EU/Korea Free Trade Agreement: bilateral safeguard clause

2010/0032(COD) - 07/09/2010 - Text adopted by Parliament, partial vote at 1st reading/single reading

The European Parliament amended, under the ordinary legislative procedure (the former co-decision procedure), 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. The final vote on the legislative resolution has been postponed to a later session.

The main amendments made to the Commission proposal are:

Definitions: Parliament made a number of amendments with the purpose of clarifying the definitions used in the proposal. In particular, they amended the definition relating to “Union industry” and that relating to “threat of serious injury”, and added a new definition for “interested parties” which means parties affected by the imports of the product in question. Members also added the following definitions:

- “**products**”: this means goods produced in the European Union and the Republic of Korea. It does not include goods or components the production of which is contracted out to external manufacturing zones. Before the regulation’s scope can be extended to include products contracted out to external manufacturing zones, it shall be amended in accordance with the ordinary legislative procedure;
- “**such conditions as to cause or threaten to cause**”: this includes such factors as the production capacity, utilisation rates, currency practices and labour conditions of a third country with regard to the manufacturing of components and materials incorporated into the product concerned.

Regional safeguard measures: Parliament proposes that there should be the option of applying safeguard measures at regional level in exceptional cases in order to 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.

Statistical monitoring and surveillance measures: for safeguard measures to be used effectively, the Commission (Eurostat) shall present an annual monitoring report to the European Parliament and the Council on updated statistics on imports from Korea impacting **sensitive sectors in the EU as a result of the Agreement** (in particular, the automobile sector). In case of a proven threat of injury reported to the Commission by the Union industry, the Commission may consider broadening the scope of the monitoring for other impacted sectors.

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.

Surveillance measures: 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 above, imports of that product may be subject

to prior European Union surveillance. The decision to impose surveillance shall be taken by the Commission. 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. Surveillance measures may be restricted to the territory of one or more regions of the Union where necessary.

Timing and deadlines: Parliament wants the investigation period to last a maximum of 200 days instead of the six months, renewable for three months proposed by the Commission, so as to ensure that industry is not left unprotected while an investigation is in progress. 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.

Criteria applicable to the opening of an investigation procedure: in the context of an investigation, the Commission shall assess 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. This list is not exhaustive and other relevant factors may also be taken into consideration by the Commission for its injury determination, such as stocks, prices, return on capital employed, cash flow, and other factors which are causing or may have caused serious injury, or threaten to cause serious injury. In the event that third-country content commonly accounts for a significant amount of the manufacturing cost of the product concerned, the Commission should also evaluate, as bearing on the situation of the Union industry, the production capacity, utilisation rates, currency practices and labour conditions of the third countries concerned. Moreover, in the investigation, the Commission shall evaluate, the observance by the Republic of Korea of the social and environmental standards laid down in Chapter 13 of the Agreement and any consequent effects on price building or unfair competitive advantages potentially leading to serious injury or the threat of serious injury to producers or specific sectors of the economy in the European Union. The Commission shall also evaluate observance of the Agreement's rules on non-tariff barriers to trade and any serious injury to producers or individual sectors of the economy in the European Union that may result therefrom.

Evidence: Members consider that 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. They propose 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.

Involvement of industry and Parliament: Members propose 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. An investigation shall be initiated upon request by a Member State, the European Parliament, the Domestic Advisory Group, by any legal person or any association not having legal personality, acting on behalf of the Union industry and representing at least 25% of it or on the Commission's own initiative if it is apparent to the Commission that there is sufficient prima facie evidence to justify such initiation. 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. The tasks of following up and reviewing the Agreement and, if necessary, imposing safeguard measures should be carried out in the most transparent manner possible and with the involvement of civil society, as well as interested parties.

Duty drawbacks: because it will not be possible to limit customs duty drawback until five years after the Agreement comes into force, it may be necessary, on the basis of this Regulation, to impose safeguard

measures in response to a serious injury or threat of serious injury to Union producers that is caused by duty drawback or exemption from duty. Therefore, from the day of the Agreement's entry into force, the Commission should monitor particularly closely, in particular in sensitive sectors, the rate of inclusion in products imported from the Republic of Korea of components or materials from third countries, any changes in that rate and the impact of such changes on the market situation.Members also want criteria to be drawn up concerning the application of Article 14 of the **Rules of Origin Protocol** in order to ensure that its provisions are properly applied and that there is close cooperation and effective information sharing with stakeholders.

Reintroduction of a request for a safeguard clause: if the European Parliament expresses an objection to the draft decision not to impose bilateral safeguard measures, on the grounds that this decision would negate the intention of the legislator, the Commission shall re-examine the draft decision. Taking the reasons for the objection into account and within the time-limits of the procedure underway, the Commission may submit a new draft decision to the committee or submit a proposal to the European Parliament and the Council in accordance with the Treaty. The Commission shall inform the European Parliament, the Council and the committee of the action which it intends to take and of its reasons for doing so. The Commission shall publish a report setting forth its findings and reasoned conclusions reached on all pertinent issues of fact and law with due regard to the protection of confidential information.

Reporting: Parliament asks that the Commission should duly substantiate decisions to terminate proceedings without imposing safeguard measures or to impose measures. It also proposes 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.

Comitology: amendments as regards comitology were also proposed.