Regulation (EU) No 20/2013 of the European Parliament and of the Council of 15 January 2013 implementing the bilateral safeguard clause and the stabilisation mechanism for bananas of the Agreement establishing an Association between the European Union and its Member States, on the one hand, and Central America on the other

REGULATION (EU) No 20/2013 OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL

of 15 January 2013

implementing the bilateral safeguard clause and the stabilisation mechanism for bananas of the Agreement establishing an Association between the European Union and its Member States, on the one hand, and Central America on the other

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 with certain countries of Central America (‘Central America’) for an Agreement establishing an Association between the European Union and its Member States, on the one hand, and Central America on the other (‘the Agreement’) on behalf of the Union and its Member States.

(2) Those negotiations have been concluded and the Agreement was signed on 29 June 2012, received the consent of the European Parliament on 11 December 2012 and is to apply as provided for in Article 353 of the Agreement.

(3) It is necessary to lay down the most appropriate procedures to guarantee the effective application of certain provisions of the Agreement which concern the bilateral safeguard clause and for applying the stabilisation mechanism for bananas that has been agreed with Central America.

(4) It is also necessary to create appropriate safeguard mechanisms to prevent serious harm to the Union banana growing sector which is of great importance to the agricultural producers of many of the outermost regions of the Union. The limited ability of those regions to diversify, owing to their natural characteristics, makes the banana sector particularly vulnerable. It is therefore essential to create effective mechanisms to address preferential imports from third countries concerned, in order to guarantee

Changes to legislation: *There are currently no known outstanding effects for the Regulation (EU) No 20/2013 of the European Parliament and of the Council. (See end of Document for details)*

that Union banana production is maintained under the best possible conditions, as it is a crucial employment sector in certain areas, especially in the outermost regions.

(5) The terms ‘serious injury’, ‘threat of serious injury’ and ‘transition period’ as referred to in Articles 104 and 105 of the Agreement should be defined.

(6) Safeguard measures should 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 competitive products as laid down in Article 104 of the Agreement.

(7) Specific safeguard provisions should be available in case the product in question is imported in such increased quantities and under such conditions as to cause or threaten to cause serious deterioration in the economic situation of any of the outermost regions as referred to in Article 349 of the Treaty on the Functioning of the European Union (TFEU).

(8) Safeguard measures should take one of the forms referred to in Article 104(2) of the Agreement.

(9) 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.

(10) 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 stabilisation mechanism for bananas.

(11) The challenges in Central America as regards human, social, labour and environmental rights in connection with products from that region require a close dialogue between the Commission and Union civil society organisations.

(12) The importance of complying with the international labour standards drawn up and supervised by the International Labour Organisation should be stressed.

(13) The Commission should monitor the observance by Central America of the social and environmental standards laid down in Title VIII of Part IV of the Agreement.

(14) 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.

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

(16) In some cases, an increase of imports concentrated in one or several of the Union's outermost regions or Member States may cause, or threaten to cause, serious deterioration or serious injury in their economic situation. In the event that there is an increase of imports concentrated in one or several of the Union's outermost regions or Member States, the Commission should be able to introduce prior surveillance measures.

(17) 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 111(3) of the Agreement in the *Official Journal of the European Union*.

(18) There should be detailed provisions on the initiation of investigations, access to and inspections by interested parties of the information gathered, hearings for the interested parties involved and the opportunities for those parties to submit their views as provided for in Article 111(3) of the Agreement.

(19) The Commission should notify Central America in writing of the initiation of an investigation and notify the results of the investigations to the Association Committee as provided for in Article 116 of the Agreement.

(20) It is also necessary, pursuant to Article 112 of the Agreement, to set time limits for the initiation of an investigation and for determinations as to whether or not 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.

(21) 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 106 of the Agreement.

(22) Close monitoring should facilitate a timely decision concerning the possible initiation of an investigation or imposition of measures. Therefore the Commission should regularly monitor imports of bananas from the date of application of the Agreement. Monitoring should be extended to other sectors upon a duly justified request.

(23) There should be a possibility to suspend swiftly for a maximum period of three months the preferential customs duties when imports exceed a defined annual trigger import volume. The decision whether or not to apply the stabilisation mechanism for bananas should take into account the stability of the Union market for bananas.

(24) 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 105 of the Agreement.

(25) The Commission should enter into consultations with the Central American country affected by measures.

(26) The implementation of the bilateral safeguard clause and the stabilisation mechanism for bananas provided for in the Agreement requires 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 suspending temporarily the preferential customs duty established under the stabilisation mechanism for bananas that has been agreed with Central America. In order to ensure uniform conditions for the implementation of this Regulation, 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

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and general principles concerning mechanisms for control by Member States of the Commission's exercise of implementing powers[(2)].

(27) The advisory procedure should be used for the adoption of surveillance and provisional safeguard measures given the effects of those measures and their sequential logic in relation to the adoption of definitive safeguard measures. Where a delay in the imposition of provisional safeguard measures would cause damage which would be difficult to repair, the Commission should adopt immediately applicable implementing acts.

(28) Given the nature and the relatively short duration of the measures foreseen under the stabilisation mechanism for bananas, and in order to prevent a negative impact on the situation of the Union market for bananas, the Commission should also adopt immediately applicable implementing acts for the temporary suspension of the preferential customs duty established under the stabilisation mechanism for bananas, or to determine that such temporary suspension is not appropriate. Where such immediately applicable implementing acts are applied, the advisory procedure should be used.

(29) The Commission should make diligent and effective use of the stabilisation mechanism for bananas in order to avoid a threat of serious deterioration or a serious deterioration for producers in the outermost regions in the Union. From 1 January 2020, the general bilateral safeguard mechanism, including the special provisions for outermost regions, remains applicable.

(30) For purposes of adopting the necessary implementing rules for the application of the rules contained in Appendix 2A of Annex II (Concerning the definition of the concept of 'originating products' and methods of administrative co-operation) and Appendix 2 of Annex I (Elimination of Customs Duties) to the Agreement, Article 247a of Council Regulation (EEC) No 2913/92 of 12 October 1992 establishing the Community Customs Code[(3)] should be applied.

(31) This Regulation should apply only to products originating in the Union or in Central America,

HAVE ADOPTED THIS REGULATION:

CHAPTER I

SAFEGUARD PROVISIONS

Article 1

Definitions

For the purposes of this Regulation:

(a) ‘product’ means a good originating in the Union or in a Central American country. 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 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, 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 specific operations that are involved in the production of the like or directly competitive product;

(d) 'serious injury' means a significant overall impairment;

(e) 'threat of serious injury' means serious injury that is clearly imminent;

(f) 'serious deterioration' means significant disturbances in a sector or in Union industry;

(g) 'threat of serious deterioration' means significant disturbances that are clearly imminent;

(h) 'transitional period' means ten years from the date of application of the Agreement, for a product for which the Schedule of the EU Party, as set out in Annex I (Elimination of Customs Duties) to the Agreement ('Tariff Elimination Schedule') provides for a tariff elimination period of less than ten years, or the tariff elimination period plus three years for a product for which the Tariff Elimination Schedule provides for a tariff elimination period of ten or more years;

(i) 'Central American country' means Costa Rica, El Salvador, Guatemala, Honduras, Nicaragua or Panama.

A determination of the existence of a threat of serious injury within the meaning of point (e) of the first paragraph shall be based on verifiable facts and not merely on an allegation, a conjecture or a remote possibility. In order to determine the existence of a threat of serious injury, forecasts, estimations and analyses made on the basis of factors referred to in Article 5(5), shall, inter alia, be taken into account.

Article 2

Principles

1 A safeguard measure may be imposed in accordance with this Regulation where a product originating in a Central American country 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 of the rate of customs duty on the product concerned provided for in the Tariff Elimination Schedule;

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 in effect at the time the measure is taken; or