

EU/Central America Association Agreement: implementation of the bilateral safeguard clause and the stabilisation mechanism for bananas

2011/0263(COD) - 15/01/2013 - Final act

PURPOSE: to incorporate in European Union law the safeguard clause and the Stabilisation Mechanism foreseen in the Association Agreement with Central America.

LEGISLATIVE ACT: Regulation (EU) No 20/2013 of the European Parliament and of the Council implementing the bilateral safeguard clause and the stabilisation mechanism for bananas of the Agreement establishing an Association between the European Union and its Member States, on the one hand, and Central America, on the other.

BACKGROUND: a [trade agreement between the European Union and its Member States, on the one hand, and Central America, on the other](#) (Costa Rica, El Salvador, Guatemala, Honduras, Nicaragua and Panama) was signed on 29 June 2012 and received the consent of the European Parliament on 11 December 2012.

The Agreement includes a **bilateral safeguard clause** that provides for the possibility of reinstating the most favoured nation (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 a 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 needed to be incorporated in EU, and the procedural aspects of their application as well as the rights of interested parties needed to be specified.

That is the objective of this Regulation.

CONTENT: this Regulation incorporates in European Union law the safeguard clause and the Stabilisation Mechanism for the banana sector foreseen in the trade agreement between the EU, on the one hand, and Central America, on the other.

1. Imposition of safeguard measures: a safeguard measure may be imposed where a product originating in a Central American country 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**.

The Regulation stipulates the various forms that the envisaged safeguard measures may take, i.e. mainly modifications in the rates of customs duties applied to the product in question (suspension of a further reduction of the rate of customs duty or an increase in the rate of customs duty, depending on the situation).

Statistical monitoring: the Commission shall monitor the evolution of import statistics of bananas from Central American countries. For that purpose, it 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 European Parliament shall be kept regularly informed of the trend of these statistics.

The Commission shall monitor the observance by Central American countries of the social and environmental standards laid down in the Agreement.

Initiation of proceedings: the Commission shall open a procedure upon request by a Member State, any legal person or any association acting on behalf of the Union industry, or on its own initiative, if it is apparent to the Commission that there is sufficient *prima facie* evidence to justify initiating proceedings and, in particular, serious disturbance in the Community market. A procedure may also be initiated in the event that there is a surge of imports concentrated **in one or several Member States, or outermost regions**. Details concerning the procedure are contained in the Regulation.

Investigations: following the initiation of the proceeding, the Commission shall commence an investigation. The investigation shall, where 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 interested 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.

Provision is made for a procedure to allow interested parties to make known their views in writing and submit information. If the investigation concludes that the market has experienced serious disturbance, safeguard measures may be launched.

Safeguard clause: specific safeguard provisions are provided for in case the product in question is imported in such increased quantities and under such conditions as to cause or threaten to cause serious deterioration in the economic situation of any of the EU's outermost regions.

The safeguard clause will be applied in 2 stages:

(a) Prior surveillance measures: the Commission may adopt prior surveillance measures in regard to imports from a Central American country in particular where there is a **surge of imports of bananas concentrated in one or several Member States, or in one or several of the Union's outermost regions**. These measures would be of a limited duration;

(b) Provisional safeguard measures: in a second stage, 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 a Central American country have increased suddenly. The Commission shall adopt provisional safeguard measures in accordance with the advisory procedure referred to in the Regulation, including in cases of imperative grounds of urgency. Provisional safeguard measures shall not apply for more than 200 calendar 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 enter into consultations with the authorities of the Central American country/countries affected. If no satisfactory solution has been reached within 30 days, the Commission may adopt a decision imposing definitive safeguard measures.

Technical provisions are also laid down in regard to the termination of an investigation without 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 to Union industry and to facilitate adjustment. That period shall not exceed **two years**, unless it is extended under circumstances described in the Regulation (i.e. to prevent or remedy serious injury to Union industry). In any event, any extension must be preceded by an investigation and the total duration of the safeguard measure cannot exceed **four years**.

Transparency measures and confidentiality: provision is made 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.

Commission report: the Regulation provides that the Commission shall submit an annual report to the European Parliament and to the Council on the application, implementation and fulfilment of obligations of the Agreement regarding social and environmental issues and of this Regulation. The report shall include information about the application of provisional and definitive measures, prior surveillance measures, regional surveillance and safeguard measures and the termination of investigations and proceedings without measures. It shall include information on the activities of the various bodies responsible for monitoring the implementation of the Agreement and on activities with civil society advisory groups.

The report shall set out a summary of the statistics and the evolution of trade with Central American countries and shall include up-to-date statistics on banana imports from Central American countries.

2. Stabilisation mechanism for bananas: the Commission shall make use of the stabilisation mechanism for bananas in order to avoid a threat of serious deterioration or a serious deterioration for producers in the outermost regions in the Union. This mechanism applies to bananas originating in Central America (fresh bananas, excluding plantains) and which are listed under category 'ST' in the EU's Tariff Elimination Schedule, in the Annex of the Agreement. It shall apply **until 31 December 2019**.

A separate **annual trigger import volume** is set for imports of these products, as indicated in the table in the Annex to the Regulation. Once the trigger volume for a Central American country is met during the corresponding calendar year, the **Commission shall adopt an implementing act**, in accordance with the advisory procedure, by which it may either 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. The decision as to whether the stabilisation measures for bananas should be applied shall take into consideration the stability of the Union market for bananas.

Where the Commission applies these measures, it shall immediately enter into consultations with the affected Central American country or countries to analyse and evaluate the situation on the basis of available factual data.

It should be noted that from 1 January 2020, the general bilateral safeguard mechanism, including the special provisions for outermost regions, remains applicable.

N.B. the Regulation includes a joint declaration of Parliament and the Council on the need for close cooperation in monitoring the implementation of the Agreement and this Regulation.

ENTRY INTO FORCE: the Regulation enters into force on 22 January 2013. It shall apply from the date of application of the EU-Central America Agreement, as provided for in Article 353 thereof. A notice shall be published in the Official Journal of the European Union specifying the date of application of the Agreement.

