EU/Korea Free Trade Agreement: bilateral safeguard clause

2010/0032(COD) - 09/02/2010 - Legislative proposal

PURPOSE: to lay down rules on implementing the bilateral safeguard clause of the EU-Korea Free Trade Agreement.

PROPOSED ACT: Regulation of the European Parliament and of the Council.

BACKGROUND: on 23 April 2007 the Council authorised the Commission to open negotiations with the Republic of Korea with a view to conclude an EU-Korea Free Trade Agreement. The agreement was then initialled on 15 October 2009. The agreement incorporates a bilateral safeguard clause that provides for the possibility of re-imposing the MFN (Most Favoured Nation) rate when as a result of a trade liberalisation imports take place in such increased quantities, in absolute terms or relative to domestic production, and under such conditions as to cause or threaten to cause serious injury to the Union Industry producing the like or directly competitive product.

In order for these measures to be operational, such safeguard clause must be incorporated in EU law not least because the procedural aspects of the imposition of safeguard measures as well as the rights of interested parties, such as the right of defence, need to be specified.

CONTENT: this proposal constitutes the legal instrument for the implementation of the safeguard clause of the EU-Korea FTA. The main points are as follows:

Principles: a safeguard measure may be imposed in accordance with the provisions set out in the Regulation where a product originating in Korea is, as a result of the reduction or the elimination of the customs duties on that product, being imported in the Union in such increased quantities, in absolute terms or relative to domestic production, and under such conditions as to cause or threaten to cause serious injury to the Union industry producing a like or directly competitive product. Safeguard measures may take one of the following forms:

- suspensions of further reduction of the rate of customs duty on the good concerned provided for under the Agreement; or
- increases of the rate of customs duty on the good to a level which does not exceed the lesser of: (i) the MFN applied rate of customs duty on the good in effect at the time the measure is taken; or (ii) the base rate of customs duty specified in the Schedules in the Annex of the Agreement.

The terms "serious injury", "threat of serious injury" and "transition period" are defined in the text.

Initiation of proceedings: the proposal lays down detailed provisions on the initiation of proceedings. The Commission should receive information including available evidence from Member States of any trends in imports which might call for the application of safeguard measures. If there is sufficient evidence to justify the initiation of a proceeding the Commission will publish a notice as provided for in the Agreement in the Official Journal of the European Union.

The investigation: the proposal lays down detailed provisions on the opening of investigations, access and inspections by interested parties to the information gathered, hearings for the parties involved and the opportunities for those parties to submit their views as provided for in the Agreement. The Commission shall notify the Republic of Korea in writing of the initiation of an investigation and consult with the

Republic of Korea as far in advance of applying a bilateral safeguard measure as practicable, with a view to reviewing the information arising from the investigation and exchanging views on the measure.

Pursuant to the Agreement, the proposal sets time limits for the initiation of investigations and for determinations as to whether or not measures are appropriate, with a view to ensuring that such determinations are made quickly, in order to increase legal certainty for the economic operators concerned.

Imposition of provisional safeguard measures: an investigation should precede the application of any safeguard measure. However, there is the reservation that the Commission be allowed to apply **provisional measures 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 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 not apply for more than 200 days.

Termination of investigation and proceeding without measures: where bilateral safeguard measures are deemed unnecessary the investigation and proceeding shall be terminated.

Imposition of definitive measures: where the facts as finally established show that the circumstances set out in the text are met, a decision to impose definitive bilateral safeguard measures shall be taken in accordance with the Comitology procedure referred to in the proposal.

Duration and review of safeguard measures: a safeguard measure shall remain in force only for such period of time as may be necessary to prevent or remedy the serious injury and to facilitate adjustment. That period shall not exceed two years, unless it is extended. The initial period of duration of a safeguard measure may exceptionally be extended by up to two years provided it is determined that the safeguard measure continues to be necessary to prevent or remedy serious injury and to facilitate adjustment and that there is evidence that the industry is adjusting. The total duration of a safeguard measure may not exceed four years, including any provisional measure. A safeguard measure shall not be applied beyond the expiration of the transition period, except with the consent of the Republic of Korea.

Lastly, the proposal lays down rules on confidentiality, committee and decision making process.

IMPACT ASSESSMENT: not applicable.

FINANCIAL IMPLICATIONS: not applicable.