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►B REGULATION (EU) No 38/2014 OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL

of 15 January 2014

amending certain regulations relating to the common commercial policy as regards the granting of delegated and implementing powers for the adoption of certain measures

(OJ L 18, 21.1.2014, p. 52)

Amended by:

		Official Journal		
		No	page	date
►M1	Regulation (EU) 2015/936 of the European Parliament and of the Council of 9 June 2015	L 160	1	25.6.2015
►M2	Regulation (EU) 2016/793 of the European Parliament and of the Council of 11 May 2016	L 135	39	24.5.2016
►M3	Regulation (EU) 2016/1076 of the European Parliament and of the Council of 8 June 2016	L 185	1	8.7.2016
►M4	Regulation (EU) 2018/196 of the European Parliament and of the Council of 7 February 2018	L 44	1	16.2.2018

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REGULATION (EU) No 38/2014 OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL

of 15 January 2014

amending certain regulations relating to the common commercial policy as regards the granting of delegated and implementing powers for the adoption of certain measures

Article 1

The Regulations listed in the Annex to this Regulation are hereby amended in accordance with the Annex.

Article 2

References to provisions of the Regulations listed in the Annex to this Regulation shall be construed as being made to those provisions as amended by this Regulation.

Article 3

This Regulation shall not affect procedures for the adoption of measures provided for in the Regulations listed in the Annex to this Regulation which have been initiated but not completed before the entry into force of this Regulation.

Article 4

This Regulation shall enter into force on the thirtieth day following that of its publication in the *Official Journal of the European Union*.

This Regulation shall be binding in its entirety and directly applicable in all Member States.

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ANNEX

LIST OF REGULATIONS FALLING UNDER THE COMMON COMMERCIAL POLICY AND AMENDED IN ADAPTATION TO ARTICLE 290 OF THE TREATY ON THE FUNCTIONING OF THE EUROPEAN UNION OR TO THE APPLICABLE PROVISIONS OF REGULATION (EU) No 182/2011 OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL

1. **Regulation (EEC) No 3030/93**

As regards Regulation (EEC) No 3030/93, in order to ensure the appropriate functioning of the system for the management of imports of certain textile products, the power to adopt acts in accordance with Article 290 of the Treaty on the Functioning of the European Union should be delegated to the Commission in respect of amending the Annexes to that Regulation, granting additional opportunities for imports, introducing or adapting quantitative limits and introducing safeguard measures and a surveillance system. It is of particular importance that the Commission carry out appropriate consultations during its preparatory work, including at expert level. The Commission, when preparing and drawing up delegated acts, should ensure a simultaneous, timely and appropriate transmission of relevant documents to the European Parliament and to the Council.

In order to ensure uniform conditions for the implementation of Regulation (EEC) No 3030/93, implementing powers should be conferred on the Commission. Those powers should be exercised in accordance with Regulation (EU) No 182/2011.

The advisory procedure should be used for the initiation and conduct of the consultations.

Accordingly, Regulation (EEC) No 3030/93 is amended as follows:

(1) any reference to "Article 17" shall be understood as a reference to "Article 17(2)".

(2) Article 2(6) is replaced by the following:

"6. The Commission shall be empowered to adopt delegated acts in accordance with Article 16a in order to adapt the definition of quantitative limits laid down in Annex V and the categories of products to which they apply, where this proves necessary to ensure that any subsequent amendment to the Combined Nomenclature (CN) or any decision amending the classification of such products does not result in a reduction of such quantitative limits.".

(3) Article 6(2) is replaced by the following:

"2. The Commission shall be empowered to adopt delegated acts in accordance with Article 16a to amend the annexes by adjusting the quantitative limits therein so as to remedy the situation referred to in paragraph 1 of this Article, due respect being given to the terms and conditions contained in the relevant bilateral agreements.

Where a delay in the imposition of measures would cause damage due to the import into the Union of textiles products at abnormally low prices which would be difficult to repair, and therefore imperative grounds of urgency so require, the procedure provided for in Article 16b shall apply to delegated acts adopted pursuant to the first subparagraph.".

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(4) Article 8 is amended as follows:

(a) the first paragraph is replaced by the following:

"The Commission shall be empowered to adopt delegated acts in accordance with Article 16a to amend the annexes to grant additional opportunities for imports during a given quota year, where, under particular circumstances, imports over and above those referred to in Annex V are required in respect of one or more categories of products.

In an emergency, where a delay in granting additional opportunities for imports during a given quota year would cause damage because of an insufficient volume of imports which would be difficult to repair, and therefore imperative grounds of urgency so require, the procedure provided for in Article 16b shall apply to delegated acts adopted pursuant to the first paragraph. The Commission shall take a decision within 15 working days of a request from a Member State.";

(b) the penultimate paragraph is deleted.

(5) Article 10 is amended as follows:

(a) in paragraph 7, point (b) is deleted;

(b) paragraph 13 is replaced by the following:

"13. The Commission shall be empowered to adopt delegated acts to impose quantitative limits by amending the annexes in accordance with Article 16a concerning the measures provided for in paragraphs 3 and 9 of this Article.

In urgent cases, either on the Commission's own initiative or within 10 working days of a request from a Member State setting out the reasons for the urgency, and where a delay in the imposition of measures would cause damage which would be difficult to repair, and therefore imperative grounds of urgency so require, the procedure provided for in Article 16b shall apply to delegated acts adopted pursuant to the first subparagraph.".

(6) In Article 13(3), the second subparagraph is replaced by the following:

"The Commission shall decide to amend Annex III to introduce an a priori or an a posteriori surveillance system. The Commission shall be empowered to adopt delegated acts in accordance with Article 16a concerning the imposition of the a priori surveillance system.".

(7) In Article 15, paragraphs 3, 4 and 5 are replaced by the following:

"3. If the Union and the supplier country fail to arrive at a satisfactory solution within the period stipulated in Article 16, and if the Commission notes that there is clear evidence of circumvention, the Commission shall be empowered to adopt delegated acts in accordance with the procedure laid down in Article 16a to amend Annex V, to deduct from the quantitative limits an equivalent volume of products originating in the supplier country concerned.

Where the Commission notes that there is clear evidence of circumvention, and a delay in the imposition of measures addressing the circumvention would cause damage that would be difficult to repair, and therefore imperative grounds of urgency so require, the procedure provided for in Article 16b shall apply to delegated acts adopted pursuant to the first subparagraph.

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4. In accordance with the provisions of the protocols and certain bilateral agreements concluded with third countries, where sufficient evidence shows that a false declaration concerning fibre content, quantities, description or classification of products originating in the countries concerned has occurred, the Union authorities may refuse to import the products in question. Furthermore, should it appear that the territory of any of these countries is involved in transhipment or re-routing of products not originating in that country, the Commission shall be empowered to adopt delegated acts in accordance with Article 16a to introduce quantitative limits against the same products originating in that same country, if they are not already subject to quantitative limits, or to counteract the situation referred to in this paragraph by amending Annex V.

Where the Commission notes that there is clear evidence of circumvention, and a delay in the imposition of measures addressing the circumvention would cause damage that would be difficult to repair, and therefore imperative grounds of urgency so require, the procedure provided for in Article 16b shall apply to delegated acts adopted pursuant to the first subparagraph.

5. In addition, where there is evidence of the involvement of the territories of third countries which are Members of the WTO but which are not listed in Annex V, the Commission shall request consultations with the third country or countries concerned in accordance with the procedure described in Article 16 in order to take appropriate action to address the problem. The Commission shall be empowered to adopt delegated acts in accordance with Article 16a to introduce quantitative limits against the third country or countries concerned or to counteract the situation referred to in this paragraph by amending Annex V.

Where a delay in the imposition of measures addressing the circumvention would cause damage that would be difficult to repair, and therefore imperative grounds of urgency so require, the procedure provided for in Article 16b shall apply to delegated acts adopted pursuant to the first subparagraph.".

(8) In Article 16(1), the introductory wording is replaced by the following:

"1. The Commission, after having provided the information to the Member States, shall conduct the consultations referred to in this Regulation in accordance with the following rules:".

(9) The following articles are inserted:

"Article 16a

Exercise of the delegation

1. The power to adopt delegated acts is conferred on the Commission subject to the conditions laid down in this Article.

2. The power to adopt delegated acts referred to in Article 2(6), Article 6(2), Article 8, Article 10(13), Article 13(3), Article 15(3), (4) and (5) and Article 19 of this Regulation and in Article 4(3) of Annex IV and Article 2 and Article 3(1) and (3) of Annex VII to this Regulation shall be conferred on the Commission for a period of five years from 20 February 2014. The Commission shall draw up a report in respect of the delegation of power not later than nine months before the end of the five-year period. The delegation of power shall be tacitly extended for periods of an identical duration, unless the European Parliament or the Council opposes such extension not later than three months before the end of each period.

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3. The delegation of power referred to in Article 2(6), Article 6(2), Article 8, Article 10(13), Article 13(3), Article 15(3), (4) and (5) and Article 19 of this Regulation and in Article 4(3) of Annex IV and Article 2 and Article 3(1) and (3) of Annex VII to this Regulation may be revoked at any time by the European Parliament or by the Council. A decision to revoke shall put an end to the delegation of the power specified in that decision. It shall take effect the day following the publication of the decision in the *Official Journal of the European Union* or at a later date specified therein. It shall not affect the validity of any delegated acts already in force.

4. As soon as it adopts a delegated act, the Commission shall notify it simultaneously to the European Parliament and to the Council.

5. A delegated act adopted pursuant to Article 2(6), Article 8, Article 10(13), Article 13(3), Article 15(3), (4) and (5) and Article 19 of this Regulation and Article 4(3) of Annex IV to this Regulation shall enter into force only if no objection has been expressed either by the European Parliament or the Council within a period of two months of notification of that act to the European Parliament and the Council or if, before the expiry of that period, the European Parliament and the Council have both informed the Commission that they will not object. That period shall be extended by two months at the initiative of the European Parliament or the Council.

6. A delegated act adopted pursuant to Article 6(2) of this Regulation and Article 2 and Article 3(1) and (3) of Annex VII to this Regulation shall enter into force only if no objection has been expressed either by the European Parliament or the Council within a period of two months of notification of that act to the European Parliament and the Council or if, before the expiry of that period, the European Parliament and the Council have both informed the Commission that they will not object. That period shall be extended by four months at the initiative of the European Parliament or of the Council.

Article 16b

Urgency procedure

1. Delegated acts adopted under this Article shall enter into force without delay and shall apply as long as no objection is expressed in accordance with paragraph 2. The notification of a delegated act to the European Parliament and to the Council shall state the reasons for the use of the urgency procedure.

2. Either the European Parliament or the Council may object to a delegated act in accordance with the procedure referred to in Article 16a(5) or (6). In such a case, the Commission shall repeal the act without delay following the notification of the decision to object by the European Parliament or by the Council.".

(10) In Article 17, the heading and paragraphs 1 and 2 are replaced by the following:

"Article 17

Committee procedure

1. The Commission shall be assisted by the Textile Committee established by Article 25 of Council Regulation (EC) No 517/94 (*). That committee shall be a committee within the meaning of Regulation (EU) No 182/2011 of the European Parliament and of the Council (**).

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1a. Where reference is made to this paragraph, Article 4 of Regulation (EU) No 182/2011 shall apply.

2. Where reference is made to this paragraph, Article 5 of Regulation (EU) No 182/2011 shall apply.

(*) Council Regulation (EC) No 517/94 of 7 March 1994 on common rules for imports of textile products from certain third countries not covered by bilateral agreements, protocols or other arrangements, or by other specific Community import rules (OJ L 67, 10.3.1994, p. 1).

(**) Regulation (EU) No 182/2011 of the European Parliament and of the Council of 16 February 2011 laying down the rules and general principles concerning mechanisms for control by Member States of the Commission's exercise of implementing powers (OJ L 55, 28.2.2011, p. 13).".

(11) Article 17a is replaced by the following:

"Article 17a

The Textile Committee may consider any matter relating to the application of this Regulation, raised by the Commission or at the request of a Member State.".

(12) Article 19 is replaced by the following:

"Article 19

The Commission shall be empowered to adopt delegated acts in accordance with Article 16a to amend the relevant Annexes to this Regulation where necessary to take into account the conclusion, amendment or expiry of agreements, protocols or arrangements with third countries or amendments made to Union rules on statistics, customs arrangements or common rules for imports.".

(13) The following article is inserted:

"Article 19a

Report

The Commission shall include information on the implementation of this Regulation in its annual report on the application and implementation of trade defence measures presented to the European Parliament and to the Council pursuant to Article 22a of Council Regulation (EC) No 1225/2009 (*).

(*) Council Regulation (EC) No 1225/2009 of 30 November 2009 on protection against dumped imports from countries not members of the European Community (OJ L 343, 22.12.2009, p. 51).".

(14) In Article 4 of Annex IV, paragraph 3 is replaced by the following:

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"3. Where it is established that the provisions of this Regulation have been contravened, and after having obtained the agreement of the supplier country or countries concerned, the Commission shall be empowered to adopt delegated acts in accordance with Article 16a of this Regulation concerning the amendment of the relevant Annexes to this Regulation, as necessary to prevent recurrence of such contravention.

Where a delay in the imposition of measures against actions contravening this Regulation would cause damage which would be difficult to repair and therefore imperative grounds of urgency so require, the procedure provided for in Article 16b of this Regulation shall apply to delegated acts adopted pursuant to the first subparagraph.".

(15) In Annex VII, Article 2 is replaced by the following:

"Article 2

The Commission shall be empowered to adopt delegated acts in accordance with Article 16a of this Regulation to subject re-imports not covered by this Annex to specific quantitative limits, provided that the products concerned are subject to the quantitative limits laid down in Article 2 of this Regulation.

Where a delay in the imposition of measures against re-imports of outward processing trade would cause damage which would be difficult to repair and therefore imperative grounds of urgency so require, the procedure provided for in Article 16b of this Regulation shall apply to delegated acts adopted pursuant to the first subparagraph.".

(16) In Annex VII, Article 3 is amended as follows:

(a) paragraph 1 is replaced by the following:

"1. The Commission shall be empowered to adopt delegated acts in accordance with Article 16a of this Regulation to effect transfers between categories and advance use or carry-over of portions of specific quantitative limits from one year to another.

Where a delay in the imposition of measures would cause damage by impeding outward processing trade given the legal requirement to operate such transfers from one year to the next, and such damage would be difficult to repair, and therefore imperative grounds of urgency so require, the procedure provided for in Article 16b of this Regulation shall apply to delegated acts adopted pursuant to the first subparagraph.";

(b) paragraph 3 is replaced by the following:

"3. The Commission shall be empowered to adopt delegated acts in accordance with Article 16a of this Regulation to adjust the specific quantitative limits where there is a need for additional imports.

Where a delay in the adjustment of the specific quantitative limits, where there is a need for additional imports, would cause damage by impeding access to such required additional imports which would be

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difficult to repair, and therefore imperative grounds of urgency so require, the procedure provided for in Article 16b of this Regulation shall apply to delegated acts adopted pursuant to the first subparagraph.".

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6. **Regulation (EC) No 55/2008**

As regards Regulation (EC) No 55/2008, in order to permit the adjustment of that Regulation, the power to adopt acts in accordance with Article 290 of the Treaty on the Functioning of the European Union should be delegated to the Commission in respect of amendments required in light of changes in customs codes, or for the conclusion of agreements with Moldova. It is of particular importance that the Commission carry out appropriate consultations during its preparatory work, including at expert level. The Commission, when preparing and drawing up delegated acts, should ensure a simultaneous, timely and appropriate transmission of relevant documents to the European Parliament and to the Council.

Accordingly, Regulation (EC) No 55/2008 is amended as follows:

(1) Article 7 is replaced by the following:

"Article 7

Conferral of power

The Commission shall be empowered to adopt delegated acts in accordance with Article 8a in order to make the necessary amendments and adjustments to the provisions of this Regulation as a result of:

(a) amendments to the Combined Nomenclature codes and to the TARIC subdivisions;

(b) the conclusion of other agreements between the Union and Moldova, to the extent that the amendments and adjustments concern the Annexes to this Regulation.".

(2) The following article is inserted:

"Article 8a

Exercise of the delegation

1. The power to adopt delegated acts is conferred on the Commission subject to the conditions laid down in this Article.

2. The power to adopt delegated acts referred to in Article 7 shall be conferred on the Commission for a period of five years from 20 February 2014. The Commission shall draw up a report in respect of the delegation

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of power not later than nine months before the end of the five-year period. The delegation of power shall be tacitly extended for periods of an identical duration, unless the European Parliament or the Council opposes such extension not later than three months before the end of each period.

3. The delegation of power referred to in Article 7 may be revoked at any time by the European Parliament or by the Council. A decision to revoke shall put an end to the delegation of the power specified in that decision. It shall take effect the day following the publication of the decision in the *Official Journal of the European Union* or at a later date specified therein. It shall not affect the validity of any delegated acts already in force.

4. As soon as it adopts a delegated act, the Commission shall notify it simultaneously to the European Parliament and to the Council.

5. A delegated act adopted pursuant to Article 7 shall enter into force only if no objection has been expressed either by the European Parliament or the Council within a period of two months of notification of that act to the European Parliament and the Council or if, before the expiry of that period, the European Parliament and the Council have both informed the Commission that they will not object. That period shall be extended by two months at the initiative of the European Parliament or of the Council.".

(3) The following article is inserted:

"Article 12a

Report

The Commission shall include information on the implementation of this Regulation in its annual report on the application and implementation of trade defence measures presented to the European Parliament and to the Council pursuant to Article 22a of Council Regulation (EC) No 1225/2009 (*).

(*) Council Regulation (EC) No 1225/2009 of 30 November 2009 on protection against dumped imports from countries not members of the European Community (OJ L 343, 22.12.2009, p. 51).".

7. **Regulation (EC) No 1340/2008**

As regards Regulation (EC) No 1340/2008, in order to permit the effective administration of certain restrictions, the power to adopt acts in accordance with Article 290 of the Treaty on the Functioning of the European Union should be delegated to the Commission in respect of amendments to Annex V to that Regulation. It is of particular importance that the Commission carry out appropriate consultations during its preparatory work, including at expert level. The Commission, when preparing and drawing up delegated acts, should ensure a simultaneous, timely and appropriate transmission of relevant documents to the European Parliament and to the Council.

Accordingly, Regulation (EC) No 1340/2008 is amended as follows:

(1) Article 5(3) is replaced by the following:

"3. Should the Union and the Republic of Kazakhstan fail to arrive at a satisfactory solution and should the Commission note that there is clear evidence of circumvention, the Commission shall be empowered to adopt delegated acts in accordance with Article 16a in order to deduct from the quantitative limits an equivalent volume of products originating in the Republic of Kazakhstan and to amend Annex V to this Regulation accordingly.

Where a delay in action to address clear evidence of circumvention in a sufficiently expedient way would cause damage which would be difficult to repair, and therefore imperative grounds of urgency so require, the procedure provided for in Article 16b shall apply to delegated acts adopted pursuant to the first subparagraph.".

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(2) The following articles are inserted:

"Article 16a

1. The power to adopt delegated acts is conferred on the Commission subject to the conditions laid down in this Article.

2. The power to adopt delegated acts referred to in Article 5(3) shall be conferred on the Commission for a period of five years from 20 February 2014. The Commission shall draw up a report in respect of the delegation of power not later than nine months before the end of the five-year period. The delegation of power shall be tacitly extended for periods of an identical duration, unless the European Parliament or the Council opposes such extension not later than three months before the end of each period.

3. The delegation of power referred to in Article 5(3) may be revoked at any time by the European Parliament or by the Council. A decision to revoke shall put an end to the delegation of the power specified in that decision. It shall take effect the day following the publication of the decision in the *Official Journal of the European Union* or at a later date specified therein. It shall not affect the validity of any delegated acts already in force.

4. As soon as it adopts a delegated act, the Commission shall notify it simultaneously to the European Parliament and to the Council.

5. A delegated act adopted pursuant to Articles 5(3) shall enter into force only if no objection has been expressed either by the European Parliament or the Council within a period of two months of notification of that act to the European Parliament and the Council or if, before the expiry of that period, the European Parliament and the Council have both informed the Commission that they will not object. That period shall be extended by two months at the initiative of the European Parliament or of the Council.

Article 16b

1. Delegated acts adopted under this Article shall enter into force without delay and shall apply as long as no objection is expressed in accordance with paragraph 2. The notification of a delegated act to the European Parliament and to the Council shall state the reasons for the use of the urgency procedure.

2. Either the European Parliament or the Council may object to a delegated act in accordance with the procedure referred to in Article 16a(5). In such a case, the Commission shall repeal the act without delay following the notification of the decision to object by the European Parliament or by the Council.".

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Joint statement by the European Parliament, the Council and the Commission on Regulation (EEC) No 3030/93 and Regulation (EC) No 517/94

It is noted that that the procedures provided for in Article 2(6), Article 6(2), Articles 8 and 10, Article 13(3), Article 15(3), (4) and (5) and Article 19 of Regulation (EEC) No 3030/93, Article 4(3) of Annex IV to Regulation (EEC) No 3030/93, and Article 2, Article 3(1) and (3) of Annex VII to Regulation (EEC) No 3030/93, and Article 3(3), Article 5(2), Article 12(3) and Articles 13 and 28 of Regulation (EC) No 517/94, are converted into procedures for the adoption of delegated acts. It is noted that some of those Articles refer to decision-making procedures for the adoption of safeguard measures in the field of trade defence.

The European Parliament, the Council and the Commission consider that safeguard measures are to be treated as implementing measures. Exceptionally, in the specific existing Regulations referred to above, the measures take the form of delegated acts as the introduction of a safeguard measure takes the form of an amendment to the relevant annexes to the Basic Regulations. This derives from the particular structure which is specific to the existing Regulations referred to above and, as a consequence, will not be used as a precedent for the drafting of future trade defence instruments and other safeguard measures.

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Commission statement on codification

The adoption of Regulation (EU) No 37/2014 of the European Parliament and of the Council of 15 January 2014 amending certain regulations relating to the common commercial policy as regards the procedures for the adoption of certain measures and Regulation (EU) No 38/2014 of the European Parliament and of the Council of 15 January 2014 amending certain regulations relating to the common commercial policy as regards the granting of delegated and implementing powers for the adoption of certain measures will entail a substantial number of amendments to the acts in question. In order to improve the legibility of the acts concerned, the Commission will propose a codification of the acts as expeditiously as possible once those two Regulations are adopted, and at the latest by 1 June 2014.

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Commission statement on delegated acts

In the context of Regulation (EU) No 37/2014 of the European Parliament and of the Council of 15 January 2014 amending certain regulations relating to the common commercial policy as regards the procedures for the adoption of certain measures and Regulation (EU) No 38/2014 of the European Parliament and of the Council of 15 January 2014 amending certain regulations relating to the common commercial policy as regards the granting of delegated and implementing powers for the adoption of certain measures, the Commission recalls the commitment it has made in paragraph 15 of the Framework Agreement on relations between the European Parliament and the European Commission to provide to the Parliament full information and documentation on its meetings with national experts within the framework of its work on the preparation of delegated acts.