Regulation (EU) No 511/2011 of the European Parliament and of the Council of 11 May 2011 implementing the bilateral safeguard clause of the Free Trade Agreement between the European Union and its Member States and the Republic of Korea

REGULATION (EU) No 511/2011 OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL

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implementing the bilateral safeguard clause of the Free Trade Agreement between the European Union and its Member States and the Republic of Korea

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 23 April 2007 the Council authorised the Commission to open negotiations for a free trade agreement with the Republic of Korea ('Korea') on behalf of the Union and its Member States.

(2) Those negotiations have been concluded and the Free Trade Agreement between the European Union and its Member States, of the one part, and the Republic of Korea, of the other part, ('the Agreement') was signed on 6 October 2010[(2)], received the consent of the European Parliament on 17 February 2011[(3)] and is to apply as provided for in Article 15.10 of the Agreement.

(3) It is necessary to lay down the procedures for applying certain provisions of the Agreement which concern safeguards.

(4) The terms 'serious injury', 'threat of serious injury' and 'transition period' as referred to in Article 3.5 of the Agreement should be defined.

(5) Safeguard measures may be considered only if the product in question is imported into the Union in such increased quantities and under such conditions as to cause, or threaten to cause, serious injury to Union producers of like or directly competitive products as laid down in Article 3.1 of the Agreement.

(6) Safeguard measures should take one of the forms referred to in Article 3.1 of the Agreement.

(7) 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.

(8) The Commission should submit a report once a year on the implementation of the Agreement and the application of the safeguard measures.

(9) There should be detailed provisions on the initiation of proceedings. 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.

(10) The reliability of statistics on all imports from Korea to the Union is therefore crucial to determining whether the conditions to apply safeguard measures are met.

(11) In some cases, an increase of imports concentrated in one or several Member States may cause or threaten to cause by itself serious injury to the Union industry. In the event that there is an increase of imports concentrated in one or several Member States, the Commission may introduce prior surveillance measures. The Commission will give full consideration to how the product subject to investigation, and consequently the Union industry producing the like product, can be defined in a manner which provides for an effective remedy, while fully respecting the criteria under this Regulation and the Agreement.

(12) If there is sufficient prima facie evidence to justify the initiation of a proceeding the Commission should publish a notice as provided for in Article 3.2.2 of the Agreement in the *Official Journal of the European Union*.

(13) There should be detailed provisions on the initiation 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 Article 3.2.2 of the Agreement.

(14) The Commission should notify Korea in writing of the initiation of an investigation and consult with Korea as provided for in Article 3.2.1 of the Agreement.

(15) It is also necessary, pursuant to Articles 3.2 and 3.3 of the Agreement, 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.

(16) An investigation should precede the application of any safeguard measure, subject to the Commission being allowed to apply provisional measures in critical circumstances as referred to in Article 3.3 of the Agreement.

(17) Safeguard measures should be applied only to the extent, and for such time, as may be necessary to prevent serious injury and to facilitate adjustment. The maximum duration of safeguard measures should be determined and specific provisions regarding extension and review of such measures should be laid down, as referred to in Article 3.2.5 of the Agreement.

(18) Close monitoring will facilitate any timely decision concerning the possible initiation of an investigation or the imposition of measures. Therefore the Commission should regularly monitor imports and exports in sensitive sectors from the date of application of the Agreement.

(19) It is necessary to lay down certain procedures relating to the application of Article 14 (Drawback of, or Exemption from, Customs Duties) of the Protocol concerning the Definition of 'Originating Products' and Methods of Administrative Cooperation ('the Rules of Origin Protocol') of the Agreement 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.

(20) Because it will not be possible to limit customs duty drawback until 5 years after the Agreement enters 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 imports benefiting from duty drawback or exemption from customs duty. In such a proceeding the Commission should evaluate all relevant factors having a bearing on the situation of the Union industry, including the conditions set out in Article 14.2.1 of the Rules of Origin Protocol. Therefore the Commission should monitor Korean statistics for sensitive sectors potentially affected by duty drawback from the date of application of the Agreement.

(21) From the date of application of the Agreement, the Commission should also monitor particularly closely, especially in sensitive sectors, the statistics showing the evolution of imports into and exports from Korea.

(22) Definitive safeguard measures adopted pursuant to this Regulation may be referred to by Member States in applications for financial contributions under Regulation (EC) No 1927/2006 of the European Parliament and of the Council of 20 December 2006 on establishing the European Globalisation Adjustment Fund[(4)].

(23) 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 of 16 February 2011 laying down the rules and general principles concerning mechanisms for control by Member States of the Commission's exercise of implementing powers[(5)].

(24) 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.

(25) This Regulation should apply only to products originating in the Union or Korea,

HAVE ADOPTED THIS REGULATION:

Changes to legislation: *There are currently no known outstanding effects for the Regulation (EU) No 511/2011 of the European Parliament and of the Council. (See end of Document for details)*

Article 1

Definitions

For the purposes of this Regulation:

(a) 'products' means goods originating in the Union or Korea. A product subject to an investigation may cover one or several tariff lines or a subsegment thereof depending on the specific market circumstances, or any product segmentation commonly applied in the Union industry;

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

(c) 'Union industry' means the Union producers as a whole of the like or directly competitive products, operating within the territory of the Union, or those Union producers whose collective output of the like or directly competitive products constitutes a major proportion of the total Union production of those products. In cases where the like or directly competitive product is only one of several products that are made by the producers constituting the Union industry, the industry shall be defined as the specific operations that are involved in the production of the like or directly competitive product;

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

(e) 'threat of serious injury' means serious injury that is clearly imminent. 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. Forecasts, estimations and analyses made on the basis of factors referred to in Article 5(5), should, inter alia, be taken into account in order to determine the existence of a threat of serious injury;

(f) 'transition period' means, for a product, the period from the date of application of the Agreement, as provided for in Article 15.10 thereof, until 10 years from the date of completion of tariff elimination or reduction, as the case may be for each product.

Article 2

Principles

1 A safeguard measure may be imposed in accordance with this 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 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.

2 Safeguard measures may take one of the following forms:

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

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

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

— the base rate of customs duty specified in the Schedules in Annex 2-A to the Agreement pursuant to Article 2.5.2 of the Agreement.

Article 3

Monitoring

1 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.

2 Upon a duly justified request by the industries concerned, the Commission may consider extending the scope of the monitoring to other sectors.

3 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.

4 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.

5 For the purposes of paragraph 4, at least the following products shall be considered as falling within the category of sensitive products: textiles and clothing (HS 2007 headings 5204, 5205, 5206, 5207, 5408, 5508, 5509, 5510, 5511), consumer electronics (HS 2007 headings 8521, 8528), passenger cars (HS 2007 headings 870321, 870322, 870323, 870324, 870331, 870332, 870333) and also those included in the additional list drawn up in accordance with Article 11.

Article 4

Initiation of proceedings

1 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, as determined on the basis of factors referred to in Article 5(5), to justify such initiation.

2 The request to initiate an investigation shall contain evidence that the conditions for imposing the safeguard measure set out in Article 2(1) are met. 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, changes in the level of sales, production, productivity, capacity utilisation, profits and losses, and employment.

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