



EUROPEAN PARLIAMENT

2009 - 2014

Committee on International Trade

2010/0032(COD)

12.5.2010

*****|**

DRAFT REPORT

on the proposal for a regulation of the European Parliament and of the Council implementing the bilateral safeguard clause of the EU-Korea Free Trade Agreement
(COM(2010)0049 – C7-0025/2010 – 2010/0032(COD))

Committee on International Trade

Rapporteur: Pablo Zalba Bidegain

Symbols for procedures

- * Consultation procedure
- *** Consent procedure
- ***I Ordinary legislative procedure (first reading)
- ***II Ordinary legislative procedure (second reading)
- ***III Ordinary legislative procedure (third reading)

(The type of procedure depends on the legal basis proposed by the draft act.)

Amendments to a draft act

In amendments by Parliament, amendments to draft acts are highlighted in ***bold italics***. Highlighting in *normal italics* alerts the relevant departments to parts of the draft act which may require correction when the final text is prepared – for instance, obvious errors or omissions in a language version. Suggested corrections of this kind are subject to the agreement of the departments concerned.

The heading for any amendment to an existing act which the draft act seeks to amend includes a third and fourth line identifying respectively the existing act and the provision in that act affected by the amendment. Passages in a provision of an existing act that Parliament wishes to amend, but the draft act has left unchanged, are highlighted in **bold**. Any deletions that Parliament wishes to make in passages of this kind are indicated thus: [...].

CONTENTS

	Page
DRAFT EUROPEAN PARLIAMENT LEGISLATIVE RESOLUTION.....	Error! Bookmark not defined.
EXPLANATORY STATEMENT.....	Error! Bookmark not defined.

DRAFT EUROPEAN PARLIAMENT LEGISLATIVE RESOLUTION

on the proposal for a regulation of the European Parliament and of the Council implementing the bilateral safeguard clause of the EU-Korea Free Trade Agreement (COM(2010)0049 – C7-0025/2010 – 2010/0032(COD))

(Ordinary legislative procedure: first reading)

The European Parliament,

- having regard to the Commission proposal to the European Parliament and the Council (COM(2010)0049),
 - having regard to Article 294 and Article 207(2) of the Treaty on the Functioning of the European Union, pursuant to which the Commission submitted the proposal to Parliament (C7-0025/2010),
 - having regard to Rule 55 of its Rules of Procedure,
 - having regard to the report of the Committee on International Trade (A7-0000/2010),
1. Adopts its position at first reading hereinafter set out;
 2. Calls on the Commission to refer the matter to Parliament again if it intends to amend its proposal substantially or replace it with another text;
 3. Instructs its President to forward its position to the Council, the Commission and the national parliaments.

Amendment 1

**Proposal for a regulation
Recital 13 a (new)**

Text proposed by the Commission

Amendment

(13a) Close monitoring and regular assessments will facilitate and shorten the initiation of proceedings and the investigation phase. Therefore the Commission should regularly monitor import and export statistics and assess the impact of the FTA on different sectors from the day of entry into force of the Agreement.

Or. en

Justification

This recital establishes a reference to the Monitoring and Surveillance Procedure.

Amendment 2

**Proposal for a regulation
Recital 13 b (new)**

Text proposed by the Commission

Amendment

(13b) It is necessary to lay down certain procedures relating to the application of Article 14 (Drawback of, or exemption from, customs duties) of the Protocol concerning the definition of 'originating products' and methods of administrative co-operation of the Agreement (hereinafter the "Rules of Origin Protocol") in order to ensure the effective operation of the mechanisms provided for therein and to provide for a comprehensive exchange of information with relevant stakeholders.

Or. en

Justification

This recital establishes a reference to the specific provision of the Regulation with regard to the consideration and application of Article 14 of the Agreement's Rules of Origin Protocol.

Amendment 3

**Proposal for a regulation
Recital 13 c (new)**

Text proposed by the Commission

Amendment

(13c) Given that the mechanism to deal with duty drawback will not come into force for five years, the safeguard may need to be used to tackle distortions arising due to the use of duty drawback during that period. Therefore the Commission should monitor Korean and

third party statistics and forecasts for the range of products potentially affected by duty drawback from the day of entry into force of the Agreement.

Or. en

Justification

This recital establishes a reference to the linkage between the rules on duty drawback and safeguard.

Amendment 4

Proposal for a regulation

Recital 14

Text proposed by the Commission

(14) The measures necessary for the implementation of this Regulation should be adopted in accordance with Council decision 1999/468/EC of 28 June 1999 laying down the procedures for the exercise of implementing powers conferred on the Commission.

Amendment

(14) The measures necessary for the implementation of this Regulation should be adopted in accordance with Council decision 1999/468/EC of 28 June 1999 laying down the procedures for the exercise of implementing powers conferred on the Commission.

This Regulation was submitted to European Parliament and the Council at a time when the review of instruments dealing with implementing powers pursuant to Article 291 (2) of the Treaty on the Functioning of the European Union had not yet been initiated. The decision-making process provided for in the current Regulation will be automatically aligned to the provisions of the Regulation laying down the rules and general principles concerning mechanisms for control by Member States of the Commission's exercise of implementing powers (COM (2010) 0083 - C7-0073/2010 – 2010/0051(COD)).

Or. en

Justification

This recital establishes a reference to the necessary alignment of the decision making procedures after the entry into force of the Regulation on laying down the rules and general principles concerning mechanisms for control by Member States of the Commission's exercise of implementing powers.

Amendment 5

Proposal for a regulation Article 1 – paragraph c

Text proposed by the Commission

(c) "threat of serious injury" means serious injury that is clearly imminent; a determination of the existence of a threat of serious injury shall be based on facts and not merely on allegation, conjecture or remote possibility;

Amendment

(c) "threat of serious injury" means serious injury that is clearly imminent; a determination of the existence of a threat of serious injury shall be based on facts and not merely on allegation, conjecture or remote possibility; ***forecasts, estimations and analyses made on the basis of factors laid down in Article 4(5), shall inter alia, be admissible to determine the existence of a threat of serious injury;***

Or. en

Justification

This amendments clarifies the indicators to determine a threat of serious injury.

Amendment 6

Proposal for a regulation Article 1 – paragraph e a (new)

Text proposed by the Commission

(ea) "interested parties" means parties affected by the imports of the product in question.

Amendment

Or. en

Justification

This amendment establishes a clarification on the meaning of “interested parties”.

Amendment 7

Proposal for a regulation

Article 2 – paragraph 1 a (new)

Text proposed by the Commission

Amendment

1a. Where it emerges, primarily on the basis of the factors referred to in Article 4(5), that the conditions laid down for the adoption of measures pursuant to Article 2(1) are met in one or more regions of the Union, the Commission, after having examined alternative solutions, may exceptionally authorise the application of surveillance or safeguard measures limited to the region(s) concerned if it considers that such measures applied at that level are more appropriate than measures applied throughout the Union. These measures must be temporary and must disrupt the operation of the internal market as little as possible. They shall be adopted in accordance with the provisions laid down in Article 2(2).

Or. en

Justification

This article establishes a "Regional Clause" in accordance with Article 18 of the General Safeguard (REGULATION (EC) No 260/2009).

Amendment 8

Proposal for a regulation

Article 2 a (new)

Text proposed by the Commission

Amendment

Article 2a

Monitoring

The Commission shall monitor the evolution of import and export statistics of Korean products, and shall cooperate and exchange data on a regular basis with Member States and the Union industry. The Commission shall ensure that Member States provide adequate and good quality statistical data diligently.

The Commission shall closely monitor Korean and third party statistics and forecasts for the range of products potentially affected by duty drawback from the day of entry into force of the Agreement.

Or. en

Justification

This Article establishes a proper Monitoring scheme.

Amendment 9

**Proposal for a regulation
Article 3 – paragraph 1**

Text proposed by the Commission

1. An investigation shall be initiated upon request by a Member State or on the Commission's own initiative if it is apparent to the Commission that there is sufficient evidence to justify such initiation.

Amendment

1. An investigation shall be initiated upon request by a Member State, ***the European Parliament, by any natural or legal person, or any association not having legal personality, acting on behalf of the Union industry,*** or on the Commission's own initiative if it is apparent to the Commission that there is sufficient ***prima facie*** evidence ***as determined on the basis of factors laid down in Article 4(5),*** to justify such initiation.

Or. en

Justification

This amendment establishes a clarification about the enabled actors for the initiation of proceedings as well as about the conditions to be met for initiating a proceeding.

Amendment 10

Proposal for a regulation

Article 3 – paragraph 2

Text proposed by the Commission

2. The Member States shall inform the Commission should trends in imports from the Republic of Korea appear to call for safeguard measures. That information shall include the evidence available as determined on the basis of factors laid down in Article 4. The Commission shall **pass** that information on to all Member States ***within three working days***.

Amendment

2. The Member States, ***or the Union industry*** shall inform the Commission should trends in imports from the Republic of Korea appear to call for safeguard measures. That information shall include the evidence available as determined on the basis of factors laid down in Article 4(5). The Commission shall, ***within three working days, upload*** that information on ***to the online-platform referred to in Article 9 (the Online-Platform), and shall send an upload notification*** to all Member States, ***the Union industry, and the European Parliament***.

Or. en

Justification

The information process should be based on a transparent procedure to inform Member States, Union industry, and the European Parliament about the possible initiation of a proceeding.

Amendment 11

Proposal for a regulation

Article 3 – paragraph 3

Text proposed by the Commission

3. Consultation with the Member States shall take place within eight working days of the Commission's sending the information ***to Member States*** as provided

Amendment

3. Consultation with the Member States shall take place within eight working days of the Commission's sending the information as provided for in paragraph 2

for in paragraph 2 within the Committee referred to in Article 10 on the basis of the procedure referred to in *Article 11.1*. Where, after consultation, it is apparent that there is sufficient evidence to justify the initiation of a proceeding the Commission shall publish a notice in the *Official Journal of the European Union*. Initiation shall take place within one month of the *receipt of information from* a Member State.

within the Committee referred to in Article 10 on the basis of the procedure referred to in *Article 11(1)*. Where, after consultation, it is apparent that there is sufficient *prima facie* evidence ***determined on the basis of factors laid down in Article 4(5)*** to justify the initiation of a proceeding the Commission shall publish a notice in the ***Online-Platform and in the Official Journal of the European Union***. Initiation shall take place within one month of the ***request by*** a Member State, ***the European Parliament, or by the Union industry***.

Or. en

Justification

Clarification. The new wording also clarifies that quality and quantity of evidence that would be required for initiation (prima facie evidence) is not as comprehensive as the evidence necessary for the adoption of measures.

Amendment 12

Proposal for a regulation Article 4 – paragraph 1

Text proposed by the Commission

1. Following the initiation of the proceeding, the Commission shall commence an investigation.

Amendment

1. Following the initiation of the proceeding, the Commission shall commence an investigation. ***The investigation period as set in Article 4(3) shall start on the day the decision to initiate the investigation is taken.***

Or. en

Justification

Clarification on the timing of the investigation.

Amendment 13

Proposal for a regulation

Article 4 – paragraph 2

Text proposed by the Commission

2. The Commission may request Member States to supply information and Member States shall take whatever steps are necessary in order to give effect to any such request. Where that information is of general interest or where its transmission was requested by a Member State, the Commission shall **forward it to all Member States** provided it is not confidential. If the information is confidential the Commission shall **forward** a non-confidential summary.

Amendment

2. The Commission may request Member States to supply information and Member States shall take whatever steps are necessary in order to give effect to any such request. Where that information is of general interest or where its transmission was requested by a Member State, **the European Parliament or the Union industry**, the Commission shall **upload the information onto the Online-Platform** provided it is not confidential. If the information is confidential the Commission shall **upload** a non-confidential summary.

Or. en

Justification

Clarification on the procedure for transmitting and sharing information.

Amendment 14

Proposal for a regulation

Article 4 – paragraph 3

Text proposed by the Commission

3. The investigation shall, **whenever possible**, be concluded within **six months** of the initiation of the investigation. **In exceptional circumstances duly justified by the Commission, that time limit may be extended by a further period of three months.**

Amendment

3. The investigation shall be concluded within **200 days** of the initiation of the investigation.

Or. en

Justification

A suggestion to streamline the period. Instead of X + X months or days, we propose a maximum number of 200 days. Unlike the EPA Safeguard that runs on a rather long time schedule, the Korea Safeguard is to deal with one country only. Therefore, it is reasonable to introduce a shorter period for a faster procedure.

Amendment 15

Proposal for a regulation
Article 4 – paragraph 5

Text proposed by the Commission

Amendment

5. In the investigation the Commission shall evaluate all relevant factors of an objective and quantifiable nature having a bearing on the situation of the Union industry, in particular, the rate and amount of the increase in imports of the product concerned in absolute and relative terms, the share of the domestic market taken by increased imports, changes in the level of sales, production, productivity, capacity utilisation, profits and losses, **and** employment.

5. In the investigation the Commission shall evaluate all relevant factors of an objective and quantifiable nature having a bearing on the situation of the Union industry, in particular, the rate and amount of the increase in imports of the product concerned in absolute and relative terms, the share of the domestic market taken by increased imports, changes in the level of sales, production, productivity, capacity utilisation, **stocks, prices**, profits and losses, **return on capital employed, cash flow**, employment, **and other factors which are causing or may have caused serious injury, or threaten to cause serious injury**.

Or. en

Justification

An alignment to Article 10 c) of the General Safeguard (REGULATION (EC) No 260/2009).

Amendment 16

Proposal for a regulation
Article 4 – paragraph 6

Text proposed by the Commission

Amendment

6. Interested parties which have come

6. Interested parties which have come

forward pursuant to Article 3 (4) (b) and representatives of the Republic of Korea may, upon written request, inspect all information made available to the Commission in connection with the investigation other than internal documents prepared by the authorities of the Union or its Member States, provided that that information is relevant to the presentation of their case and not confidential within the meaning of Article 9 and that it is used by the Commission in the investigation. Interested parties which have come forward may communicate their views on the information in question to the Commission. Those views *may* be taken into consideration where they are backed by sufficient evidence.

forward pursuant to Article 3 (4) (b) and representatives of the Republic of Korea may, upon written request, inspect all information made available to the Commission in connection with the investigation other than internal documents prepared by the authorities of the Union or its Member States, provided that that information is relevant to the presentation of their case and not confidential within the meaning of Article 9 and that it is used by the Commission in the investigation. Interested parties which have come forward may communicate their views on the information in question to the Commission. Those views *shall* be taken into consideration where they are backed by sufficient evidence.

Or. en

Justification

Clarification on wording.

Amendment 17

Proposal for a regulation Article 4 a (new)

Text proposed by the Commission

Amendment

Article 4a

Surveillance measures

- 1. Where the trend in imports of a product originating in the Republic of Korea is such that they could lead to one of the situations referred to in Article 2, imports of that product may be subject to prior European Union surveillance.***
- 2. The decision to impose surveillance shall be taken by the Commission on the basis of the procedure referred to in Article 11(1).***
- 3. Surveillance measures shall have a***

limited period of validity. Unless otherwise provided, they shall cease to be valid at the end of the second six-month period following the first six months after the measures were introduced.

4. Surveillance measures may be restricted to the territory of one or more regions of the Union where necessary.

Or. en

Justification

This Article would allow for a proper surveillance mechanism on the basis of the General Safeguard (REGULATION (EC) No 260/2009).

Amendment 18

Proposal for a regulation
Article 4 – paragraph 7

Text proposed by the Commission

7. The Commission *may* hear *the* interested parties. Such parties shall be heard where they have made a written application within the period laid down in the notice published in the Official Journal of the European Union, showing that they are actually likely to be affected by the outcome of the investigation and that there are *special* reasons for them to be heard orally.

Amendment

7. The Commission *shall* hear interested parties. Such parties shall be heard where they have made a written application within the period laid down in the notice published in the Official Journal of the European Union, showing that they are actually likely to be affected by the outcome of the investigation and that there are reasons for them to be heard orally.

The Commission shall hear such parties on further occasions if there are special reasons for them to be heard again.

Or. en

Justification

Clarification on wording. Moreover, the new subparagraph would clarify that parties have the right to be heard at least once and that there must be special reasons for them to be heard again.

Amendment 19

Proposal for a regulation Article 5 – paragraph 1

Text proposed by the Commission

1. Provisional safeguard measures shall be applied in critical circumstances where a delay would cause damage which it would be difficult to repair, pursuant to a preliminary determination that there is clear evidence that imports of an originating good from the Republic of Korea have increased as the result of the reduction or elimination of a customs duty under the Agreement, and such imports cause serious injury, or threat thereof, to the domestic industry. Provisional measures shall be taken on the basis of the procedure referred to in *Article 11.1*.

Amendment

1. Provisional safeguard measures shall be applied in critical circumstances where a delay would cause damage which it would be difficult to repair, pursuant to a preliminary determination ***on the basis of the factors laid down in Article 4(5)*** that there is clear evidence that imports of an originating good from the Republic of Korea have increased as the result of the reduction or elimination of a customs duty under the Agreement, and such imports cause serious injury, or threat thereof, to the domestic industry. Provisional measures shall be taken on the basis of the procedure referred to in *Article 11(1)*.

Or. en

Justification

Clarification on the link between Article 5(1) and Article 4(5).

Amendment 20

Proposal for a regulation Article 5 – paragraph 2

Text proposed by the Commission

2. Where a Member State requests immediate intervention by the Commission and where the conditions in paragraph 1 are met, the Commission shall take a decision within five working days of receiving the request.

Amendment

2. Where a Member State, ***the European Parliament, or the Union industry*** requests immediate intervention by the Commission and where the conditions in paragraph 1 are met, the Commission shall take a decision within five working days of receiving the request. ***The investigation period as set in Article 4(3) shall start on the day the decision to apply provisional safeguard measures is***

taken.

Or. en

Justification

Clarification on the actors concerned and on the exact timing.

Amendment 21

Proposal for a regulation

Article 5 – paragraph 4 a (new)

Text proposed by the Commission

Amendment

4a. The measures referred to in this Article shall apply to every product which is put into free circulation after their entry into force. However, such measures shall not prevent the release for free circulation of products already on their way to the Union provided that the destination of such products cannot be changed.

Or. en

Justification

Introduction of a Shipping clause like in Article 16(5) of the General Safeguard (REGULATION (EC) No 260/2009).

Amendment 22

Proposal for a regulation

Article 6

Text proposed by the Commission

Amendment

Where bilateral safeguard measures are deemed unnecessary the investigation and proceeding shall be terminated on the basis of the procedure referred to in **Article 11.2.**

Where bilateral safeguard measures are deemed unnecessary the investigation and proceeding shall be terminated on the basis of the procedure referred to in **Article 11(1).**

The Commission shall make public, with due regard to the protection of confidential information within the meaning of Article 9, a report with a summary of the material facts and considerations relevant to the determinations.

Or. en

Justification

Reintroduction of the Advisory Procedure according to the Comitology Decision as well as the Advisory Procedure (Article 4) proposed in the Commission proposal for a Regulation of the European Parliament and the Council laying down the rules and general principles concerning mechanisms for control by Member States of the Commission's exercise of implementing powers (COM(2010)0083), and introduction of a new paragraph to underline the transparency of the procedure.

Amendment 23

**Proposal for a regulation
Article 7**

Text proposed by the Commission

Where the facts as finally established show that the circumstances set out in Article 2.1 are met, a decision to impose definitive bilateral safeguard measures shall be taken in accordance with the procedure referred to in **Article 11.2**.

Amendment

Where the facts as finally established show that the circumstances set out in Article 2.1 are met, a decision to impose definitive bilateral safeguard measures shall be taken in accordance with the procedure referred to in **Article 11(1)**.

The Commission shall make public, with due regard to the protection of confidential information within the meaning of Article 9, a report with a summary of the material facts and considerations relevant to the determination.

Or. en

Justification

Reintroduction of the Advisory Procedure according to the Comitology Decision as well as

the Advisory Procedure (Article 4) proposed in the Commission proposal for a Regulation of the European Parliament and the Council laying down the rules and general principles concerning mechanisms for control by Member States of the Commission's exercise of implementing powers (COM(2010)0051), and introduction of a paragraph to underline the transparency of the procedure.

Amendment 24

Proposal for a regulation Article 9 – paragraph 1a (new)

Text proposed by the Commission

Amendment

1a. All relevant, non-confidential information within the meaning of this Article shall be shared on a password-restricted Online-Platform managed by the Commission. Member States, registered Union industry, and the European Parliament must be granted access to this Online-Platform on request. The information includes statistical information relevant for determining if evidence fulfils the requirements as stated in Article 2(1), as well as all further information relevant in connection with an investigation.

Or. en

Justification

With this provision, rules for the creation, operation and use of the online-platform are to be established.

Amendment 25

Proposal for a regulation Article 10

Text proposed by the Commission

Amendment

The Commission shall be assisted by the Committee provided for in Article 4(1) of Council Regulation (EC) No 260/2009 on the common rules for imports. **Article 4 of**

The Commission shall be assisted by the Committee provided for in Article 4(1) of Council Regulation (EC) No 260/2009 on

Council Regulation (EC) No 260/2009
shall apply mutatis mutandis.

the common rules for imports.

Or. en

Justification

The procedural provisions for the Committee are described in Article 11. A reference to Article 4 of Regulation 260/2009 could create misunderstandings.

Amendment 26

Proposal for a regulation
Article 11 – paragraph 2

Text proposed by the Commission

Amendment

2. When reference is made to this paragraph, Articles 4 and 7 of Decision 1999/468/EC shall apply. **deleted**

Or. en

Justification

Given that the Common Commercial Policy falls under the exclusive competencies of the Union, there is no need to establish a procedure, whereby Member States could vote by qualified majority against a Commission's draft measure. The imposition of Safeguard measures is determined after an examination of the conditions referred to in the Regulation, which is essentially an economic assessment. When these conditions are met, there should be no room for discretion or for political choice, and thereby no need for a Member States' decision against the Commission's draft.

Amendment 27

Proposal for a regulation
Article 11 – paragraph 3

Text proposed by the Commission

Amendment

3. The period laid down in Article 5(6) of Decision 1999/468/EC shall be set at one month. **deleted**

Justification

No need to refer to Article 4(3) of the Decision 1999/468/EC (the reference made to Article 5(6) is a clerical error in the Commission's proposal.

Amendment 28

Proposal for a regulation
Article 11 a (new)

Text proposed by the Commission

Amendment

Article 11a

Reporting

1. The Commission shall make public an annual report on the application and functioning of the safeguard clause. The report shall include a summary of the requests to initiate proceedings, investigations and its results, termination of investigations and proceedings without measures, imposition of provisional safeguard measures or definitive measures, and the justification for each decision on these issues accompanied by a summary of the relevant information and facts.

2. The report shall also present a summary of the statistics and the evolution of trade with Korea. Specific mention shall be made of the results of the monitoring of the duty drawback.

3. The European Parliament or the Council may convene the Commission within one month for an ad hoc meeting of the competent committee of the European Parliament or of the Council to present and explain any issue related to the application of the safeguard clause, the duty drawback, or the FTA in general.

Justification

With this provision, the Regulation would establish a clear duty on the Commission to report on the application of the Regulation.

Amendment 29

Proposal for a regulation

Article 11 b (new)

Text proposed by the Commission

Amendment

Article 11b

Procedure for the application of Article 14 of the Rules of Origin Protocol
1. For the purpose of applying Article 14 (Drawback of, or exemption from, customs duties) of the Protocol concerning the definition of 'originating products' and methods of administrative co-operation of the Agreement (hereinafter the "Rules of Origin Protocol"), the Commission shall monitor closely the evolution of relevant import and export statistics both in value and as appropriate in quantities and regularly share these data with, and report its findings, to the European Parliament, the Council and the Union industries concerned. Monitoring will start from the time of provisional application and data will be shared on a bimonthly basis. In addition to the tariff lines included in Article 14(1) of the Rules of Origin Protocol, the Commission shall draw up, in cooperation with the Union industry, a list of key tariff lines that are not specific for automotive, but important for car manufacturing and other related sectors. A specific monitoring shall be carried out as laid down in Article 14(1) of the Rules of Origin Protocol, assuming that the burden of proof is on the Korean authorities with regard to giving clarifications.
2. Upon request of a Member State or on its own initiative the Commission shall

immediately examine whether the conditions for invoking Article 14 of the Rules of Origin Protocol are met and report its findings within 10 working days of a request. Following consultations in the framework of the special committee to which Article 207(3), subparagraph 3 of the Treaty on the Functioning of the European Union refers to, the Commission shall request consultations with Korea whenever the conditions of Article 14 of the Rules of Origin Protocol are met. The Commission shall consider that the conditions are met, inter alia, when the thresholds mentioned in paragraph 3 are reached.

3. A difference of 10 percentage points shall be considered as "significant" for the purposes of application of paragraph 2.1(a) of Article 14 of the Rules of Origin Protocol when assessing the increased rate of imports of parts or components to/into Korea as compared with the increased rate of exports from Korea to the EU of finished products. An increase of 10% shall be considered as "significant" for the purposes of application of paragraph 2.1(b) of Article 14 of the Rules of Origin Protocol when assessing the increase of exports from Korea to the EU of finished products in absolute terms, or relative to domestic production. Increases below these thresholds may also be considered as "significant" on a case-by-case basis.

Or. en

Justification

With this provision, the Regulation would meet the concerns raised by many representative organisations of the Union's civil society, as well as its industry and trade unions. It would establish a specific provision to the application of Article 14 of the Rules of Origin Protocol.

EXPLANATORY STATEMENT

On 23 April 2007 the Council authorised the Commission to open negotiations with the Republic of Korea with a view to concluding an EU-Korea Free Trade Agreement. The agreement was initialled on 15 October 2009.

The agreement incorporates a bilateral safeguard clause that provides for the possibility of re-imposing the most-favoured-nation (MFN) rate when, as a result of trade liberalisation, imports increase to such an extent – in absolute terms or in relation to domestic production – and take place under such conditions as to cause, or threaten to cause, serious injury to the EU industry producing a similar or directly competing product.

For such measures to become operational, the safeguard clause must be incorporated into EU law, not least because the procedural aspects of the imposition of safeguard measures, as well as the rights of interested parties, need to be specified. The proposal for a regulation of the European Parliament and of the Council that is before us constitutes the legal instrument required for implementation of the safeguard clause in the EU-Korea Free Trade Agreement.

The rapporteur would stress that legislative work on this regulation should be confined to issues relating to its implementation, without unilaterally altering fundamental provisions of the agreement and adopting measures that go against its spirit. For instance, no changes should be made to the type of safeguard measures applicable, to the length of time for which they may apply or to the period during which the safeguard clause may be brought to bear.

It is the rapporteur's intention to ensure that the clause is both effective and genuinely applicable. The clause must provide a genuinely enforceable means of preventing serious injury from being caused to EU industry and enabling it to adjust to the new situation. To this end, the rapporteur believes that the following proposals should be made:

Timing and deadlines

The investigation process must be concluded within no more than 200 days, in line with the maximum period for the application of provisional measures, so as to ensure that industry is not left unprotected while an investigation is in progress. This period is more than long enough to enable an investigation to be carried out, given that it will focus on the situation in only one country.

A number of amendments seek to clarify exactly when the investigation process is deemed to have started. The investigation period will be deemed to have started on the day the decision to initiate an investigation is taken or the day on which provisional safeguard measures are adopted.

'Regional' safeguard measures

The rapporteur is proposing that there should be the option of applying safeguard measures at regional level in exceptional cases; any such measures must cause the least possible disruption to the internal market. The aim is to take due account of the major differences between the specific circumstances obtaining in each Member States and the fact that the FTA with South Korea may have a very different impact on the industry in each. Accordingly, where industries in one or more Member States are particularly severely affected, it should be possible for 'regional' safeguard measures to be brought to bear in order to enable them to adjust to the new situation.

Such measures are in keeping with the aims of the safeguard clause and are proportionate, given the huge market that is being opened up to Korean exports and the fact that use may be made of the clause during only a limited period of time, i.e. 10 years after the removal of tariffs.

Involvement of industry and Parliament

The rapporteur is proposing that industry and Parliament should be able to request that an investigation be opened and provisional measures be applied, and should be afforded access to information relating to the investigation process. It is proposed that an online platform be set up, on which all non-confidential information supplied to the Commission will be shared. The information must be kept up to date, so as to ensure that the latest information on safeguard proceeding investigations is available.

Evidence

The type of evidence required in order for a proceeding to be initiated needs to be clearly defined, in order to place industries that may be affected in a more secure position. The rapporteur is proposing that the adequacy of the evidence supplied should be determined on the basis of the factors that the regulation lays down for the investigation phase. The range of factors should be extended to include others that could be relevant when determining whether serious injury is being caused or there is a threat of it being caused.

Monitoring and surveillance measures

The Commission should, from the day on which the agreement comes in to force, rigorously monitor trends in exports and imports between Korea and the European Union, paying particular attention to the sectors likely to be most affected.

Furthermore, appropriate arrangements need to be made for the imposition of surveillance measures in situations that could result in serious injury being caused to EU industry.

Reporting

The rapporteur is proposing that the Commission should duly substantiate decisions to terminate proceedings without imposing safeguard measures or to impose measures.

He is also proposing that it should publish an annual report providing an overview of the

requests to initiate investigations that have been submitted, the investigations conducted and their outcome, and decisions to impose provisional or definitive measures, together with statistics showing the trends in trade with Korea, with specific reference being made to duty drawback data.

Parliament or the Council may, within one month, summon the Commission to appear before the competent committee of Parliament or of the Council to present and explain any issue related to the application of the safeguard clause, the duty drawback or the FTA in general.

Duty drawback

The rapporteur has noted the concerns voiced by representatives of civil society, industry and the trade union movement, among others, as to the implications of the duty drawback arrangements, and believes that a number of criteria relating to the implementation of Article 14 of the Rules of Origin Protocol need to be laid down in order to ensure that its provisions are properly applied and that there is close cooperation and effective information sharing with stakeholders.

Comitology

The regulation was submitted to the Council and Parliament before the review of instruments relating to the implementing powers deriving from Article 291(2) of the Treaty on the Functioning of the European Union had commenced. The decision-making procedures will need to be in keeping with the provisions finally adopted in this respect. Given that the common commercial policy comes within the EU's exclusive sphere of competence and that the imposition of safeguard measures is to be based on an economic assessment, there should be no scope for Member States to take decisions that go against Commission decisions in this area.