Basic information

2010/0032(COD) COD - Ordinary legislative procedure (ex-codecision procedure) Regulation	Procedure completed
EU/Korea Free Trade Agreement: bilateral safeguard clause See also 2010/0075(NLE) **Subject** 6.20.03 Bilateral economic and trade agreements and relations **Geographical area** South Korea	

Key players

European Parliament

Committee responsible	Rapporteur	Appointed
INTA International Trade	ZALBA BIDEGAIN Pablo (PPE)	17/03/2010
	Shadow rapporteur LANGE Bernd (S&D) THEURER Michael (ALDE) JADOT Yannick (Verts /ALE) STURDY Robert (ECR) SCHOLZ Helmut (GUE /NGL)	

Council of the European Union

Council configuration	Meetings	Date
Justice and Home Affairs (JHA)	3081	2011-04-11

European Commission

Commission DG	Commissioner
Trade and Economic Security	DE GUCHT Karel

Key events

Date	Event	Reference	Summary
09/02/2010	Legislative proposal published	COM(2010)0049	Summary

25/02/2010	Committee referral announced in Parliament, 1st reading		
23/06/2010	Vote in committee, 1st reading		Summary
28/06/2010	Committee report tabled for plenary, 1st reading	A7-0210/2010	
06/09/2010	Debate in Parliament		
07/09/2010	Decision by Parliament, 1st reading	T7-0301/2010	Summary
07/09/2010	Results of vote in Parliament		
17/02/2011	Decision by Parliament, 1st reading	T7-0061/2011	Summary
17/02/2011	Results of vote in Parliament		
11/04/2011	Act adopted by Council after Parliament's 1st reading		
11/05/2011	Final act signed		
11/05/2011	End of procedure in Parliament		
31/05/2011	Final act published in Official Journal		

Technical information

Procedure reference	2010/0032(COD)
Procedure type	COD - Ordinary legislative procedure (ex-codecision procedure)
Procedure subtype	Legislation
Legislative instrument	Regulation
Amendments and repeals	See also 2010/0075(NLE)
Legal basis	Treaty on the Functioning of the European Union TFEU 207-p2
Other legal basis	Rules of Procedure EP 165
Stage reached in procedure	Procedure completed
Committee dossier	INTA/7/02256

Documentation gateway

European Parliament

Document type	Committee	Reference	Date	Summary
Committee draft report		PE441.080	08/06/2010	
Amendments tabled in committee		PE442.964	10/06/2010	
Committee report tabled for plenary, 1st reading/single reading		A7-0210/2010	28/06/2010	
Text adopted by Parliament, partial vote at 1st reading /single reading		T7-0301/2010	07/09/2010	Summary
Amendments tabled in committee		PE456.679	12/01/2011	
Text adopted by Parliament, 1st reading/single reading		T7-0061/2011	17/02/2011	Summary

Council of the EU

Document type	Reference	Date	Summary
Draft final act	00008/2011/LEX	11/05/2011	

European Commission

Document type	Reference	Date	Summary
Legislative proposal	COM(2010)0049	09/02/2010	Summary
Commission response to text adopted in plenary	SP(2011)2217	16/03/2011	
Follow-up document	COM(2013)0100	25/02/2013	Summary
Follow-up document	COM(2014)0109	28/02/2014	Summary
Follow-up document	COM(2015)0139	26/03/2015	Summary
Follow-up document	COM(2016)0268	30/06/2016	Summary
Follow-up document	SWD(2016)0162	30/06/2016	
Follow-up document	COM(2017)0614	20/10/2017	Summary
Follow-up document	SWD(2017)0345	20/10/2017	

Additional information

Source	Document	Date
National parliaments	IPEX	
European Commission	EUR-Lex	

Final act

Regulation 2011/0511
OJ L 145 31.05.2011, p. 0019 Summary

EU/Korea Free Trade Agreement: bilateral safeguard clause

2010/0032(COD) - 26/03/2015 - Follow-up document

The Commission presents the **3rd Annual Report on the implementation of the Free Trade Agreement between the EU-South Korea** (*for the results of the 1st report, please refer to the summary dated 25/02/2013 included on the same procedure file*).

To recall, 1 July 2013 marked the second anniversary of the Free Trade Agreement (FTA) between the EU and its Member States and the Republic of Korea (South Korea), which has been provisionally applied since July 2011. It is the first of a new generation FTA, characterised by its far-reaching and comprehensive nature. It is also the EU's first trade deal with an Asian country.

This is the third Annual Report on the implementation of the FTA, in accordance with the provisions of 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.

Objectives of the report and main findings: the present report has a two-fold objective: (i) to comply with the Regulation on the adoption of the FTA; (ii) present an annual monitoring report on updated statistics on imports from Korea of products in the sensitive sectors and those sectors to which monitoring has been extended.

The main findings from the Commission's analysis may be summarised as follows:

- **Positive outcome for the parties**: based on three years of implementation of the EU-Korea FTA, it is clear that the FTA has worked well for both sides, **in particular for the EU**. EU exports of goods to Korea **increased by 35%** in the third year of FTA implementation, compared to the 12-month period before the FTA took effect. While imports from Korea were roughly equal to the 12-month period before the FTA, they increased by 6% in the third year of FTA implementation, compared to the previous year. The weaker performance of Korean exports has to be seen in the context of the decreased demand in the EU following the financial crisis: EU imports from its 14 main suppliers have decreased and in fact Korea is one of the few trade partners, along with Turkey and China, whose exports to the EU increased in the third year of FTA implementation. It seems therefore that the FTA has mitigated the impact of the crisis on Korean exports and that without the FTA, the Korean exports to the EU would have been hit much harder;
- **Liberalisation of goods**: when looking at the development of bilateral trade of goods which has been fully or partially liberalised by the FTA, the situation looks brighter also for Korea, with **an increase of 21% in exports of fully liberalised goods and 26% of partially liberalised goods to the EU**. On the EU-side, exports of fully and partially liberalised goods have also increased more than exports overall, with an increase of 46% for fully liberalised goods and 37% for partially liberalised goods;
- **Products in sensitive sectors**: the report noted that while trade is prospering, full implementation of the FTA remains of key importance. Some implementation and bilateral trade issues persist. For example, **in the automotive sector tackling the remaining non-tariff barriers remains a challenge**. As regards Sanitary and Phytosanitary Measures, some of the issues encountered by EU exporters stem from the fact that Korea applies different import conditions for EU Member States for animal and plant products, although the legislation is fully harmonised in the EU. This delays access to the Korean market, as EU Member States have to undergo individual negotiations. However, there are also success stories, such as the conclusion of the **agreement of equivalency of organic, agricultural processed products** at the end of 2014. As a consequence, processed organic products processed and certified in the EU may be sold as organic in Korea as of 1 February 2015.

Governance: the FTA implementation structure, with its various specialised committees and working groups has proven an effective way to discuss and seek solutions to the implementation and market access issues. They also provide a regular forum to discuss current and future regulatory developments and any implications these may have on future exports.

Discussions to amend the FTA will continue in the 4th year of implementation, with a view to finding a balanced "package" of amendments, with economic benefits to exporters and consumers in the EU as well as in Korea, to futher improve the FTA and to make it more trade-facilitative.

EU/Korea Free Trade Agreement: bilateral safeguard clause

2010/0032(COD) - 20/10/2017 - Follow-up document

The Commission presents the **5th report** on the implementation of the EU-Korea Free Trade Agreement.

To recall, 1 July 2017 marked the sixth anniversary of application of the Free Trade Agreement (FTA) between the EU and its Member States and the Republic of Korea (in this report referred to as Korea). The FTA has been provisionally applied since July 2011. On 13 December 2015 it entered formally into force after ratification by EU Member States. The Additional Protocol to the FTA to take into account the accession of Croatia to the EU has been provisionally applied since 26 May 2014 and entered into force on 1 January 2016.

The EU-Korea FTA is the first of a new generation of comprehensive FTAs. It is also the EU's first trade deal with an Asian country. It is the most ambitious FTA implemented by the EU so far.

This is the 5th annual report on the implementation of the EU-Korea FTA, prepared in accordance with the provisions of 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 Korea.

The main conclusion of the report stated that the first six years of application show that the EU-Korea FTA has worked very well.

Trade in goods: EU exports to Korea increased by 59.2%, from EUR 28 billion in 2010 to EUR 44.5 billion in 2016. The average increase of EU exports to Korea was 8.1%, the average growth of EU imports from Korea 0.8% per year.

In 2010, the base year before the start of provisional application of the FTA, EU exports to Korea were EUR 28 billion, and imports from Korea were EUR 39.5 billion.

In 2016, EU exports to Korea were EUR 44.5 billion and imports from Korea were EUR 41.4 billion. So the **EU's EUR 11.6 billion trade deficit with Korea in 2010 has turned into a trade surplus of EUR 3.1 billion in 2016**.

The current level of EU exports to Korea would have generated duty payments of approximately EUR 2 billion had the FTA not been in place.

Between 2015 and 2016 **total EU exports to Korea declined by 6.9%.** EU imports from Korea declined by 2.2%. The more pronounced decline of EU exports to Korea is inter alia due to lower sales of machinery, transport equipment, motor vehicle (also related to the diesel engine scandal) and UK oil exports (due to end of Iran sanctions), and lower number of delivery of aircrafts (with more deliveries scheduled for the next years). Vice versa, 2016 showed a fall in EU imports of vessels, LCDs and petrochemicals from Korea.

Imports from Korea represented 2.6% of total imports into the EU in 2010, and 2.4% in 2016, making **Korea the EU's 8th largest import origin in 2016**. EU exports to Korea represented 2% of total EU exports in 2010, and 2.6% in 2016, making the Korea the EU 9th largest export market in 2016.

In terms of **EU exports to Korea**, in 2016 the most important product categories are as follows:

- machinery and appliances accounted for 29.2% of total EU exports to Korea (a decrease of 8.2% compared to 2015);
- transport equipment represented 21.2% of total EU exports to Korea (a decrease of 6.4% compared to 2015);
- chemical products accounted for 13.6% of total EU exports to Korea (an increase of 8.4% compared to 2015);
- mineral products, pearls & precious metals, footwear" and wood have shown a significant increase in EU exports.

As far as **EU imports from Korea** are concerned, in 2016 the main product categories are:

- machinery and appliances accounted for 33.9% of EU imports from Korea (a decrease of 4.9% compared to 2015);
- transport equipment accounted for 26.1% of total EU imports from Korea (also a decrease of 4.9% compared to 2015);
- significant increases were noted in EU imports of chemical products and plastics.

Vehicles and car parts: EU exports of motor vehicles have increased by 244% in value from 2010 to 2016, from EUR 1.68 billion to EUR 5.79 billion, accounting for 13% of total EU exports to Korea.

EU imports from Korea have grown by 53% from EUR 2.48 billion to EUR 4.79 billion. Motor vehicles account for almost 12% of total EU imports from Korea

EU exports of car parts to Korea were around EUR 1.4 billion in 2016. This represents an annual increase of 25% over 2015. EU imports from Korea of car parts were around EUR 3.5 billion in 2016. This represents an annual increase of 9% over 2015.

Climate change: the EU stressed the importance of collaboration between strategic partners and the G20 leadership role with regard to the implementation of the Paris Agreement and the importance of coherent climate policies. Korea and the EU reviewed the ongoing cooperation project on Emission Trading Systems, which was going well, and agreed that the involvement of other Korean ministries would be beneficial to the project.

Pending issues and follow-up actions: the report stated that full and correct implementation of the EU-Korea FTA continues to be of key importance, in order to bring the expected benefits to both sides.

The EU has **serious concerns** in particular in the area of trade and sustainable development, i.e. on insufficient progress on the ratification and implementation of ILO conventions and on protection of **labour rights** in Korea. Other market access and implementation issues relate *inter alia* to electronics, cars and machinery.

The EU has a particular interest in exporting again **beef** to the Korean market which has been closed to all EU imports since January 2001. The acceptance of the principle of regionalisation for animal diseases by Korea is another important topic in the sanitary and phyto-sanitary area.

Effort should be made in the areas of intellectual property and customs procedures.

Lastly, the Commission will pursue exploratory discussions with Korea on a package of amendments to the FTA or its protocols, with the aim of reaching a balanced and mutually agreeable outcome.

EU/Korea Free Trade Agreement: bilateral safeguard clause

2010/0032(COD) - 30/06/2016 - Follow-up document

The Commission presents the **4th report** on the implementation of the EU-Korea Free Trade Agreement (*please refer to the relevant summaries of the three previous reports).*

To recall, 1 July 2015 marked the fourth anniversary of the Free Trade Agreement (FTA) between the EU and its Member States and Korea, which has been provisionally applied since July 2011. On 13 December 2015, it entered formally into force following the ratification by EU Member States.

The EU-Korea FTA is the first of a new generation of FTAs, characterised by its far-reaching and comprehensive nature. It is also the EU's first trade deal with an Asian country and the most ambitious FTA implemented by the EU so far.

This is the 4th annual report on the implementation of the FTA, presented in accordance with the provisions of Regulation (EU) No 511/2011 of the European Parliament and of the Council implementing the bilateral safeguard clause of the FTA between the European Union and its Member States and Korea.

The main conclusion of the report, based on more than four years of implementation, is that **the EU-Korea FTA has worked very well.**

Trade in goods: **EU exports of goods to Korea increased by 55%** in the fourth year of FTA implementation, from EUR 30.6 billion in the 12-month period before the FTA took effect to EUR 47.3 billion in the fourth year of the FTA.

At the same time **Korean exports increased, even though the increase is less than the EU's exports**. EU imports from Korea in the fourth year of the FTA amounted to 40.0 billion EUR, having increased by 5% since the 12-month period before the entry into effect of the FTA. The weaker performance of Korean exports of goods has to be seen in the context of the decreased demand in the EU following the financial crisis.

However, when looking at the development of bilateral trade in goods which has been fully or partially liberalised by the FTA, **the situation looks much brighter for Korea**, with an increase of **35%** in exports of fully liberalised goods and **64%** of partially liberalised goods to the EU.

On the EU-side, exports of fully and partially liberalised goods have also increased more than exports overall, with an increase of **57%** for fully liberalised goods and **71%** for partially liberalised goods.

Sectoral effects:

- **in terms of EU exports**, the most important product categories are: "machinery and appliances" (+24%); "transport equipment" (+134%); "chemical products" (+21%). Other categories of products that have shown a significant increase in EU exports since July 2011 are "mineral products", "pearls & precious metals", "footwear" and "wood";
- as far as **EU imports from Korea** are concerned, the main product categories are: "machinery & appliances (- 16%); transport equipment", which, in June 2015 were almost at the same level as in June 2011. Significant increases were noted in EU imports of "chemical products" and "plastics", which have increased by 115% and 59% respectively since the FTA's entry into effect;
- **trade in motor vehicles**: EU exports of motor vehicles have increased by 206%, from EUR 2 billion (74,600 units) in the 12-month period preceding the entry into force of the agreement to EUR 6.1 billion (210,900 units) in the fourth year of the FTA, accounting for 13% of total EU exports to Korea. EU imports from Korea have grown by 53% from EUR 2.6 billion EUR to EUR 4 billion or by 13% in terms of units imported (from 300,000 to 339,000);
- in 2014 EU **exports of services** increased by 11% compared to the previous year, and EU imports of services from Korea increased by 4% compared to 2013. EU FDI inward stocks from Korea increased by 35% compared to the previous year.

Solving persistent problems: full implementation of the FTA continues to be of key importance, in order to bring the expected benefits to both sides. Some implementation and bilateral trade issues still persist. For example in the **sanitary and phytosanitary sector**, cumbersome authorisation procedures create barriers, which affect in particular EU beef and pork exports. Implementation has also caused concern in the areas of **intellectual property rights,** in particular in respect of public performance rights and geographical indications, as well as trade and sustainable development, where there is a need to speed up the ratification of fundamental International Labour Organisation (ILO) conventions.

In this respect, **the specialised committees and working groups** established to implement the FTA will continue to discuss and seek solutions to the implementation and market access issues, with the aim to produce tangible results. These implementation bodies have also **proven to be very useful forums** to discuss current and future regulatory developments and areas of future cooperation.

Lastly, as agreed at the Trade Committee in September 2015, the EU and Korea will continue discussions on a **package of FTA amendments**, with the aim of reaching a balanced and mutually agreeable outcome.

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.

EU/Korea Free Trade Agreement: bilateral safeguard clause

2010/0032(COD) - 09/02/2010 - Legislative proposal

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

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

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. The agreement was then initialled on 15 October 2009. The agreement incorporates a bilateral safeguard clause that provides for the possibility of re-imposing the MFN (Most Favoured Nation) rate when as a result of a trade liberalisation imports take place in such increased quantities, in absolute terms or relative to domestic production, and under such conditions as to cause or threaten to cause serious injury to the Union Industry producing the like or directly competitive product.

In order for these measures to be operational, such safeguard clause must be incorporated in EU law not least because the procedural aspects of the imposition of safeguard measures as well as the rights of interested parties, such as the right of defence, need to be specified.

CONTENT: this proposal constitutes the legal instrument for the implementation of the safeguard clause of the EU-Korea FTA. The main points are as follows:

Principles: a safeguard measure may be imposed in accordance with the provisions set out in the Regulation 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 in the Union in such increased quantities, in absolute terms or relative to domestic 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:

- suspensions of further reduction of the rate of customs duty on the good concerned provided for under the Agreement; or
- increases of the rate of customs duty on the good to a level which does not exceed the lesser of: (i) the MFN applied rate of customs duty on the good in effect at the time the measure is taken; or (ii) the base rate of customs duty specified in the Schedules in the Annex of the Agreement.

The terms "serious injury", "threat of serious injury" and "transition period" are defined in the text.

Initiation of proceedings: the proposal lays down detailed provisions on the initiation of proceedings. The Commission should receive information including available evidence from Member States of any trends in imports which might call for the application of safeguard measures. If there is sufficient evidence to justify the initiation of a proceeding the Commission will publish a notice as provided for in the Agreement in the Official Journal of the European Union.

The investigation: the proposal lays down detailed provisions on the opening of investigations, access and inspections by interested parties to the information gathered, hearings for the parties involved and the opportunities for those parties to submit their views as provided for in the Agreement. The Commission shall notify the Republic of Korea in writing of the initiation of an investigation and consult with the Republic of Korea as far in advance of applying a bilateral safeguard measure as practicable, with a view to reviewing the information arising from the investigation and exchanging views on the measure.

Pursuant to the Agreement, the proposal sets time limits for the initiation of investigations and for determinations as to whether or not measures are appropriate, with a view to ensuring that such determinations are made quickly, in order to increase legal certainty for the economic operators concerned.

Imposition of provisional safeguard measures: an investigation should precede the application of any safeguard measure. However, there is the reservation that the Commission be allowed to apply **provisional measures in critical circumstances** where a delay would cause damage which it would be difficult to repair, pursuant to a preliminary determination that there is clear evidence that imports of an originating good from Korea have increased as the result of the reduction or elimination of a customs duty under the Agreement, and such imports cause serious injury, or threat thereof, to the domestic industry. Provisional measures shall not apply for more than 200 days.

Termination of investigation and proceeding without measures: where bilateral safeguard measures are deemed unnecessary the investigation and proceeding shall be terminated.

Imposition of definitive measures: where the facts as finally established show that the circumstances set out in the text are met, a decision to impose definitive bilateral safeguard measures shall be taken in accordance with the Comitology procedure referred to in the proposal.

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 two years, unless it is extended. The initial period of duration of a safeguard measure 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 to facilitate adjustment and that there is evidence that the industry is adjusting. The total duration of a safeguard measure may not exceed four years, including any provisional measure. A safeguard measure shall not be applied beyond the expiration of the transition period, except with the consent of the Republic of Korea.

Lastly, the proposal lays down rules on confidentiality, committee and decision making process.

IMPACT ASSESSMENT: not applicable.

FINANCIAL IMPLICATIONS: not applicable.

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.

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.

EU/Korea Free Trade Agreement: bilateral safeguard clause

2010/0032(COD) - 25/02/2013 - Follow-up document

The purpose of this report is to comply with the obligations deriving from 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. This requires the Commission to make public an annual report on the application and implementation of the Agreement, as well as to provide an annual monitoring report to the European Parliament and the Council on updated statistics on imports from Korea of products in the sensitive sectors.

The Free Trade Agreement (FTA) between the EU and South Korea has been provisionally applied since July 2011. It is the first of a new generation of FTAs, characterised by a far-reaching and comprehensive nature. It is also the EU's first trade deal with an Asian country.

While it is still too early, after one year of operation, to draw conclusions on the long-term impact of the EU-Korea FTA, the first signs are promising; there is clear evidence that even only one year into the FTA, the EU has benefited significantly and its exports to Korea are on the up. During this first year of implementation, EU exports to Korea increased by 37% overall compared to the reference period and exports of products fully liberalised as from the date of provisional application of the agreement increased more than exports of other products.

As regards Korean imports into the EU, the current economic climate in Europe has clearly had a negative impact on the growth rate of Korean exports. However, on both sides, exports of products fully liberalised as from provisional application of the agreement have increased.

Now the focus is being put on ensuring proper implementation of the FTA. This FTA establishes comprehensive monitoring based on a set of various Committees and Working Groups, the majority of which have met during the first year of implementation.

According to the Commission, the prospects are bright and despite the fact that some external factors not linked to the FTA, such as the Euro crisis, have created unexpected complications, the situation is likely to stabilise in the longer term and allow bilateral trade to expand to its full potential.

EU/Korea Free Trade Agreement: bilateral safeguard clause

2010/0032(COD) - 28/02/2014 - Follow-up document

The Commission presents the **2nd Annual Report on the implementation of the Free Trade Agreement between the EU-South Korea** (*for the results of the 1st report, please refer to the summary dated 25/02/2013 included on the same procedure file*).

To recall, 1 July 2013 marked the second anniversary of the Free Trade Agreement (FTA) between the EU and its Member States and the Republic of Korea (South Korea), which has been provisionally applied since July 2011. It is the first of a new generation FTA, characterised by its far-reaching and comprehensive nature. It is also the EU's first trade deal with an Asian country.

Objectives of the report and main findings: the present report has a two-fold objective: (i) to comply with the Regulation on the adoption of the FTA; (ii) present an annual monitoring report on updated statistics on imports from Korea of products in the sensitive sectors and those sectors to which monitoring has been extended.

The main findings from the Commission's analysis may be summarised as follows:

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a positive outcome for EU exporters: based on two years of implementation of the FTA, it is clear that in terms of development of bilateral trade, the FTA has worked very well overall **in particular for the EU**. Exports of goods increased by 24% or **EUR 7 billion** in the second year of implementation compared to the year before the FTA was provisionally applied. In comparison, EU exports to the rest of the world increased by 17% during the same period. While imports from Korea decreased by 6%, mainly due to reasons which are not directly linked to the FTA, imports of fully or partially liberalised goods developed positively for both the EU and Korea, increasing more than exports overall;

- **preferential tariffs**: the report stressed that exporters are increasingly making use of the preferential tariffs, with increased utilisation rates in particular on the EU-side, although there is still room for improvement in this area. In reality FTA preferences are not always used by exporters. The preference utilisation rate of EU exports to Korea, i.e. the extent to which preferential tariffs are applied in practice by business, was 66% in the period March-June 2013. This is a slight increase compared with the period September 2012-February 2013 when it was 64%. As for Korean preference utilisation on the EU market, the figure, in the year 2012, was 77%, implying that **Korean exporters are making better use of the FTA compared to the EU exporters**. There are many reasons for this, one being that on the Korean side exporters are often big, export driven, chaebols whereas on the EU side the industry is more fragmented;
- **sensitive sectors: car sector**: the report notes that the focus remains on the proper implementation of the FTA so that exporters can enjoy the benefits they expected from it. Some implementation issues persist, notably in the **sector of motor vehicles and parts**. Discussions on these issues will continue in the context and follow-up of the meetings of the various Committees and Working Groups established by the FTA, with the view to finding mutually acceptable and workable solutions, in line with the letter and the spirit of the FTA.

Imports of cars from Korea into the EU increased by 41% in the first year of implementation of the FTA (July 2011 - June 2012) compared to the year before the FTA was provisionally applied (July 2010 - June 2011). **This increase was followed by a decrease of 13% of imports** in the second year of FTA implementation (July 2012 – June 2013) compared to the previous year. The decreasing trend is valid for cars with small engines, as well as for cars with medium – large engines. Looking at the long term trends, **the car imports seem to have stabilised at a significantly lower level than that of the July 2007 – June 2008 period**. Car part imports have also stabilised.

In the margins of the EU-Korea Summit in November 2013, the EU and Korea initialled the Additional Protocol amending the FTA in view of Croatia's EU accession. Discussions to amend the FTA further to make it more trade-facilitative, will continue. These amendments are in the interest of both sides and will eventually benefit exporters and consumers in the EU as well as in Korea.