Regulation (EU) 2019/287 of the European Parliament and of the Council of 13 February 2019 implementing bilateral safeguard clauses and other mechanisms allowing for the temporary withdrawal of preferences in certain trade agreements concluded between the European Union and third countries

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THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union, and in particular Article 207(2) thereof,

Having regard to the proposal from the European Commission,

After transmission of the draft legislative act to the national parliaments,

Acting in accordance with the ordinary legislative procedure[(1)],

Whereas:

(1) The Union regularly concludes trade agreements with third countries, in which it grants those countries preferential treatment. Such trade agreements might include bilateral safeguard clauses and other mechanisms for the temporary withdrawal of tariff preferences or of other preferential treatment, such as stabilisation mechanisms for certain sensitive products. The specificities of some products subject to trade agreements might require ad hoc provisions, as might the vulnerable situation of the Union's outermost regions as referred to in Article 349 of the Treaty on the Functioning of the European Union (TFEU).

(2) It is necessary to lay down procedures to guarantee the effective implementation of bilateral safeguard clauses and other mechanisms for the temporary withdrawal of tariff preferences or of other preferential treatment.

(3) This Regulation should apply without prejudice to any specific provisions that are contained in trade agreements in relation to safeguard measures and other mechanisms for the temporary withdrawal of tariff preferences or of other preferential treatment, where such specific provisions are not in accordance with this Regulation. Any such specific provisions should be listed in the Annex to this Regulation. The Commission should therefore not be prevented from negotiating such specific provisions in future trade agreements with third countries.

(4) Safeguard measures are only to be considered where the product in question is imported into the Union in such increased quantities, in absolute terms or relative to Union

Changes to legislation: *There are currently no known outstanding effects for the Regulation (EU) 2019/287 of the European Parliament and of the Council. (See end of Document for details)*

production, and under such conditions as to cause or threaten to cause serious injury to Union producers of like or directly competing products. Safeguard measures should take one of the forms referred to in the relevant trade agreement.

(5) The follow up and review of trade agreements, the conduct of investigations and, where appropriate, the imposition of safeguard measures, should be carried out in the most transparent manner possible.

(6) Member States should inform the Commission of any trends in imports which might call for the imposition of safeguard measures.

(7) The reliability of statistics relating to all imports from the countries concerned to the Union is crucial when determining whether the conditions for the imposition of safeguard measures are met.

(8) The close monitoring of any sensitive products should facilitate timely decisions concerning the possible initiation of investigations and the subsequent imposition of safeguard measures. Therefore, the Commission should regularly monitor imports of any sensitive products from the date of provisional application of the relevant trade agreement, or the date of entry into force thereof, if there is no provisional application. Monitoring should be extended to other products or sectors if the relevant Union industry makes a duly justified request to the Commission.

(9) It is also necessary to set time limits for the initiation of investigations and for determinations as to whether safeguard measures are appropriate, with a view to ensuring that such determinations are made quickly, thereby increasing legal certainty for the economic operators concerned.

(10) An investigation should precede the application of any safeguard measure, but the Commission should be allowed to apply provisional safeguard measures in critical circumstances.

(11) Safeguard measures should be applied only to the extent, and for such time as, necessary to prevent serious injury and to facilitate adjustment. The maximum duration of safeguard measures should be determined, and specific provisions regarding the extension and review of such measures should be laid down.

(12) The Commission should enter into consultations with the countries concerned that are affected by safeguard measures if the trade agreements to which they are party so require.

(13) In order to amend the Annex to this Regulation, the power to adopt acts in accordance with Article 290 of the TFEU should be delegated to the Commission in respect of adding or deleting entries relating to: a trade agreement; any specific provisions contained in a trade agreement and related to safeguard measures or other mechanisms for the temporary withdrawal of tariff preferences or of other preferential treatment that are not in accordance with this Regulation; any products identified as sensitive by a trade agreement; or any provisions laying down specific rules for other mechanisms. It is of particular importance that the Commission carry out appropriate consultations during its preparatory work, including at expert level, and that those consultations be conducted

in accordance with the principles laid down in the Interinstitutional Agreement of 13 April 2016 on Better Law-Making[(2)]. In particular, to ensure equal participation in the preparation of delegated acts, the European Parliament and the Council receive all documents at the same time as Member States' experts, and their experts systematically have access to meetings of Commission expert groups dealing with the preparation of delegated acts.

(14) The implementation of the bilateral safeguard clauses or other mechanisms and the putting in place of transparent criteria for the temporary suspension of tariff preferences or other preferential treatment provided for in the trade agreements require uniform conditions for the adoption of provisional and definitive safeguard measures, the imposition of prior surveillance measures, the termination of an investigation without measures, and the temporary suspension of the tariff preferences or other preferential treatment.

(15) In order to ensure uniform conditions for the implementation of this Regulation, implementing powers should be conferred on the Commission. Those powers should be exercised in accordance with Regulation (EU) No 182/2011 of the European Parliament and of the Council[(3)].

(16) The advisory procedure should be used for the adoption of prior surveillance measures and provisional safeguard measures, given the effects of those measures and their sequential logic in relation to the adoption of definitive safeguard measures. The examination procedure should apply to the imposition of definitive safeguard measures and for the review of such measures.

(17) The Commission should adopt immediately applicable implementing acts where imperative grounds of urgency so require if, in duly justified cases, a delay in the imposition of provisional safeguard measures would cause damage which would be difficult to repair or in order to prevent a negative impact on the Union market as a result of an increase in imports.

(18) Provision should be made for the treatment of confidential information so that business secrets are not disclosed.

(19) The Commission should submit an annual report to the European Parliament and the Council on the implementation of the trade agreements contained in the Annex to this Regulation and on the application of the safeguard measures,

HAVE ADOPTED THIS REGULATION:

Article 1

Subject matter and scope

1 This Regulation lays down provisions for the implementation of bilateral safeguard clauses and other mechanisms for the temporary withdrawal of tariff preferences or of other preferential treatment contained in the trade agreements concluded between the Union and one or more third countries and referred to in the Annex to this Regulation.

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These provisions shall apply without prejudice to any specific provisions contained in the trade agreements and listed in the Annex in relation to bilateral safeguard clauses or other mechanisms for the temporary withdrawal of tariff preferences or of other preferential treatment, where such provisions are not in accordance with this Regulation.

This Regulation shall therefore not prevent the Commission from negotiating such specific provisions in future trade agreements.

2 Article 194 of Regulation (EU) No 1308/2013 of the European Parliament and of the Council[(4)] shall continue to apply to the application of safeguard measures for the temporary withdrawal of tariff preferences or of other preferential treatment contained in trade agreements concluded between the Union and third countries that are not referred to in the Annex to this Regulation.

Article 2

Definitions

For the purposes of this Regulation:

(1) ‘Agreement’ means a trade agreement referred to in the Annex to this Regulation;

(2) ‘bilateral safeguard clause’ means a provision relating to the temporary suspension of tariff preferences that is set out in an Agreement;

(3) ‘interested parties’ means parties affected by the imports of the product;

(4) ‘Union industry’ means either the Union producers as a whole of the like or directly competitive product who operate within the territory of the Union or Union producers whose collective output of the like or directly competitive product constitutes a major proportion of the total Union production of that product; where a like or a directly competitive product is only one of several products that are made by the Union producers, the Union industry shall be defined in relation to the specific operations that are involved in the production of the like or directly competitive product;

(5) ‘serious injury’ means a significant overall impairment to the position of Union industry;

(6) ‘threat of serious injury’ means serious injury that is clearly imminent, the determination of the existence of which shall be based on verifiable information;

(7) ‘sensitive product’ means a product identified in a specific Agreement as being relatively more vulnerable to a surge of imports than other products;

(8) ‘transition period’ means a period of 10 years from the entry into force of an Agreement, unless otherwise defined in the relevant Agreement;

(9) ‘country concerned’ means a third country that is a party to an Agreement.

Article 3

Principles

1 A safeguard measure may be imposed in accordance with this Regulation where a product originating in a country concerned is imported into the Union:

a in such increased quantities, in absolute terms or relative to Union production; and

b under such conditions, as to cause or threaten to cause serious injury to the Union industry; and

c the increase of imports is the result of the effect of obligations incurred under the respective Agreement, including of the reduction or the elimination of the customs duties on that product.

2 A safeguard measure may take one of the following forms:

a a suspension of a further reduction of the rate of customs duty on the product concerned provided for in the Tariff Elimination Schedule of the Agreement with the country concerned;

b 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 applied rate of customs duty on the product concerned in effect at the time the safeguard measure is taken; or

(ii) the base rate of customs duty as specified in the Tariff Elimination Schedule of the Agreement with the country concerned.

Article 4

Monitoring

1 The Commission shall regularly monitor the evolution of import statistics of any sensitive products mentioned in the Annex to this Regulation in respect of each Agreement. For that purpose, the Commission shall cooperate and exchange data with Member States and the Union industry on a regular basis.

2 Upon a duly justified request by the Union industry concerned, the Commission may extend the scope of the monitoring referred to in paragraph 1 to any products or sectors other than those mentioned in the Annex.

3 The Commission shall present an annual monitoring report to the European Parliament and to the Council concerning statistics on imports of sensitive products and of any products or sectors to which monitoring has been extended.

Article 5

Initiation of an investigation

1 An investigation shall be initiated by the Commission at the request of a Member State, of any natural or legal person that is acting on behalf of the Union industry, or of any association not having legal personality that is acting on behalf of the Union industry, or on the Commission's own initiative, where there is sufficient prima facie evidence of serious injury or the threat of serious injury to the Union industry, as determined on the basis of factors referred to in Article 6(5).

2 Requests for the initiation of an investigation may also be submitted jointly by the Union industry, or by any natural or legal person that is acting on behalf of the Union industry or any association not having legal personality that is acting on behalf of the Union industry, and trade unions. In addition, requests for the initiation of an investigation may be supported by trade unions. This does not affect the right of the Union industry to withdraw the request.