EU/Korea Free Trade Agreement: bilateral safeguard clause

2010/0032(COD) - 11/05/2011 - Final act

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

LEGISLATIVE ACT : Regulation (EU) No 511/2011 of the European Parliament and of the Council implementing the bilateral safeguard clause of the Free Trade Agreement between the European Union and its Member States and the Republic of Korea.

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. Those negotiations have been concluded and the Free Trade Agreement between the EU and its Member States, of the one part, and the Republic of Korea, of the other part, was signed on 6 October 2010.

Accordingly, this Regulation lays down the procedures for applying certain provisions of the Agreement which concern safeguards.

CONTENT : following first reading agreement, the Council and the European Parliament adopted this Regulation which lays down the rules and procedures for implementing the bilateral safeguard clause of the Free Trade Agreement between the EU and its Member States and the Republic of Korea.

The main points of the agreement were as follows:

Definitions: the Regulation defines several terms, including "**threat of serious injury**". The text states 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. It also includes "**products**" which means goods originating in the Union or Korea.

Principles: a safeguard measure may be imposed 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 into the Union in such increased quantities, in absolute terms or relative to Union 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.

Forms 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: (i) the most-favoured-nation ('MFN') applied rate of customs duty on the product in effect at the time the measure is taken, or
- (ii) the base rate of customs duty specified in the Schedules in Annex 2-A to the Agreement.

Monitoring: in order to ensure that safeguard measures are properly imposed, 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.

It 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.

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 Regulation.

For a period of 5 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: 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.

Investigation: the Regulation sets time limits for investigations. Following the initiation of the proceeding, the Commission shall commence an investigation. The investigation shall, whenever possible, be concluded within 6 months of its initiation, which may be extended by a further period of 3 months in exceptional circumstances such as the involvement of an unusually high number of parties, or complex market situations. 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.

It should be noted that interested parties and representatives 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 Union authorities or those of the Member States, provided that that information is relevant to the presentation of their case and not confidential. All data and statistics which are used for the investigation must be available, comprehensible, transparent and verifiable.

Prior surveillance measures: where the trend in imports of a product originating in Korea is such that it could lead to serious injury, imports of that product may be subject to prior surveillance measures. In the event that there is a surge of imports of products falling into sensitive sectors concentrated in one or several Member States, the Commission may introduce prior surveillance measures for a limited period of validity. Unless otherwise provided, they shall cease to be valid at the end of the second 6-month period following the first 6 months after the measures were introduced.

Imposition of provisional safeguard measures: provisional safeguard measures shall be applied in critical circumstances where a delay would cause damage which would be difficult to repair, pursuant to a preliminary determination that there is sufficient prima facie evidence that imports of a product originating in Korea cause serious injury, or threat thereof, to the Union industry. Provisional measures shall not apply for more than 200 days. In cases of imperative grounds of urgency, the Commission shall adopt immediately applicable provisional safeguard measures.

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 2 years, unless it is extended by up to 2 years.) The total duration of **a safeguard measure may not exceed 4 years**, including any provisional measure.

The Regulation also contains provisions on:

- the termination of investigation;
- proceeding without measures;
- imposition of definitive measures;
- the establishment of password-protected online access to the non-confidential file (‘online platform’);
- the procedure for the application of Article 14 of 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.)

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

Reports: it is provided that 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 therefrom, 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 1 month from the Commission making public the report, invite the Commission to an ad hoc meeting of its responsible committee to present and explain any issues related to the implementation of the Agreement.

Implementing powers: the implementation of the bilateral safeguard clause of the Agreement requires uniform conditions for the adoption of provisional and definitive safeguard measures, for the imposition of prior surveillance measures, and for the termination of an investigation without measures. Those

measures should be adopted by the Commission in accordance with Regulation (EU) No 182/2011 of the European Parliament and of the Council laying down the rules and general principles concerning mechanisms for control by Member States of the Commission's exercise of implementing powers. It is appropriate that the advisory procedure be used for the adoption of surveillance and provisional measures given the effects of these measures and their sequential logic in relation to the adoption of definitive safeguard measures. Where a delay in the imposition of measures would cause damage which would be difficult to repair it is necessary to allow the Commission to adopt immediately applicable provisional measures.

Declaration: it should be noted that in a declaration annexed to the text, the Commission will present a yearly report to the European Parliament and the 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 agrees also on the importance of providing effective protection in the case of sudden surges of imports in sensitive sectors, including small cars.

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 agree that in case the European Parliament adopts a recommendation to initiate a safeguard investigation, the Commission will carefully examine whether the conditions under the Regulation for ex-officio initiation are fulfilled.

ENTRY INTO FORCE: 01.06.2011. The Regulation will apply from the date of application of the Agreement.