EU/Korea Free Trade Agreement: bilateral safeguard clause

2010/0032(COD) - 17/02/2011 - Text adopted by Parliament, 1st reading/single reading

The European Parliament adopted by 495 votes to 16 with 75 abstentions a 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.

It adopted its position at first reading under the ordinary legislative procedure. The amendments are the result of a compromise agreement between Parliament and Council. It should be noted that a first series of amendments were adopted on 7 September 2010 but the issue had been referred to the competent committee for reconsideration on the same date. **The amendments made here replace the amendments adopted on 7 September 2010.**

The main amendments to the Commission's proposal are as follows :

Definitions: several definitions in the proposal are clarified. The definition for "Union industry" has been amended and a new definition for "interested parties" has been inserted. The concept of threat of serious injury has also been amended in order to stress that a determination of the existence of a threat of serious injury shall be based on verifiable facts and not merely on allegation, conjecture or remote possibility. A new definition of **"products" meaning goods originating in the Union or Korea,** has been inserted.

Types of safeguard measures: safeguard measures may take one of the following forms:

suspension of further reduction of the rate of customs duty on the product concerned provided for under the Agreement; or

increase in the rate of customs duty on the product to a level which does not exceed the lesser of: (a) **the most-favoured-nation ('MFN') applied rate of customs duty** on the product in effect at the time the measure is taken; or (b) the base rate of customs duty specified in the Annex 2-A to the Agreement.

Monitoring based on evolution of statistics: the text provides that the Commission shall monitor the evolution of import and export statistics of Korean products in **sensitive sectors potentially affected by duty drawback** from the date of application of the Agreement and shall cooperate and exchange data on a regular basis with Member States and the Union industry. Upon a duly justified **request by the industries concerned**, the Commission may consider extending the scope of the monitoring to other sectors. The Commission shall present an annual monitoring report to the European Parliament and the Council on updated statistics on imports from Korea of products in the sensitive sectors and those sectors to which monitoring has been extended.. For the purposes of this article, at least the following products shall be considered as falling within the category of **sensitive products: textiles and clothing, consumer electronics, passenger cars** and also those products included in the additional list drawn up in accordance with the text.

For a period of five years following the date of application of the Agreement and upon a duly reasoned request from the Union industry, the Commission shall pay particular attention to any increase in the import of **finished sensitive products** originating in Korea into the Union **where such an increase is attributable to increased use of parts or components imported into Korea from third countries** which have not concluded a free trade agreement with the Union and which are covered by the provisions on customs duty drawback or exemption from customs duty.

Initiation of proceedings: the text provides that an investigation shall be initiated upon request by a Member State, by any 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 to justify such initiation. The request to initiate an investigation shall contain evidence that the conditions for imposing the safeguard measure are met. It shall generally contain the following information: 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 determination of the existence of serious injury or threat of serious injury, 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 to the Union industry. An investigation may also be initiated in the event that there is a surge of imports concentrated in one or several Member States, provided that there is sufficient prima facie evidence that the conditions for initiation are met.

The text also contains provisions clarifying the rules and time-limits regarding the **conclusion of the investigation:** six months of its initiation, which may be extended by a further period of three months in exceptional circumstances such as the involvement of an unusually high number of parties, or complex market situations. .

Prior surveillance measures: where the trend in imports of a product originating in Korea is such that it could lead to market instability, imports of that product may be subject to prior surveillance measures. The Commission may introduce prior surveillance measures for a limited period in the event that there is a surge of imports of products falling into sensitive sectors concentrated in one or several Member States.

Provisional safeguard measures: the text provides that provisional safeguard measures shall be applied in critical circumstances where a delay would cause damage to Union industry which would be difficult to repair. In cases of imperative grounds of urgency, the Commission shall adopt applicable provisional safeguard measures immediately.

On-line platform: in cases where an investigation commences, the Commission shall ensure password-protected online access to the non-confidential file (‘online platform’), which it shall manage. All relevant, non-confidential information must be disseminated. Interested parties to the investigation as well as Member States and the European Parliament shall be granted access to this online platform.

Procedure for the application of Article 14 of the Rules of Origin Protocol: Parliament wanted the establishment of criteria for the application of Article 14 of 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. In this regard, the Commission shall, from the date of application of the Agreement, monitor closely the evolution of relevant import and export statistics.

Confidentiality: no information of a confidential nature or any information provided on a confidential basis received pursuant to the Regulation shall be disclosed without specific permission from the supplier of such information.

Report: the Commission shall make public an annual report on the application and implementation of the Agreement. The report shall include information about the activities of the various bodies responsible for monitoring the implementation of the Agreement and fulfilment of the obligations arising from the latter, including obligations concerning barriers to trade. 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 duty drawback.

The **European Parliament** may, within one month from the Commission making public the report, **invite the Commission to an ad hoc meeting of its competent committee** to present and explain any issues related to the implementation of the Agreement.

Procedural rules: the text also makes amendments to the rules on the adoption of provisional and definitive safeguard measures, prior surveillance measures and the termination of investigation and proceeding without measures.

Declarations: it should be noted that in Statement annexed to the text, the indicates that it will present a yearly report to the European Parliament and Council on the implementation of the EU-Korea FTA and will be ready to discuss with the responsible committee of the European Parliament any issues arising from the implementation of the Agreement. It places some emphasis on the particular attention to the **small car sector**.

In a joint declaration, the Commission and the European Parliament agree on the importance of close cooperation in monitoring the implementation of the EU-Korea Free Trade Agreement (FTA) and the Safeguard Regulation. Towards this end they establish the rules to be followed where **the European Parliament adopts a recommendation** to initiate a safeguard investigation.