

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

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

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.

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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)*

- (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.

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- (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:

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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

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- 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

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facie evidence that the conditions for initiation are met, as determined on the basis of factors referred to in Article 5(5).

3 A Member State shall inform the Commission if trends in imports from Korea appear to call for safeguard measures. That information shall include the evidence available as determined on the basis of factors referred to in Article 5(5). The Commission shall pass that information on to all Member States.

4 The Commission shall consult Member States forthwith if a request is received pursuant to paragraph 1 or if the Commission considers initiation of an investigation on its own initiative. Consultation with the Member States shall take place within 8 working days of the Commission sending the request or information, as provided for in paragraphs 1 and 3 of this Article respectively, within the Committee referred to in Article 14. Where, after consultation, it is apparent that there is sufficient prima facie evidence as determined on the basis of factors referred to in Article 5(5) to justify the initiation of a proceeding the Commission shall publish a notice in the *Official Journal of the European Union*. Initiation shall take place within 1 month of the request received pursuant to paragraph 1.

5 The notice referred to in paragraph 4 shall:

- a give 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, 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 Article 5(9).

6 Evidence collected for the purpose of initiating proceedings in accordance with Article 14.2 of the Rules of Origin Protocol may also be used for investigations with a view to the imposition of safeguard measures where the conditions stipulated in this Article are met, in particular during the first 5-year period following the date of application of the Agreement.

Article 5

The investigation

1 Following the initiation of the proceeding, the Commission shall commence an investigation. The period as set out in paragraph 3 shall start on the day the decision to initiate the investigation is published in the *Official Journal of the European Union*.

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 information is of general interest and is not confidential within the meaning of Article 12, it shall be added to the non-confidential files as provided for in paragraph 8.

3 The investigation shall, whenever 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 parties, or complex market situations. The Commission shall notify all interested parties of any such extension and explain the reasons which have led to this extension.

4 The Commission shall seek all information it considers necessary to make a determination with regard to the conditions set out in Article 2(1), and, where it considers it appropriate, endeavour to verify that information.

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5 In the investigation 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, changes in the level of sales, production, productivity, capacity utilisation, profits and losses, and employment. This list is not exhaustive and other relevant factors may also be taken into consideration by the Commission for its determination of the existence of serious injury or threat of serious injury, such as stocks, prices, return on capital employed, cash flow, and other factors which are causing or may have caused serious injury, or threaten to cause serious injury to the Union industry.

6 Interested parties who have come forward pursuant to Article 4(5)(b) and representatives of Korea 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 within the meaning of Article 12 and that it is used by the Commission in the investigation. Interested parties who have come forward may communicate their views on the information to the Commission. Those views shall be taken into consideration where they are backed by sufficient prima facie evidence.

7 The Commission shall ensure that all data and statistics which are used for the investigation are 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 ('online platform'), which it shall manage and through which all information which is relevant and is not confidential within the meaning of Article 12 shall be disseminated. Interested parties to the investigation as well as Member States and the European Parliament shall be granted access to this online platform.

9 The Commission shall hear the 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 actually 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 such parties on further occasions if there are special reasons for them to be heard again.

10 When information is not supplied within the time limits set by the Commission, or the investigation is significantly impeded, findings may be made on the basis of the facts available. Where the Commission finds that any interested party or 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 Korea in writing of the initiation of an investigation and consult with Korea as far in advance of applying a safeguard measure as practicable, with a view to reviewing the information arising from the investigation and exchanging views on the measure.

Article 6

Prior surveillance measures

1 Where the trend in imports of a product originating in Korea is such that it could lead to one of the situations referred to in Articles 2 and 3, imports of that product may be subject to prior surveillance measures.

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2 In the event that there is a surge of imports of products falling into sensitive sectors concentrated in one or several Member States, the Commission may introduce prior surveillance measures.

3 Prior surveillance measures shall be adopted by the Commission in accordance with the advisory procedure referred to in Article 14(2).

4 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 the measures were introduced.

Article 7

Imposition of provisional safeguard measures

1 Provisional safeguard measures shall be applied in critical circumstances where a delay 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 Korea have increased as the result of the reduction or elimination of a customs duty under the Agreement, and such imports cause serious injury, or threat thereof, to the Union industry.

Provisional measures shall be adopted by the Commission in accordance with the advisory procedure referred to in Article 14(2). In cases of imperative grounds of urgency, including the case referred to in paragraph 2, the Commission shall adopt immediately applicable provisional safeguard measures in accordance with the procedure referred to in Article 14(4).

2 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 5 working days of receiving the request.

3 Provisional measures shall not apply for more than 200 days.

4 Should the provisional safeguard measures be repealed because the investigation shows that the conditions set out in Article 2(1) are not met, any customs duty collected as a result of those provisional measures shall be refunded automatically.

5 The measures referred to in this Article shall apply to every product which is put into free circulation after their entry into force. However, such measures shall not prevent the release for free circulation of products already on their way to the Union provided that the destination of such products cannot be changed.

Article 8

Termination of investigation and proceeding without measures

1 Where the facts as finally established show that the conditions set out in Article 2(1) are not met, the Commission shall adopt a decision terminating the investigation and proceeding in accordance with the examination procedure referred to in Article 14(3).

2 The Commission shall make public, with due regard to the protection of confidential information within the meaning of Article 12, a report setting forth its findings and reasoned conclusions reached on all pertinent issues of fact and law.

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Article 9

Imposition of definitive measures

1 Where the facts as finally established show that the conditions set out in Article 2(1) are met, the Commission shall adopt a decision imposing definitive safeguard measures in accordance with the examination procedure referred to in Article 14(3).

2 The Commission shall make public, with due regard to the protection of confidential information within the meaning of Article 12, 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 the serious injury and to facilitate adjustment. That period shall not exceed 2 years, unless it is extended under paragraph 3.

2 A safeguard measure shall remain in force, pending the outcome of the review, during any extension period.

3 The initial period of duration of a safeguard measure may exceptionally be extended by up to 2 years provided it is determined that the safeguard measure continues to be necessary to prevent or remedy serious injury and to facilitate adjustment and that there is evidence that the Union industry is adjusting.

4 Extensions shall be adopted in accordance with the procedures of this Regulation applying to investigations and using the same procedures as for the initial measures.

The total duration of a safeguard measure may not exceed 4 years, including any provisional measure.

5 A safeguard measure shall not be applied beyond the expiry of the transition period, except with the consent of Korea.

Article 11

Procedure for the application of Article 14 of the Rules of Origin Protocol

1 For the purpose of applying Article 14 of the Rules of Origin Protocol, the Commission shall monitor closely the evolution of relevant import and export statistics both in value and as appropriate in quantities and regularly share these data with, and report its findings to, the European Parliament, the Council and the Union industries concerned. Monitoring shall start from the date of application of the Agreement and data shall be shared on a bimonthly basis.

In addition to the tariff lines included in Article 14.1 of the Rules of Origin Protocol, the Commission shall draw up, in cooperation with the Union industry, a list of key tariff lines that are not specific to the automotive sector, but are important for car manufacturing and other related sectors. Specific monitoring shall be carried out as laid down in Article 14.1 of the Rules of Origin Protocol.

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2 Upon request of a Member State or on its own initiative the Commission shall immediately examine whether the conditions for invoking Article 14 of the Rules of Origin Protocol are met and report its findings within 10 working days of the request. Following consultations in the framework of the special committee referred to in the third subparagraph of Article 207(3) of the Treaty on the Functioning of the European Union the Commission shall request consultations with Korea whenever the conditions of Article 14 of the Rules of Origin Protocol are met. The Commission shall consider that the conditions are met, inter alia, when the thresholds mentioned in paragraph 3 of this Article are reached.

3 A difference of 10 percentage points shall be considered as ‘significant’ for the purposes of application of paragraph 2.1(a) of Article 14 of the Rules of Origin Protocol when assessing the increased rate of imports of parts or components into Korea as compared with the increased rate of exports from Korea to the Union of finished products. An increase of 10 % shall be considered as ‘significant’ for the purposes of application of paragraph 2.1(b) of Article 14 of the Rules of Origin Protocol when assessing the increase of exports from Korea to the Union of finished products in absolute terms, or relative to Union production. Increases below these thresholds may also be considered as ‘significant’ on a case-by-case basis.

Article 12

Confidentiality

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

2 No information of a confidential nature nor any information provided on a confidential basis received pursuant to this Regulation shall be disclosed without specific permission from 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 wishes neither to make it public nor to authorise its disclosure in general terms or in the form of a summary and if it appears that the request for confidentiality 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.

Article 13

Report

1 The Commission shall make public an annual report on the application and implementation of the Agreement. The report shall include information about the activities of the various bodies responsible for monitoring the implementation of the Agreement and fulfilment of the obligations arising therefrom, including obligations concerning barriers to trade.

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2 Special sections of the report shall deal with the fulfilment of obligations under Chapter 13 of the Agreement and with the activities of the Domestic Advisory Group and the Civil Society Forum.

3 The report shall also present a summary of the statistics and the evolution of trade with Korea. Specific mention shall be made of the results of the monitoring of duty drawback.

4 The report shall include information on the implementation of this Regulation.

5 The European Parliament may, within 1 month from the Commission making public the report, invite the Commission to an ad hoc meeting of its responsible committee to present and explain any issues related to the implementation of the Agreement.

Article 14

Committee procedure

1 The Commission shall be assisted by the Committee established by Article 4(1) of Council Regulation (EC) No 260/2009 of 26 February 2009 on the common rules for imports⁽⁶⁾. 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 4 thereof, shall apply.

5 Paragraphs 2, 3 and 4 do not prejudice in any way the exercise by the European Parliament and the Council of the power established in Article 11 of Regulation (EU) No 182/2011.

Article 15

Entry into force

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

It shall apply from the date of application of the Agreement as provided for in Article 15.10 thereof. A notice shall be published in the *Official Journal of the European Union* specifying the date of application of the Agreement.

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

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No 511/2011 of the European Parliament and of the Council. (See end of Document for details)

Done at Strasbourg, 11 May 2011.

For the European Parliament

The President

J. BUZEK

For the Council

The President

GYŐRI E.

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ANNEX I

COMMISSION STATEMENT

The Commission welcomes the first reading agreement between the European Parliament and the Council on the Safeguards Regulation.

As envisaged in the Regulation, the Commission will present a yearly report to the European Parliament and the Council on the implementation of the EU-Korea FTA and will be ready to discuss with the responsible committee of the European Parliament any issues arising from the implementation of the Agreement.

In this connection, the Commission wishes to note the following:

- (a) The Commission will monitor closely the implementation by Korea of its commitments on regulatory issues, including in particular the commitments relating to technical regulations in the car sector. The monitoring shall include all aspects of non-tariff barriers and its results shall be documented and reported to the European Parliament and the Council.
- (b) The Commission will also attach particular importance to the effective implementation of commitments on labour and environment of Chapter 13 of the FTA (Trade and Sustainable Development). In this connection, the Commission will seek the advice of the Domestic Advisory Group, which will include representatives of business organisations, trade unions and non-governmental organisations. The implementation of Chapter 13 of the FTA shall be duly documented and reported to the European Parliament and the Council.

The Commission agrees also on the importance of providing effective protection in the case of sudden surges of imports in sensitive sectors, including small cars. Monitoring of sensitive sectors shall include cars, textiles and consumer electronics. In this connection, the Commission notes that the small car sector can be considered a relevant market for the purpose of a safeguard investigation.

The Commission notes that the designation of outward processing zones in the Korean Peninsula, in accordance with the provisions of Article 12 of the Protocol of Rules of Origin, would require an international agreement between the Parties to which the European Parliament would have to give its consent. The Commission will keep the Parliament fully informed of the deliberations by the Committee on outward Processing Zones in the Korean Peninsula.

Finally, the Commission also notes that if due to exceptional circumstances it decides to extend the duration of the investigation pursuant to Article 5(3), it will ensure that such an extended timing does not go beyond the expiry date of any provisional measures introduced pursuant to Article 7.

ANNEX II

JOINT DECLARATION

The Commission and the European Parliament agree on the importance of close cooperation in monitoring the implementation of the EU-Korea Free Trade Agreement (FTA) and the Safeguard Regulation. Towards this end they agree on the following:

- In case the European Parliament adopts a recommendation to initiate a safeguard investigation, the Commission will carefully examine whether the conditions under

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the Regulation for ex-officio initiation are fulfilled. In case the Commission considers that the conditions are not fulfilled, it will present a report to the responsible committee of the European Parliament including an explanation of all the factors relevant to the initiation of such an investigation.

- Upon request by the responsible committee of the European Parliament, the Commission shall report to it on any specific concerns relating to the implementation by Korea of its commitments on non-tariff measures or on Chapter 13 (Trade and Sustainable Development) of the FTA.

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- (1) Position of the European Parliament of 17 February 2011 (not yet published in the Official Journal) and decision of the Council of 11 April 2011.
- (2) Not yet published in the Official Journal.
- (3) Not yet published in the Official Journal.
- (4) [OJ L 406, 30.12.2006, p. 1.](#)
- (5) [OJ L 55, 28.2.2011, p. 13.](#)
- (6) [OJ L 84, 31.3.2009, p. 1.](#)

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