Regulation (EU) 2016/400 of the European Parliament and of the Council of 9 March 2016 implementing the safeguard clause and the anti-circumvention mechanism provided for in the Association Agreement between the European Union and the European Atomic Energy Community and their Member States, of the one part, and the Republic of Moldova, of the other part

REGULATION (EU) 2016/400 OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL

of 9 March 2016

implementing the safeguard clause and the anti-circumvention mechanism provided for in the Association Agreement between the European Union and the European Atomic Energy Community and their Member States, of the one part, and the Republic of Moldova, of the other part

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) On 15 June 2009 the Council authorised the Commission to open negotiations with the Republic of Moldova for the conclusion of an agreement establishing an association between the Union and the Republic of Moldova.

(2) Those negotiations have been concluded and the Association Agreement between the European Union and the European Atomic Energy Community and their Member States, of the one part, and the Republic of Moldova, of the other part[(2)] ('the Agreement') was signed on 27 June 2014 and has been provisionally applied since 1 September 2014.

(3) It is necessary to lay down the procedures to guarantee the effective application of the safeguard clause that has been agreed with the Republic of Moldova.

(4) The Agreement also includes an anti-circumvention mechanism for the temporary suspension of preferential duties on specific products. It is also necessary to lay down the procedures for the effective application of this mechanism.

(5) Safeguard measures may be considered only if the product in question is 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 Union producers of like or directly competing products as laid down in Article 165(1) of the Agreement.

Changes to legislation: *There are currently no known outstanding effects for the Regulation (EU) 2016/400 of the European Parliament and of the Council. (See end of Document for details)*

(6) Certain terms such as 'serious injury', 'threat of serious injury' and 'transitional period' as referred to in Article 169 of the Agreement should be defined.

(7) The tasks of following up and reviewing the Agreement, carrying out investigations and, if necessary, imposing safeguard measures should be carried out in the most transparent manner possible.

(8) The Commission should receive information, including available evidence, from the Member States of any trends in imports which might call for the application of safeguard measures.

(9) The reliability of statistics on all imports from the Republic of Moldova to the Union is therefore crucial in determining whether the conditions for the application of safeguard measures are met.

(10) If there is sufficient *prima facie* evidence to justify the initiation of proceedings, the Commission should publish a notice in the *Official Journal of the European Union*.

(11) There should be detailed provisions on the initiation of investigations, access to information gathered and inspections by interested parties of such information, hearings for the interested parties involved and opportunities for those parties to submit their views.

(12) The Commission should notify the Republic of Moldova in writing of the initiation of an investigation and consult the Republic of Moldova as provided for in Article 166(1) of the Agreement.

(13) It is also necessary to set time limits for the initiation of an investigation and for determinations as to whether safeguard 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.

(14) An investigation should precede the application of any safeguard measure, subject to the Commission being allowed to apply provisional safeguard measures in critical circumstances as referred to in Article 167 of the Agreement.

(15) Safeguard measures should be applied only to the extent that, and for such time as, they are necessary to prevent or remedy 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.

(16) Article 148 of the Agreement provides for an anti-circumvention mechanism for certain agricultural products and processed agricultural products. This Regulation should also provide for the possibility to suspend the preferential duties for a maximum period of 6 months when the imports of such products reach the annual import volumes defined in Annex XV-C to the Agreement.

(17) For reasons of transparency, the Commission should submit an annual report to the European Parliament and to the Council on the implementation of the Agreement and the application of the safeguard measures and the anti-circumvention mechanism.

***Changes to legislation:** There are currently no known outstanding effects for the Regulation (EU) 2016/400 of the European Parliament and of the Council. (See end of Document for details)*

(18) In order to ensure uniform conditions for the adoption of provisional and definitive safeguard measures, for the imposition of prior surveillance measures, for the termination of an investigation without measures and for the implementation of the anti-circumvention mechanism provided for in the Agreement, 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)].

(19) The advisory procedure should be used for the adoption of prior surveillance and provisional safeguard measures given the effects of those measures and their sequential logic in relation to the adoption of definitive safeguard measures. Provisional safeguard measures should be adopted where a delay in the imposition of such 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. The Commission should adopt immediately applicable implementing acts imposing provisional safeguard measures in duly justified cases, where imperative grounds of urgency so require.

(20) The advisory procedure should also be used for the adoption of implementing acts for the decision on the suspension of the preferential duties under the anti-circumvention mechanism, given that those acts have to be implemented quickly once the relevant threshold for the categories of products listed in Annex XV-C to the Agreement has been reached as they have only a very limited period of application. In order to prevent a negative impact on the Union market as a result of an increase in imports, the Commission should adopt immediately applicable implementing acts where, in duly justified cases, imperative grounds of urgency so require.

(21) The examination procedure should be used for the adoption of definitive safeguard measures and for the review of such measures,

HAVE ADOPTED THIS REGULATION:

CHAPTER I

GENERAL PROVISIONS

Article 1

Subject matter and scope

1 This Regulation lays down provisions for the implementation of the safeguard clause and the anti-circumvention mechanism provided for in the Agreement.

2 This Regulation applies to products originating in the Republic of Moldova.

Article 2

Definitions

For the purposes of this Regulation:

Changes to legislation: *There are currently no known outstanding effects for the Regulation (EU) 2016/400 of the European Parliament and of the Council. (See end of Document for details)*

(1) 'product' means a good originating in the Union or in the Republic of Moldova; a product subject to an investigation may cover one or several tariff lines or a sub-segment thereof depending on the specific market circumstances, or any product segmentation commonly applied in Union industry;

(2) 'interested parties' means parties affected by the imports of the product in question;

(3) 'Union industry' means the Union producers as a whole of the like or directly competitive products, operating within the territory of the Union, or Union producers whose collective output of the like or directly competitive products constitutes a major proportion of the total Union production of those products, or, where a like or a directly competitive product is only one of several products that are made by the Union producers, the Union industry is understood in relation to the specific operations that are involved in the production of the like or directly competitive product;

(4) 'serious injury' means, when referring to the position of Union industry, a significant overall impairment to it;

(5) 'threat of serious injury' means, when referring to the position of Union industry, a serious injury that is clearly imminent;

(6) 'transitional period' means a period of 10 years from the entry into force of the Agreement.

CHAPTER II

SAFEGUARD PROVISIONS

Article 3

Principles

1 A safeguard measure may be imposed in accordance with this Regulation where a product originating in the Republic of Moldova is, as a result of the reduction or the elimination of the customs duties on that product, 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.

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

a a suspension of a further reduction in the rate of customs duty on the product concerned provided for in the Agreement;

b an increase in the rate of customs duty on the product concerned to a level which does not exceed the lesser of:

— the most-favoured-nation (MFN) applied rate of customs duty on the product concerned in effect at the time the measure is taken, or

— the base rate of customs duty as specified in the Schedules included in Annex XV pursuant to Article 147 of the Agreement.

***Changes to legislation:** There are currently no known outstanding effects for the Regulation (EU) 2016/400 of the European Parliament and of the Council. (See end of Document for details)*

Article 4

Initiation of proceedings

1 Proceedings shall be initiated by the Commission upon request by a Member State or 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 the factors referred to in Article 5(5), to justify such initiation.

2 The request 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 regarding the Union industry.

3 Proceedings may also be initiated in the event that there is a surge in imports concentrated in one or several Member States, provided that there is sufficient *prima facie* evidence, as determined on the basis of the factors referred to in Article 5(5), to justify such initiation.

4 A Member State shall inform the Commission if trends in imports from the Republic of Moldova appear to call for safeguard measures. That information shall include the evidence mentioned in paragraphs 1 and 2, and, if applicable, in paragraph 3.

5 The Commission shall inform the Member States when it receives a request to initiate proceedings or when it considers the initiation of proceedings to be appropriate on its own initiative pursuant to paragraph 1.

6 Where it is apparent that there is sufficient *prima facie* evidence to justify the initiation of proceedings, the Commission shall initiate such proceedings and shall publish a notice of initiation of investigations in the *Official Journal of the European Union*. Initiation of proceedings shall take place within 1 month of receipt by the Commission of the request pursuant to paragraph 1.

7 The notice referred to in paragraph 6 shall:

a contain a summary of the information received and require that all relevant information be communicated to the Commission;

b state the period within which interested parties may make known their views in writing and submit information to the Commission, if such views and information are to be taken into account during the proceedings;

c state the period within which interested parties may apply to be heard orally by the Commission in accordance with Article 5(9).

Article 5

Investigations

1 Following the publication of the notice referred to in Article 4(6),the Commission shall conduct an investigation.

2 The Commission may request Member States to supply information and Member States shall take whatever steps are necessary in order to give effect to any such request. If that