

EU/Colombia and Peru Trade Agreement: implementation of the bilateral safeguard clause and stabilisation mechanism for bananas

2011/0262(COD) - 03/10/2011 - Legislative proposal

PURPOSE : incorporation in the European Union law of the safeguard clause and the Stabilisation Mechanism foreseen in the Trade Agreement with Colombia and Peru.

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

BACKGROUND : on 19 January 2009 the Council authorised the Commission to open negotiations with the Member Countries of the Andean Community, which resulted in a Trade Agreement with Colombia and Peru. The Agreement was initialled on 23 March 2011.

The Agreement includes a bilateral safeguard clause that provides for the possibility to re-instate the MFN customs duty rate when, as a result of a trade liberalisation, imports take place in such increased quantities and under such conditions as to cause (or threaten to cause) serious injury to the Union Industry producing the like or directly competitive product.

Furthermore, the Agreement also incorporates a Stabilisation Mechanism for Bananas according to which, until 1 January 2020, preferential customs duties can be suspended when a certain annual import volume is reached.

In order for these measures to be operational, the safeguard clause and the Stabilisation Mechanism should be incorporated in EU law, and the procedural aspects of their application as well as the rights of interested parties need to be specified.

This is the purpose of the proposal.

IMPACT ASSESSMENT : no impact assessment was undertaken.

LEGAL BASIS : Article 207(2) of the Treaty on the Functioning of the EU.

CONTENT : the proposal for a Regulation of the European Parliament and of the Council constitutes the legal instrument for the implementation of the safeguard clause and the Stabilisation Mechanism of the EU- Colombia and Peru Free Trade Agreement.

1) Principles on the imposition of safeguard measures: a safeguard measure may be imposed in accordance with this Regulation where a product originating in Colombia or Peru is, as a result of tariff concessions on that product under the Agreement, 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.

Safeguard measures may take one of the following forms:

- a suspension of further reduction of the rate of customs duty on the product concerned provided for in the Tariff Elimination Schedule of the European Union set out in Annex I to the Agreement;

- an increase in the rate of customs duty on the product concerned 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 as specified in the Tariff Elimination Schedule of the European Union set out in Annex I to the Agreement.

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, as determined on the basis of factors referred to above, to justify such initiation. The request to initiate an investigation 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 and changes in the level of sales, production, productivity, capacity utilisation, profits and losses, and employment.

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 proposal makes provision for the procedures for initiating an investigation and the conditions under which the latter may be done.

Investigation: following the initiation of the proceeding, the Commission shall commence an investigation, which shall, whenever possible, be concluded **within six months of its initiation**. That time limit 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 Colombia or Peru is such that it could lead to a serious threat to the Union market, imports of that product may be subject to prior surveillance measures. Such measures shall be adopted by the Commission in accordance with the advisory procedure referred to in the text. Prior surveillance measures shall have a limited period of validity.

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 Colombia or Peru have increased as the result of the reduction or elimination of a customs duty. Provisional measures shall be adopted by the Commission in accordance with the advisory procedure, including on imperative grounds of urgency. Provisional measures shall not apply for more than **200 days**.

Imposition of definitive measures: where the facts as finally established show that conditions regarding a serious threat to Union industry are met the Commission shall invite the authorities of Colombia or Peru to hold consultations in accordance with the Agreement. Where no satisfactory solution has been reached within 45 days, the Commission may adopt a decision imposing definitive safeguard measures in accordance with the examination procedure.

The text also contains provisions on the termination of investigation and proceeding without measure.

Duration and review of safeguard measures: it is provided that 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**, and 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 that there is evidence that the Union industry is adjusting.. The **total duration of a safeguard measure may not exceed four years**, including any provisional measure.

Confidentiality and transparency: the text contains provisions to ensure the confidentiality of information received pursuant to the Regulation. Information shall in any case be considered to be confidential if its disclosure is likely to have a significantly adverse effect upon the supplier or the source of such information.

At the same time, when initiating an investigation, provisions are made to ensure transparency, and interested parties and representatives of Colombia and Peru may inspect all information made available to the Commission, which shall ensure that all data and statistics which are used for the investigation are available, comprehensible, transparent and verifiable. There are other provisions to ensure transparency, such as such as the Commission's obligation to ensure password-protected online access to the non-confidential file through which all information which is not confidential shall be disseminated. The European Parliament shall be granted access to this online platform.

2) **Stabilisation Mechanism for Bananas:** for bananas originating in Colombia and Peru (fresh Bananas, excluding plantains) and listed under category "BA" in the Schedule of the EU Party set out in Annex I to the

Agreement, a stabilisation mechanism shall apply **until 1 January 2020**.

A **separate annual trigger import volume** is set for imports of products as indicated in the Annex to the Regulation. Once the trigger volume for either Colombia or Peru is met during the corresponding calendar year, the Commission may, in accordance with the examination procedure, temporarily suspend the preferential customs duty applied to products of the corresponding origin during that same year for a period of time not exceeding three months, and not going beyond the end of the calendar year.

In case the Commission decides to suspend the preferential customs duty applicable, the Commission shall apply the lesser of: (i) the base rate of customs duty or (ii) the MFN rate of duty that in application at the time such action is taken.

In case the Commission applies these actions, it shall immediately enter into consultations with the affected country (either Colombia or Peru or both) to analyse and evaluate the situation on the basis of factual available data.

These measures may be applicable only during the period ending on 31 December 2019.

BUDGETARY IMPLICATIONS : the proposal has no implications for the EU budget.