

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<sup>(1)</sup>,

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<sup>(2)</sup> ('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.

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- (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.

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- (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<sup>(3)</sup>.
- (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:

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- (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.

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## 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

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information is of general interest and is not confidential in accordance with Article 11, it shall be added to the non-confidential file as provided for in paragraph 8 of this Article.

3 The investigation shall, where possible, be concluded within 6 months of its initiation. That time limit may be extended by a further period of 3 months in exceptional circumstances such as the involvement of an unusually high number of interested parties or complex market situations. The Commission shall notify all interested parties of any such extension and explain the reasons therefor.

4 The Commission shall seek all information it considers necessary to make a determination with regard to the conditions set out in Article 3(1), and shall, where appropriate, endeavour to verify that information.

5 In the investigation to determine whether increased imports have caused or are threatening to cause serious injury to the Union industry, the Commission shall evaluate all relevant factors of an objective and quantifiable nature having a bearing on the situation of the Union industry, in particular, 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. This list is not exhaustive and other relevant factors, such as stocks, prices, return on capital employed and cash flow, may also be taken into consideration by the Commission in its determination of the existence of serious injury or threat of serious injury.

6 Interested parties who have submitted information pursuant to point (b) of Article 4(7) and representatives of the Republic of Moldova may, upon written request, inspect all information made available to the Commission in connection with the investigation, other than internal documents prepared by the Union authorities or those of the Member States, provided that that information is relevant to the presentation of their case and not confidential in accordance with Article 11 and that it is used by the Commission in the investigation. Interested parties may communicate to the Commission their views on the information made available. Where there is sufficient *prima facie* evidence in support of those views, the Commission shall take them into consideration.

7 The Commission shall ensure that all data and statistics which are used for the investigation are representative, available, comprehensible, transparent and verifiable.

8 The Commission shall, as soon as the necessary technical framework is in place, ensure password-protected online access to the non-confidential file (the online platform), which it shall manage and through which all information which is relevant and is not confidential in accordance with Article 11 shall be disseminated. The European Parliament, Member States and interested parties shall be granted access to that platform.

9 The Commission shall hear interested parties, in particular where they have made a written application within the period laid down in the notice published in the *Official Journal of the European Union*, showing that they are likely to be affected by the outcome of the investigation and that there are special reasons for them to be heard orally. The Commission shall hear interested parties on further occasions if there are special reasons therefor.

10 Where information is not supplied within the time limits set by the Commission, or where the investigation is significantly impeded, the Commission may make findings on the basis of the facts available. Where the Commission finds that any interested party or any third party has supplied it with false or misleading information, it shall disregard that information and may make use of the facts available.

11 The Commission shall notify the Republic of Moldova in writing of the initiation of an investigation.

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## Article 6

### Prior surveillance measures

1 The Commission may adopt, by means of implementing acts, prior surveillance measures in regard to imports from the Republic of Moldova where the trend in imports of a product is such that it could lead to one of the situations referred to in Articles 3(1) and 4(1) and (3). Those implementing acts shall be adopted in accordance with the advisory procedure referred to in Article 13(3).

2 Prior surveillance measures shall have a limited period of validity. Unless otherwise provided, they shall cease to be valid at the end of the second 6-month period following the first 6 months after their introduction.

## Article 7

### Imposition of provisional safeguard measures

1 The Commission shall adopt, by means of implementing acts, provisional safeguard measures in critical circumstances where a delay in imposing safeguard measures would cause damage which would be difficult to repair, pursuant to a preliminary determination on the basis of the factors referred to in Article 5(5) that there is sufficient *prima facie* evidence that imports of a product originating in the Republic of Moldova have increased as a result of the reduction or elimination of a customs duty in accordance with the Schedules included in Annex XV pursuant to Article 147 of the Agreement and that such imports cause serious injury, or threat of serious injury, to the Union industry. Those implementing acts shall be adopted in accordance with the advisory procedure referred to in Article 13(3) of this Regulation.

2 On duly justified imperative grounds of urgency, including the case referred to in paragraph 3, the Commission shall adopt immediately applicable implementing acts imposing provisional safeguard measures in accordance with the procedure referred to in Article 13(5).

3 Where a Member State requests immediate intervention by the Commission and where the conditions set out in paragraph 1 are met, the Commission shall take a decision within five working days of receiving the request.

4 Provisional safeguard measures shall not apply for more than 200 calendar days.

5 Should the provisional safeguard measures be repealed because the investigation shows that the conditions set out in Article 3(1) are not met, any customs duty collected as a result of those provisional safeguard measures shall be refunded automatically.

6 Provisional safeguard measures shall apply to every product which is put into free circulation after the date of entry into force of those measures.

## Article 8

### Termination of investigations and proceedings without measures

1 Where the facts as finally established show that the conditions set out in Article 3(1) are not met, the Commission shall adopt, by means of an implementing act, a decision terminating the investigation and proceedings and publish that decision in the *Official Journal of the*

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*European Union.* That implementing act shall be adopted in accordance with the examination procedure referred to in Article 13(4).

2 The Commission shall make public, with due regard to the protection of confidential information in accordance with Article 11, a report setting out its findings and reasoned conclusions reached on all pertinent issues of fact and law.

#### *Article 9*

### **Imposition of definitive safeguard measures**

1 Where the facts as finally established show that the conditions set out in Article 3(1) are met, the Commission shall invite the authorities of the Republic of Moldova to hold consultations in accordance with Article 160(2) of the Agreement. Where no satisfactory solution has been reached within 30 days, the Commission may adopt, by means of implementing acts, definitive safeguard measures. Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 13(4) of this Regulation.

2 The Commission shall make public, with due regard to the protection of confidential information in accordance with Article 11, a report containing a summary of the material facts and considerations relevant to the determination.

#### *Article 10*

### **Duration and review of safeguard measures**

1 A safeguard measure shall remain in force only for such period of time as may be necessary to prevent or remedy serious injury to Union industry and to facilitate adjustment. That period shall not exceed 2 years, unless it is extended pursuant to paragraph 3.

2 A safeguard measure shall remain in force pending the outcome of the review under paragraph 3.

3 The initial duration of a safeguard measure may be extended by up to 2 years provided that the Commission determines in a review that the safeguard measure continues to be necessary to prevent or remedy serious injury to Union industry and that there is evidence that the Union industry is adjusting.

4 Any extension pursuant to paragraph 3 shall be preceded by an investigation initiated upon a 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 there is sufficient *prima facie* evidence that the conditions laid down in paragraph 3 are met, on the basis of factors referred to in Article 5(5).

5 A notice of the initiation of an investigation shall be published in the *Official Journal of the European Union* in accordance with Article 4(6) and (7) *mutatis mutandis*. The investigation shall be conducted, and any decision regarding an extension pursuant to paragraph 3 of this Article shall be made, in accordance with Articles 5, 8 and 9 *mutatis mutandis*.

6 The total duration of a safeguard measure shall not exceed 4 years, including the period of application of any provisional safeguard measure and the initial period of application and extension thereof.



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7 A safeguard measure shall not be applied beyond the expiry of the transitional period, except with the consent of the Republic of Moldova.

#### *Article 11*

### **Confidentiality**

1 Information received pursuant to this Regulation shall be used only for the purpose for which it was requested.

2 Neither information of a confidential nature nor any information provided on a confidential basis received pursuant to this Regulation shall be disclosed without the express consent of the supplier of such information.

3 Each request for confidentiality shall state the reasons why the information is confidential. However, if the supplier of the information requests that the information not be made public or disclosed, in full or in summary form, and if that request is unjustified, the information concerned may be disregarded.

4 Information shall in any case be considered to be confidential if its disclosure is likely to have a significantly adverse effect upon the supplier or the source of such information.

5 Paragraphs 1 to 4 shall not preclude reference by the Union authorities to general information and in particular to reasons on which decisions taken pursuant to this Regulation are based. Those authorities shall, however, take into account the legitimate interest of natural and legal persons concerned that their business secrets should not be divulged.

## CHAPTER III

### **ANTI-CIRCUMVENTION MECHANISM**

#### *Article 12*

### **Anti-circumvention mechanism for certain agricultural products and processed agricultural products**

1 An average annual import volume is set for imports of products listed in Annex XV-C to the Agreement, which are subject to the anti-circumvention mechanism set out in Article 148 thereof. On duly justified imperative grounds of urgency, related to the import volume of one or more categories of products that reach the volume indicated in Annex XV-C to the Agreement in any given year starting on 1 January, and unless it has received a sound justification from the Republic of Moldova, the Commission shall adopt an immediately applicable implementing act in accordance with the procedure referred to in Article 13(5) of this Regulation. By such act, the Commission may decide either to temporarily suspend the preferential duty applied to the product or products concerned or that such suspension is not appropriate.

2 The temporary suspension of the preferential duty shall be applicable for a maximum period of 6 months from the date of publication of the decision to suspend the preferential duty. Before the expiry of that 6-month period and on duly justified imperative grounds of urgency relating to the suspension of the preferential duties, the Commission may adopt an immediately applicable implementing act in accordance with the procedure referred to in Article 13(5) in order to lift the temporary suspension of the preferential duty if it is satisfied that the volume of

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the relevant category of products imported in excess of the volume referred to in Annex XV-C to the Agreement results from a change in the level of production and export capacity of the Republic of Moldova for the product or products concerned.

3 The application of the mechanism set out in this Chapter is without prejudice to the application of any measures defined in Chapter II. Measures taken pursuant to the provisions of both chapters shall not, however, be applied simultaneously to the same product or products.

## CHAPTER IV

### COMMITTEE PROCEDURE AND FINAL PROVISIONS

#### *Article 13*

#### **Committee procedure**

1 For the purpose of Articles 6 to 10, the Commission shall be assisted by the Committee on Safeguards established by Article 3(1) of Regulation (EU) 2015/478 of the European Parliament and of the Council<sup>(4)</sup>. That Committee shall be a committee within the meaning of Regulation (EU) No 182/2011.

2 For the purpose of Article 12, the Commission shall be assisted by the Committee for the Common Organisation of the Agricultural Markets, established by Article 229(1) of Regulation (EU) No 1308/2013 of the European Parliament and of the Council<sup>(5)</sup>, and, as regards processed agricultural products, by the Committee on horizontal questions concerning trade in processed agricultural products not listed in Annex I, established by Article 44(1) of Regulation (EU) No 510/2014 of the European Parliament and of the Council<sup>(6)</sup>. Those Committees shall be committees within the meaning of Regulation (EU) No 182/2011.

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

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

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

6 Pursuant to Article 3(5) of Regulation (EU) No 182/2011, where recourse is made to the written procedure for adopting measures pursuant to paragraph 3 of this Article, that 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.

#### *Article 14*

#### **Report**

1 The Commission shall submit an annual report to the European Parliament and to the Council on the application and implementation of this Regulation and Title V of the Agreement and on compliance with the obligations laid down therein.

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2 The report shall, inter alia, include information about the application of provisional and definitive safeguard measures, prior surveillance measures, the termination of investigations and proceedings without measures, and the application of the anti-circumvention mechanism.

3 The report shall set out a summary of the statistics and the evolution of trade with the Republic of Moldova.

4 The European Parliament may, within 1 month of submission of the Commission's report, invite the Commission to an ad hoc meeting of its responsible committee to present and explain any issues related to the implementation of this Regulation.

5 No later than 3 months after submitting its report to the European Parliament and to the Council, the Commission shall make it public.

#### *Article 15*

#### **Entry into force**

This Regulation shall enter into force on the day following that of its publication in the *Official Journal of the European Union*.

This Regulation shall be binding in its entirety and directly applicable in all Member States.

Done at Strasbourg, 9 March 2016.

*For the European Parliament*

*The President*

M. SCHULZ

*For the Council*

*The President*

J. A. HENNIS-PLASSCHAERT

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- (1) Position of the European Parliament of 3 February 2016 (not yet published in the Official Journal) and decision of the Council of 29 February 2016.
- (2) Council Decision 2014/492/EU of 16 June 2014 on the signing, on behalf of the European Union, and provisional application of 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 ([OJ L 260, 30.8.2014, p. 1](#)).
- (3) 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 ([OJ L 55, 28.2.2011, p. 13](#)).
- (4) Regulation (EU) 2015/478 of the European Parliament and of the Council of 11 March 2015 on common rules for imports ([OJ L 83, 27.3.2015, p. 16](#)).
- (5) Regulation (EU) No 1308/2013 of the European Parliament and of the Council of 17 December 2013 establishing a common organisation of the markets in agricultural products and repealing Council Regulations (EEC) No 922/72, (EEC) No 234/79, (EC) No 1037/2001 and (EC) No 1234/2007 ([OJ L 347, 20.12.2013, p. 671](#)).
- (6) Regulation (EU) No 510/2014 of the European Parliament and of the Council of 16 April 2014 laying down the trade arrangements applicable to certain goods resulting from the processing of agricultural products and repealing Council Regulations (EC) No 1216/2009 and (EC) No 614/2009 ([OJ L 150, 20.5.2014, p. 1](#)).

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