Regulation (EU) 2015/478 of the European Parliament and of the Council of 11 March 2015 on common rules for imports (codification)

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on common rules for imports

(codification)

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,

Having regard to the opinion of the European Economic and Social Committee[(1)],

Acting in accordance with the ordinary legislative procedure[(2)],

Whereas:

(1) Council Regulation (EC) No 260/2009[(3)] has been substantially amended[(4)]. In the interests of clarity and rationality, that Regulation should be codified.

(2) The common commercial policy should be based on uniform principles.

(3) The European Community concluded the Agreement establishing the World Trade Organization ('WTO'). Annex 1A to that Agreement contains, inter alia, the General Agreement on Tariffs and Trade 1994 ('GATT 1994') and an Agreement on Safeguards.

(4) The Agreement on Safeguards meets the need to clarify and reinforce the disciplines of GATT 1994, and specifically those of Article XIX. That Agreement requires the elimination of safeguard measures which escape those rules, such as voluntary export restraints, orderly marketing arrangements and any other similar import or export arrangements.

(5) The Agreement on Safeguards also covers coal and steel products. The common rules for imports, especially as regards safeguard measures, therefore also apply to those products without prejudice to any possible measures to apply an agreement specifically concerning coal and steel products.

(6) The textile products covered by Council Regulation (EC) No 517/94[(5)] are subject to special treatment at Union and international level. They should therefore be excluded from the scope of this Regulation.

Changes to legislation: *There are currently no known outstanding effects for the Regulation (EU) 2015/478 of the European Parliament and of the Council. (See end of Document for details)*

(7) The Commission should be informed by the Member States of any danger created by trends in imports which might call for Union surveillance or the application of safeguard measures.

(8) In such instances the Commission should examine the terms and conditions under which imports occur, the trend in imports, the various aspects of the economic and trade situations and, where appropriate, the measures to be applied.

(9) If prior Union surveillance is applied, release for free circulation of the products concerned should be made subject to presentation of a surveillance document meeting uniform criteria. That document should, on simple application by the importer, be issued by the authorities of the Member States within a certain period but without the importer thereby acquiring any right to import. The surveillance document should therefore be valid only during such period as the import rules remain unchanged.

(10) The Member States and the Commission should exchange the information resulting from Union surveillance as fully as possible.

(11) It falls to the Commission to adopt the safeguard measures required by the interests of the Union. Those interests should be considered as a whole and should in particular encompass the interests of Union producers, users and consumers.

(12) Safeguard measures against a member of the WTO may be considered only if the product in question is imported into the Union in such greatly increased quantities and on such terms or conditions as to cause, or threaten to cause, serious injury to Union producers of like or directly competing products, unless international obligations permit derogation from this rule.

(13) The terms ‘serious injury’, ‘threat of serious injury’ and ‘Union producers’ should be defined and precise criteria for determining injury should be laid down.

(14) An investigation should precede the application of any safeguard measure, subject to the reservation that the Commission be allowed in urgent cases to apply provisional measures.

(15) There should be detailed provisions on the opening of investigations, the checks and inspections required, access by exporter countries and interested parties to the information gathered, hearings for the parties involved and the opportunities for those parties to submit their views.

(16) The provisions on investigations laid down in this Regulation are without prejudice to Union or national rules concerning professional secrecy.

(17) It is also necessary to set 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.

(18) In cases in which safeguard measures take the form of a quota the level of the latter should be set in principle no lower than the average level of imports over a representative period of at least 3 years.

(19) In cases in which a quota is allocated among supplier countries each country's quota may be determined by agreement with the countries themselves or by taking as a reference the level of imports over a representative period. Derogations from these rules should nevertheless be possible where there is serious injury and a disproportionate increase in imports, provided that due consultation under the auspices of the WTO Committee on Safeguards takes place.

(20) The maximum duration of safeguard measures should be determined and specific provisions regarding extension, progressive liberalisation and reviews of such measures should be laid down.

(21) The circumstances in which products originating in a developing country which is a member of the WTO are to be exempt from safeguard measures should be established.

(22) Surveillance or safeguard measures confined to one or more regions of the Union may prove more suitable than measures applying to the whole Union. However, such measures should be authorised only exceptionally and where no alternative exists. It is necessary to ensure that such measures are temporary and cause the minimum of disruption to the operation of the internal market.

(23) In the interests of uniformity in rules for imports, the formalities to be carried out by importers should be simple and identical regardless of the place where the goods clear customs. It is therefore desirable to provide that any formalities should be carried out using forms corresponding to the specimen annexed to this Regulation.

(24) Surveillance documents issued in connection with Union surveillance measures should be valid throughout the Union irrespective of the Member State of issue.

(25) The implementation of this Regulation requires uniform conditions for adopting provisional and definitive safeguard measures, and for the imposition of prior surveillance 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[(6)].

(26) The advisory procedure should be used for the adoption of surveillance and provisional measures given the effects of such 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,

HAVE ADOPTED THIS REGULATION:

CHAPTER I

GENERAL PRINCIPLES

Article 1

1 This Regulation applies to imports of products originating in third countries, except for:

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a textile products subject to specific import rules under Regulation (EC) No 517/94;

b products originating in certain third countries listed in Council Regulation (EC) No 625/2009[7].

2 The products referred to in paragraph 1 shall be freely imported into the Union and accordingly, without prejudice to the safeguard measures which may be taken under Chapter V, shall not be subject to any quantitative restrictions.

CHAPTER II

UNION INFORMATION AND CONSULTATION PROCEDURE

Article 2

Member States shall inform the Commission if trends in imports appear to call for surveillance or safeguard measures. This information shall contain the evidence available, as determined on the basis of the criteria laid down in Article 9. The Commission shall immediately pass this information on to all the Member States.

Article 3

1 The Commission shall be assisted by a Committee on Safeguards. That Committee shall be a committee within the meaning of Regulation (EU) No 182/2011.

2 Where reference is made to this paragraph, Article 4 of Regulation (EU) No 182/2011 shall apply.

3 Where reference is made to this paragraph, Article 5 of Regulation (EU) No 182/2011 shall apply.

4 Where reference is made to this paragraph, Article 8 of Regulation (EU) No 182/2011, in conjunction with Article 5 thereof, shall apply.

5 Pursuant to Article 3(5) of Regulation (EU) No 182/2011, where recourse is made to the written procedure for adopting definitive measures pursuant to Article 16 of this Regulation, such procedure shall be terminated without result where, within the time-limit set down by the chair, the chair so decides or a majority of committee members as defined in Article 5(1) of Regulation (EU) No 182/2011 so request. Where recourse is made to the written procedure in other instances where there has been a discussion of the draft measure in the Committee, that procedure shall be terminated without result where, within the time-limit set down by the chair, the chair so decides or a simple majority of committee members so request. Where recourse is made to the written procedure in other instances where there has not been a discussion of the draft measure in the Committee, that procedure shall be terminated without result where, within the time-limit set down by the chair, the chair so decides or at least a quarter of committee members so request.

CHAPTER III

UNION INVESTIGATION PROCEDURE

Article 4

1 Without prejudice to Article 7, the Union investigation procedure shall be implemented before any safeguard measure is applied.

2 Using as a basis the factors referred to in Article 9, the investigation shall seek to determine whether imports of the product in question are causing or threatening to cause serious injury to the Union producers concerned.

3 The following definitions shall apply:

a 'serious injury' means a significant overall impairment in the position of Union producers;

b 'threat of serious injury' means serious injury that is clearly imminent;

c 'Union producers' means the producers as a whole of like or directly competing products operating within the territory of the Union, or those whose collective output of like or directly competing products constitutes a major proportion of the total Union production of those products.

Article 5

1 Where it is apparent to the Commission that there is sufficient evidence to justify the initiation of an investigation, the Commission shall initiate an investigation within 1 month of the date of receipt of information from a Member State and publish a notice in the *Official Journal of the European Union*. That notice shall:

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

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

c state the period within which interested parties may apply to be heard orally by the Commission in accordance with paragraph 4.

The Commission shall commence the investigation, acting in cooperation with the Member States.

The Commission shall provide information to the Member States concerning its analysis of the information normally within 21 days of the date on which the information is provided to the Commission.

2 The Commission shall seek all information it deems necessary and, where it considers it appropriate, after having informed the Member States, endeavour to check that information with importers, traders, agents, producers, trade associations and organisations.

The Commission shall be assisted in this task by staff of the Member State on whose territory those checks are being carried out, provided that that Member State so wishes.

3 The Member States shall supply the Commission, at its request and following procedures laid down by it, with the information at their disposal on developments in the market of the product being investigated.

4 Interested parties which have come forward pursuant to the first subparagraph of paragraph 1 and representatives of the exporting country may, upon written request, inspect all information made available to the Commission in connection with the investigation other than internal documents prepared by the authorities of the Union or its Member States, provided that that information is relevant to the presentation of their case and not confidential within the meaning of Article 8 and that it is used by the Commission in the investigation.

Interested parties which have come forward may communicate their views on the information in question to the Commission. Those views may be taken into consideration where they are backed by sufficient evidence.