purvis, Godelieve Quisthoudt-Rowohl, Imelda Mary Read, Mechtild Rothe, Christian Foldberg Rovsing, Paul Rübig, Jacques Santer (for Dominique Vlasto), Umberto Scapagnini, Ilka Schröder, Konrad K. Schwaiger, Esko Olavi Seppänen, Astrid Thors, Claude Turmes (for Nelly Maes), Jaime Valdivielso de Cué, W.G. van Velzen, Alejo Vidal-Quadras Roca and Anders Wijkman.

The Committee on Development and Cooperation decided on 9 January 2001 not to deliver an opinion. The Committee on Foreign Affairs, Human Rights, Common Security and Defence Policy decided on 23 January 2001 not to deliver an opinion.

The report was tabled on 30 January 2001.

DRAFT LEGISLATIVE RESOLUTION

European Parliament legislative resolution on the proposal for a Council decision establishing the Community position within the EC-Mexico Joint Council with a view to the adoption of a decision implementing Articles 6, 9, 12(2)(b) and 50 of the Economic Partnership, Political Coordination and Cooperation Agreement (COM(2000)739 – C5-0698/2000 – 2000/0296(CNS))

(Consultation procedure)

The European Parliament,

- having regard to the proposal for a Council decision (COM(2000)739¹),
 - having regard to Article 44(1), Article 47(2), last sentence, Articles 55, 56 to 59, 71 and 80(2) of the EC Treaty,
 - having been consulted by the Council pursuant to Article 300(3), first subparagraph, of the EC Treaty (C5-0698/2000),
 - having regard to Rule 67 and Rule 97(7) of its Rules of Procedure,
 - having regard to the report of the Committee on Industry, External Trade, Research and Energy (A5-0036/2001),
1. Approves the proposal for a Council decision;
 2. Instructs its President to forward its position to the Council and Commission, and the governments and parliaments of the Member States and the United Mexican States.

¹ Not yet published in the OJ.

EXPLANATORY STATEMENT

Introductory remarks:

This is the fourth consultation of the European Parliament on the EU-Mexico Agreement. Three earlier reports (two by Ms. Miranda de Lage and one by Ms. Ferrer) in this committee (or the REX committee, as it was) have considered the EU-Mexico Agreement as well as the Interim Agreement since 1998, explaining general aspects of the predicted gains in trade in goods, but also analysing its new aspects in comparison with the preceding agreement – in particular, the democratic and human rights clause, and mentioning as a new element of the bilateral relations the introduction of a new framework for political dialogue mainly within the Joint Council.

However, since this fourth consultation is probably the last one for the foreseeable future, it has a particular importance. The report concerns the decision of the Joint Council of the Economic Partnership, Political Coordination and Cooperation Agreement on aspects not covered by the Interim Agreement, that is to say: services, investment and aspects of intellectual property.

From a European perspective, the EU-Mexico agreement is seen as a milestone in the forthcoming relations with Latin American countries. It has a larger scope than any other agreement the EU has ever concluded with a third country. In the Commission's own words:

"In terms of coverage, this package will provide EC operators with more rapid preferential treatment than Mexico has ever before granted to any of its preferential partners and will place them in a much better position to compete on the Mexican market which is strategically important and has a significant growth potential." (Communication of the Commission to the Council and the European Parliament, 18.1.2000)

EU negotiators attach particular importance to this agreement because of EU losses in trade with Mexico after the conclusion of the NAFTA agreement, and as a result of its attempts to regain lost ground as well as to gain new access to US markets through Mexico. In fact, the EU has not only succeeded in achieving NAFTA parity, but has reached a result that even goes beyond NAFTA privileges in a number of areas, among them some of those which are part of the present report: e.g. services, investment and certain aspects of intellectual property.

Before covering those issues in more depth, two prior issues merit attention, and should guide our considerations:

1. Poverty in Mexico

First, it is clear that Mexico has an ambiguous status. On the one hand, it is member of the OECD and thus is considered to belong to the industrialised countries. On the other hand, it is a country with 95 million inhabitants where according to the poverty indicators established by

the Organisation of American States (OAS) well over half the population - 65 % - live in poverty. If we look at these poverty indicators, indicators of income distribution, access to drinking water and electricity and all those factors which led to the conflict in Chiapas, the country rightly deserves the status of a developing country.

That means that it is absolutely essential to take seriously the coherency principle of the European Union. The bottom line must be that a reinforced economic relationship with Mexico and better access to Mexican markets should not contradict development objectives and should not exacerbate the existing asymmetry between the two parties.

It is therefore of considerable concern that the agreement foresees the almost overall prohibition of performance requirements (see for instance exclusions of limitations in Chapter I, „General Dispositions“, Article 4, Market Access, and Article 6, National Treatment, Article 7, Trade liberalisation, including a „stand still clause“ etc.). On occasion of the approval this parliament has given to the Global Agreement, members had to face the reproach of giving a ‘blank cheque’ to an agreement whose contents had no even be negotiated in full. We should not expose ourselves once again to this reproach – we therefore need to focus on the impact the provisions we are examining are likely to cause.

2. The Joint Council

A second important consideration concerns the Joint Council itself. Particularly after the EU Summit in Nice, there is an increased sensitivity among members of parliament about who makes decisions on trade. This report is directed to the Joint Council, which on the European side is composed of Ministers – with the possibility of substitution by Commission representatives - and on the Mexican side by senior civil servants of the Executive.

According to the Agreement, the Joint Council has the authority to administer the execution of the agreement and to conduct any future liberalisation process. What is not clear, however, is whether any further mandates are given to the Joint Council, whether it acts autonomously and whether results of future negotiations will be submitted to the EP and the Mexicans for ratification and conversion into law inside the EU and in Mexico. At least in the case of Mexico, this procedure is mandatory in a number of sensitive issues (such as those this report is concerned with) according to the Mexican Constitution. However, according to critical comments from Mexican political parties and sectors of the civil society, the procedures established for the activities of the Joint Council contravene the Mexican Constitution. The rapporteur expects a clarification and eventual change of the provisions in order to meet the necessities of the Mexican Constitution. Additionally, we need to know whether the European Parliament will be informed before any further negotiations start. Both problems need to be addressed at the Joint Council meeting.

Trade in services

For the Commission, the negotiated trade package in services "is of key offensive interest to the EC" (18.1.2000). The liberalisation in services cover *all* sectors with the exception of audio-visual services, maritime cabotage and air transport.

Its terms and its scope are far-reaching. "From the entry into force, through a standstill provision, the agreement will secure service operators from the EC with an access to the Mexican market which will be equivalent if not superior to that currently enjoyed by Mexico's other preferential partners, in particular the USA and Canada" (ibid). Such a standstill clause is extremely worrying, since, by prohibiting Mexico from introducing any further standards and conditions, it could seriously damage the social and economic development and policy autonomy of a developing country.,

In relation to financial services, nobody doubts that there is an urgent need for the prevention of future financial crisis and crashes. However, looking through Chapter III, article 11, which refers to financial services, there appears to be no provision that *effectively* protects against another financial crisis, promotes the stability of the concerned financial markets and, above all, protects people from financial crashes. The only reference to the problem in article 19 is far too vague and is limited to the protection of investors and financial systems. Instead the programme merely consists of liberalisation and deregulation. Even more, e.g. par. B,6,d explicitly includes speculative aims. While the World Bank and the IMF are already working on safeguarding mechanisms, it is strange and worrying that the Commission has not followed their lead.

Furthermore, the Agreement states that "... no mode of supply is a priori excluded from coverage" (ibid). If that implies that education and health might be covered without safeguarding provisions, this is clearly of concern. Your rapporteur recalls that in the EP report on the EU approach to the Millennium Round, adopted on 18 November 1999, a specific demand was made that health and education be excluded from the revision of the GATS. More recently, at the Nice summit and on occasion of the revision of article 133, the French Government succeeded in excluding the negotiation of these sectors from Commission competence in trade, thus demonstrating a specific sensitivity. It would therefore be inconsistent to include education and health in the EU-Mexico Agreement as sectors to be liberalised. Moreover: "The agreement will prohibit the introduction or any new discrimination between or among the parties in the covered sectors, and will provide for the elimination of substantially all existing discrimination in the covered sectors within a time frame of no more than ten years." (ibid) This further example of a standstill clause means that the constraints placed upon Mexico by this Agreement are even stronger than those of the WTO, which contains no provision for a 10 year time frame. Besides, it limits the capacity of the respective legislative bodies to introduce new laws in an – at least - doubtful way.

Finally, Mexican civil society groups believe that the Mexican negotiators went beyond their powers in making this agreement, since the agreement establishes the powers of the Joint Council to dismantle Mexican trade in services legislation, which clearly is the duty of the legislative power. A strong recommendations should be to support civil society in Mexico which is asking for a change of this unconstitutional provision.

Investment

After the different economic crashes we have known in Mexico, investment is a particularly sensitive issue. However, the definition of investment includes direct investment, real estate, and purchase of securities, and therefore includes speculative movements, thus opening the door to further financial instability. The only measures that are proposed to safeguard the impact of this investment are limited to "firefighting" actions once a crisis has occurred, rather than being geared to the stabilisation of the overall system.

The introduction of further performance requirements is also excluded, which, once more, is highly questionable in terms of development coherence.

Furthermore, there are problems with the revision clause. Article 35 of the Decision of the Joint Council obliges Mexico to revise its legislation on investment within three years to make it compatible with international agreements on investment. Again, it is questionable whether this procedure is constitutionally correct in Mexico. Your rapporteur would like to see clear explanations on that matter. There are concerns that this provision violates the Mexican Constitution, as changes in the national legislation are in the competence of the legislative and not of the executive power, while only the latter is represented in the Joint Council. This matter should also be clarified as soon as possible.

Title IV on Investment and Related Payment, article 33, (b), concerns the "development of a legal framework favourable to investment on both sides, particularly through the conclusion, where appropriate, by the Member States of the Community and Mexico of bilateral agreements promoting and protecting investment and preventing double taxation". These bilateral agreements already exist between Mexico and the EU member countries, with ratification pending in the UK and Ireland. They have been severely criticised by large sectors of the organised Mexican civil society, as on the one hand, they give a preferential regime to foreign investors which may invoke international tribunals to solve conflicts avoiding Mexican jurisdiction, while national investors may not do so. On the other hand, as taxation of foreign companies based in Mexico by Mexican authorities is practically excluded, fiscal losses are expected to be enormous. Together with Mexican observers, the rapporteur proposes a report on the losses of Mexican tax income following the bilateral agreements.

Intellectual Property Rights

The provisions in this area are based on a number of international conventions. As it is often the case throughout the agreement, references to international conventions are in most cases very vague and thus open the door to conflicting interpretations. Curiously, the whole area of biodiversity and linked conventions is not explicitly mentioned. New important conventions and protocols are not referred to. With respect to the biosafety protocol, not included for obvious chronological reasons, a quick introduction of a positive reference to the necessity of the ratification process would be useful. Especially for the Mexican side, high standards of protection from exploitation and extinction in order to safeguard the country's biodiversity are urgently needed, and recommendations to ensure this should be introduced.

As other parts of the agreement provide for cooperation in the sector of biotechnology, any incoherence should be removed and the above mentioned aspect should be a priority of the cooperation.

Another point of concern is Title IV, article 36, 4.. It stipulates that within three years both parties will have to have adhered to the Treaty of Budapest on the International Recognition of the deposit of micro-organisms for the purpose of procedure with regard to patents (1977, modified 1980). How is it possible that the Executive commits itself not only to submitting this treaty to the corresponding legislative chambers for consideration, but also guarantees its ratification? From a legal point of view, the text needs to be changed. If not, it again violates at least the Mexican constitution.

Conflict resolution

The proposed panel mechanism follows the model of the WTO dispute settlement mechanism, and consequently suffers from the same problems: there is no civil society involvement whatsoever and the hierarchy between the panel findings and national legal systems seems to prioritise the first. There are no provisions concerning conventions or legislation that should be considered. In order to prevent arbitration unilaterally based on purely economic concerns, references to environmental and labour legislation and conventions should be introduced. Furthermore, there should be references to mechanisms of consultations with civil society, concerned consumer groups, trade unions etc. In this sense, annex III, par. 40 and 41 to article 43 should be substantially enlarged.

Conclusions:

Though the agreement has not yet come into force in its entirety, it is already time to undertake its revision in a number of aspects.

Your rapporteur recommends the following topics for the forthcoming agendas of the Joint Council:

I. The compatibility of the competences of the Joint Council with Mexican Constitution and, in general, democratic accountability of any negotiation and decision taken by the Joint Council should be a top priority of the Joint Council agenda. Its competences in terms of liberalisation in services, investment, intellectual property and conflict resolution should strictly be subject to the provisions of the Mexican Constitution. A protocol could be envisaged to recall and clarify the competences of the Mexican Senate and the European Parliament concerning the negotiation mandate and conclusion of liberalisation steps.

II. Effective monitoring of the human rights situation in Mexico as well as in the EU should be part of the agenda of the Joint Council. In order to make the very formal contents of the human rights clause operational and legally binding, the rapporteur proposes a reform concerning article 58 and article 39 of the Global Agreement. In this respect, the Joint Council should envisage a side agreement on Cooperation in Human Rights. A consultation with human rights organisations in Mexico and the EU on the scope of its provisions and enforcement mechanisms would be useful.

As a first step a clarification of the International Covenants on Human Rights on which the human rights clause is based should be undertaken. Endorsing recommendations made by organisations such as FIDH (International Human Rights Federation), ICFTU (International Confederation of Free Trade Unions), CES (Confederation of European Trade Unions) and CMT (Confederación Mundial del Trabajo), the rapporteur recommends the introduction of the following references:

- the International Covenant on Civil and Political Rights
- the International Covenant on Economic, Social and Cultural Rights
- the International Convention on the Elimination of All Forms of Discrimination against Women (CEDAW)
- the Declaration on the Right to Development (UNO, General Assembly, 4.12.1986)
- the main ILO Conventions
- the Project of a Universal Declaration on Indigenous Rights

III. The introduction of provisions for national development is another urgent matter. In order to monitor the evaluation of the Mexican situation, regular revisions of the effect of the Agreement on the national productive structure, and especially on SME which account for 90 % of the Mexican labour force, as well as on income distribution and job stability are necessary. A monitoring of the coherence and compatibility of trade measures in the scope of the Agreement with development principles is needed.

IV. Provisions that lead to the contravention of international Conventions both parties have subscribed to, such as the Basle and Rotterdam Conventions, have to be eliminated as soon as possible in order to avoid major legal conflicts at international level.

V. With respect to intellectual property, a reference to the Biosafety Protocol is recommended.

VI. With respect to, an amendment containing a reference to the recent OECD Code on Corporate Responsibility should be introduced.

VII. Furthermore, inconsistencies that refer to the unclear status of Mexico should be identified. In this context, the principle of national treatment which is evoked throughout the text of the agreement should undergo a revision. A reference to the outcome of the last Iberoamerican Summit (IX summit, 16.11.1999), where the Heads of State from the EU and Latin America promised to keep in mind the asymmetrical economic situation in both continents and to take measures for its elimination would be useful.

VIII The negotiation of sectoral agreements on labour rights and environment, including sanctioning mechanisms should be initiated at the first possible occasion. Concerning the environment, this step is of utmost urgency, as Mexico is considered as one of the countries with least environmental sustainability (La Jornada, 17.7.2000). It has lost 60 % of its temperate forest and more than 90 % of its tropical rainforest.

VIII. Finally, the rapporteur hopes that the EP is associated in the closest possible manner to all developments concerning the Agreement.

The favourable opinion the EP issues on occasion of the simple consultation on the concerned parts of the agreement is based on the expectation that all of the above mentioned issues will be addressed in due time and in a satisfactory manner.