

Regulation (EU) 2019/287 of the European Parliament and of the Council of 13 February 2019 implementing bilateral safeguard clauses and other mechanisms allowing for the temporary withdrawal of preferences in certain trade agreements concluded between the European Union and third countries

Article 1

Subject matter and scope

1 This Regulation lays down provisions for the implementation of bilateral safeguard clauses and other mechanisms for the temporary withdrawal of tariff preferences or of other preferential treatment contained in the trade agreements concluded between the Union and one or more third countries and referred to in the Annex to this Regulation.

These provisions shall apply without prejudice to any specific provisions contained in the trade agreements and listed in the Annex in relation to bilateral safeguard clauses or other mechanisms for the temporary withdrawal of tariff preferences or of other preferential treatment, where such provisions are not in accordance with this Regulation.

This Regulation shall therefore not prevent the Commission from negotiating such specific provisions in future trade agreements.

2 Article 194 of Regulation (EU) No 1308/2013 of the European Parliament and of the Council⁽¹⁾ shall continue to apply to the application of safeguard measures for the temporary withdrawal of tariff preferences or of other preferential treatment contained in trade agreements concluded between the Union and third countries that are not referred to in the Annex to this Regulation.

Article 2

Definitions

For the purposes of this Regulation:

- (1) ‘Agreement’ means a trade agreement referred to in the Annex to this Regulation;
- (2) ‘bilateral safeguard clause’ means a provision relating to the temporary suspension of tariff preferences that is set out in an Agreement;
- (3) ‘interested parties’ means parties affected by the imports of the product;
- (4) ‘Union industry’ means either the Union producers as a whole of the like or directly competitive product who operate within the territory of the Union or Union producers whose collective output of the like or directly competitive product constitutes a major proportion of the total Union production of that product; where a like or a directly competitive product is only one of several products that are made by the Union producers, the Union industry shall be defined in relation to the specific operations that are involved in the production of the like or directly competitive product;
- (5) ‘serious injury’ means a significant overall impairment to the position of Union industry;

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- (6) ‘threat of serious injury’ means serious injury that is clearly imminent, the determination of the existence of which shall be based on verifiable information;
- (7) ‘sensitive product’ means a product identified in a specific Agreement as being relatively more vulnerable to a surge of imports than other products;
- (8) ‘transition period’ means a period of 10 years from the entry into force of an Agreement, unless otherwise defined in the relevant Agreement;
- (9) ‘country concerned’ means a third country that is a party to an Agreement.

Article 3

Principles

- 1 A safeguard measure may be imposed in accordance with this Regulation where a product originating in a country concerned is imported into the Union:
 - a in such increased quantities, in absolute terms or relative to Union production; and
 - b under such conditions, as to cause or threaten to cause serious injury to the Union industry; and
 - c the increase of imports is the result of the effect of obligations incurred under the respective Agreement, including of the reduction or the elimination of the customs duties on that product.
- 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 of the Agreement with the country concerned;
 - b an increase in the rate of customs duty on the product concerned to a level which does not exceed the lesser of:
 - (i) the most-favoured-nation applied rate of customs duty on the product concerned in effect at the time the safeguard measure is taken; or
 - (ii) the base rate of customs duty as specified in the Tariff Elimination Schedule of the Agreement with the country concerned.

Article 4

Monitoring

- 1 The Commission shall regularly monitor the evolution of import statistics of any sensitive products mentioned in the Annex to this Regulation in respect of each Agreement. For that purpose, the Commission shall cooperate and exchange data with Member States and the Union industry on a regular basis.
- 2 Upon a duly justified request by the Union industry concerned, the Commission may extend the scope of the monitoring referred to in paragraph 1 to any products or sectors other than those mentioned in the Annex.
- 3 The Commission shall present an annual monitoring report to the European Parliament and to the Council concerning statistics on imports of sensitive products and of any products or sectors to which monitoring has been extended.

Article 5

Initiation of an investigation

1 An investigation shall be initiated by the Commission at the request of a Member State, of any natural or legal person that is acting on behalf of the Union industry, or of any association not having legal personality that is acting on behalf of the Union industry, or on the Commission's own initiative, where there is sufficient prima facie evidence of serious injury or the threat of serious injury to the Union industry, as determined on the basis of factors referred to in Article 6(5).

2 Requests for the initiation of an investigation may also be submitted jointly by the Union industry, or by any natural or legal person that is acting on behalf of the Union industry or any association not having legal personality that is acting on behalf of the Union industry, and trade unions. In addition, requests for the initiation of an investigation may be supported by trade unions. This does not affect the right of the Union industry to withdraw the request.

3 Requests for the initiation of an investigation shall contain the following information:

- a the rate and amount of the increase in imports of the product concerned, in absolute and relative terms;
- b the share of the domestic market taken by the increased imports, and the changes regarding the Union industry with respect to the level of sales, production, productivity, capacity utilisation, profits and losses, and employment.

4 The scope of the product that is subject to the investigation may cover one or several tariff lines or one or several subsegments of one or several tariff lines, depending on the specific market circumstances, or may follow any product segmentation commonly applied in the Union industry.

5 An investigation may also be initiated where there is a surge of imports concentrated in one or several Member States, provided that there is sufficient prima facie evidence of serious injury or the threat of serious injury to the Union industry, as determined on the basis of factors referred to in Article 6(5).

6 The Commission shall provide a copy of the request to initiate an investigation to the Member States before it initiates the investigation. Where the Commission intends to initiate an investigation on its own initiative pursuant to paragraph 1, it shall provide information to the Member States once it has determined the need to initiate that investigation.

7 Where it is apparent to the Commission that there is sufficient prima facie evidence to justify the initiation of an investigation, the Commission shall initiate the investigation and shall publish a notice on initiation of investigation (the 'notice of initiation') in the *Official Journal of the European Union*. The investigation shall be initiated within one month of the Commission receiving the request pursuant to paragraph 1.

8 The notice of initiation shall contain the following elements:

- a a summary of the information received by the Commission and a request that all relevant information be communicated to the Commission;
- b the period within which interested parties may make their views known in writing and submit information to the Commission, if such views and information are to be taken into account during the investigation;
- c the period within which interested parties may apply to be heard by the Commission in accordance with Article 6(9).

Article 6

Conduct of investigation

1 Following the publication of the notice of initiation in accordance with Article 5(7) and (8), the Commission shall initiate an investigation.

2 The Commission may request Member States to supply information, and Member States shall take all necessary steps to give effect to any such requests. If the requested information is of general interest and is not confidential within the meaning of Article 12, it shall be added to the non-confidential file as provided for in paragraph 8 of this Article.

3 Where possible, the investigation shall be concluded within six months from the date on which the notice of initiation is published in the *Official Journal of the European Union*. That time limit may be extended by a further period of three 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 extensions and explain the reasons therefor.

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

5 The Commission shall evaluate all relevant factors of an objective and quantifiable nature that affect 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 the increased imports, and changes regarding the Union industry with respect to the level of sales, production, productivity, capacity utilisation, profits and losses, and employment. This list is not exhaustive, and the Commission may take other relevant factors into consideration for its determination of the existence of serious injury or threat of serious injury, such as stocks, prices, return of capital employed, cash flow, the level of market shares, 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 submitted information pursuant to point (b) of Article 5(8) and representatives of the country concerned may, upon written request, inspect all information obtained by the Commission in connection with the investigation, other than internal documents prepared by the Union authorities or authorities of the Member States, provided that such information is relevant to the presentation of their case, is not confidential within the meaning of Article 12, and is used by the Commission in the investigation. Interested parties may also communicate their views on such information. 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 As soon as the necessary technical framework is in place, the Commission shall 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 within the meaning of Article 12 shall be disseminated. Interested parties, Member States and the European Parliament shall be granted access to the online 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 of initiation published in the *Official Journal of the European Union* demonstrating 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 The Commission shall facilitate access to the investigation for diverse and fragmented industry sectors, which are largely composed of small and medium-sized enterprises (SMEs), through a dedicated SME Helpdesk, for example by raising awareness, by providing general information and explanations on procedures and on how to submit a request, by releasing standard questionnaires in all official languages of the Union and by replying to general, non-case-specific queries. The SME Helpdesk shall make available standard forms for statistics to be submitted for standing purposes and questionnaires.

11 Where information is not supplied within the time limits set by the Commission, or where the investigation is significantly impeded, the Commission may reach a decision on the basis of the available facts. 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.

12 The Commission shall have in place the office of the Hearing Officer whose powers and responsibilities are set out in a mandate adopted by the Commission and who shall safeguard the effective exercise of the procedural rights of the interested parties.

13 The Commission shall notify the country or countries concerned in writing of the initiation of an investigation.

Article 7

Prior surveillance measures

1 The Commission may adopt prior surveillance measures with regard to imports of a product from a country concerned where the trend of imports of that product is such that it could lead to one of the situations referred to in Articles 3 and 5. Those prior surveillance measures shall be adopted by means of implementing acts in accordance with the advisory procedure referred to in Article 17(2).

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

Article 8

Imposition of provisional safeguard measures

1 The Commission shall adopt provisional safeguard measures in critical circumstances where a delay is likely to cause damage which would be difficult to repair, making immediate action necessary, pursuant to a preliminary determination by the Commission on the basis of the factors referred to in Article 6(5) that there is sufficient prima facie evidence that a product originating in the country concerned is imported:

- a in such increased quantities, in absolute terms or relative to Union production; and
- b under such conditions, as to cause or threaten to cause serious injury to the Union industry; and
- c the increase of imports is the result of the reduction or the elimination of the customs duties on that product.

Those provisional safeguard measures shall be adopted by means of implementing acts in accordance with the advisory procedure referred to in Article 17(2).

2 On duly justified imperative grounds of urgency, where a Member State requests immediate intervention by the Commission, and where the conditions set out in paragraph 1 of this Article are met, the Commission shall adopt immediately applicable implementing acts in accordance with the procedure referred to in Article 17(4). The Commission shall take a decision within five working days of receiving the request.

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

4 Where the provisional safeguard measures are repealed because the investigation reveals 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.

5 Provisional safeguard measures shall apply to every product which is put into free circulation after the date of entry into force of those measures. However, such measures shall not prevent the release into free circulation of products already on their way to the Union, where the destination of such products cannot be changed.

Article 9

Termination of investigations and proceedings without measures

1 Where an investigation leads to the conclusion that the conditions set out in Article 3(1) are not met, the Commission shall publish a decision terminating the investigation and proceedings in accordance with the examination procedure referred to in Article 17(3).

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

Article 10

Imposition of definitive safeguard measures

1 Where an investigation leads to the conclusion that the conditions set out in Article 3(1) are met, the Commission may adopt definitive safeguard measures in accordance with the examination procedure referred to in Article 17(3).

2 The Commission shall make public a report containing a summary of the material facts and considerations relevant to the determination, with due regard to the protection of confidential information within the meaning of Article 12.

Article 11

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 to Union industry and to facilitate adjustment. That period shall not exceed two years, unless it is extended under paragraph 2.

2 The initial duration of a safeguard measure, as referred to in paragraph 1, may be extended by up to two years, provided 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.

3 Any Member State, any natural or legal person that is acting on behalf of the Union industry, or any association not having legal personality that is acting on behalf of the Union industry, may request an extension as referred to in paragraph 2 of this Article. In such case, before deciding on the extension, the Commission shall conduct a review to investigate whether the conditions laid down in paragraph 2 of this Article are met, having regard to the factors referred to in Article 6(5). The Commission may initiate such review on its own initiative if there is sufficient prima facie evidence that the conditions laid down in paragraph 2 of this Article have been met. The safeguard measure shall remain in force pending the outcome of that review.

4 The notice of initiation of the review referred to in paragraph 3 of this Article shall be published in accordance with Article 5(7) and (8). The review shall be conducted in accordance with Article 6.

5 Any decision regarding an extension pursuant to paragraph 2 of this Article shall be made in accordance with Articles 9 and 10.

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

Article 12

Confidentiality

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

2 Information of a confidential nature and information provided on a confidential basis received pursuant to this Regulation shall not be disclosed without the express consent of the supplier of such information.

3 Each request for confidentiality shall state the reasons why the information should be confidential. Interested parties that provide confidential information shall be required to provide non-confidential summaries thereof. Those summaries shall be sufficiently detailed to permit a reasonable understanding of the substance of the confidential information. In exceptional circumstances, such interested parties may indicate that it is not possible to summarise the information. In such cases, the interested party shall provide a statement of the reasons why a summary is not possible. However, if it appears that a request for confidentiality is unjustified and 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, 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 source of that information.

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

Changes to legislation: There are currently no known outstanding effects for the Regulation (EU) 2019/287 of the European Parliament and of the Council. (See end of Document for details)

Article 13

Report

1 The Commission shall submit an annual report to the European Parliament and to the Council on the application, implementation and fulfilment of the obligations contained in each Agreement, including with regard to the Trade and Sustainable Development chapter, if the Agreement contains such chapter, and in this Regulation.

2 The report shall include, inter alia, information on the application of any provisional and definitive safeguard measures, any prior surveillance measures, any regional surveillance and safeguard measures, the termination of any investigations or proceedings without measures, and information on the activities of the various bodies responsible for the implementation of the Agreement and on the activities of the domestic advisory groups.

3 The report shall set out a summary of the statistics and the evolution of trade with each country concerned.

4 The European Parliament may, within two months of submission of the Commission's report, invite the Commission to a meeting of its committee responsible to present and explain any issues related to the implementation of this Regulation.

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

Article 14

Other mechanisms and criteria for the temporary withdrawal of tariff preferences or of other preferential treatment

1 Where an Agreement provides for other mechanisms or criteria allowing for the temporary withdrawal of tariff preferences or of other preferential treatment with respect to certain products, such as a stabilisation mechanism in relation to the Union's outermost regions, for example, where the conditions laid down in the relevant Agreement are met, the Commission shall adopt implementing acts to:

- a suspend, or confirm the non-suspension of, the tariff preferences or other preferential treatment for the product concerned;
- b reinstate the tariff preferences or other preferential treatment where the conditions laid down in the relevant Agreement are met;
- c adjust the suspension to conform with the conditions in the relevant Agreement; or
- d take any other action specified in the relevant Agreement.

Those acts shall be adopted in accordance with the examination procedure referred to in Article 17(3).

2 On duly justified imperative grounds of urgency, where a delay in taking the action referred to in paragraph 1 of this Article would cause damage which would be difficult to repair, or in order to prevent a negative impact on the situation of the Union market, in particular as a result of an increase in imports, or as otherwise provided in the relevant Agreement, the Commission shall adopt immediately applicable implementing acts in accordance with the procedure referred to in Article 17(4).

Article 15

Delegated acts

The Commission is empowered to adopt delegated acts in accordance with Article 16 in order to amend the Annex with a view to adding or deleting entries relating to:

- (a) an Agreement;
- (b) any specific provisions as referred to in the second subparagraph of Article 1(1);
- (c) any sensitive products;
- (d) any provisions laying down specific rules for other mechanisms as referred to in Article 14 concerning inter alia, if applicable, monitoring, deadlines for investigations, and reporting.

Article 16

Exercise of the delegation

1 The power to adopt delegated acts is conferred on the Commission subject to the conditions laid down in this Article.

2 The power to adopt delegated acts referred to in Article 15 shall be conferred on the Commission for a period of five years from 14 March 2019. The Commission shall draw up a report in respect of the delegation of power not later than nine months before the end of the five-year period. The delegation of power shall be tacitly extended for periods of an identical duration, unless the European Parliament or the Council opposes such extension not later than three months before the end of each period.

3 The delegation of power referred to in Article 15 may be revoked at any time by the European Parliament or by the Council. A decision to revoke shall put an end to the delegation of the power specified in that decision. It shall take effect the day following the publication of the decision in the *Official Journal of the European Union* or at a later date specified therein. It shall not affect the validity of any delegated acts already in force.

4 Before adopting a delegated act, the Commission shall consult experts designated by each Member State in accordance with the principles laid down in the Interinstitutional Agreement of 13 April 2016 on Better Law-Making.

5 As soon as it adopts a delegated act, the Commission shall notify it simultaneously to the European Parliament and to the Council.

6 A delegated act adopted pursuant to Article 15 shall enter into force only if no objection has been expressed either by the European Parliament or the Council within a period of two months of notification of that act to the European Parliament and the Council or if, before the expiry of that period, the European Parliament and the Council have both informed the Commission that they will not object. That period shall be extended by two months at the initiative of the European Parliament or of the Council.

Changes to legislation: *There are currently no known outstanding effects for the Regulation (EU) 2019/287 of the European Parliament and of the Council. (See end of Document for details)*

Article 17

Committee procedure

1 The Commission shall be assisted by the committee established by Article 3(1) of Regulation (EU) 2015/478 of the European Parliament and of the Council⁽²⁾. 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 shall apply in conjunction with Article 4 thereof.

Article 18

Entry into force

This Regulation shall enter into force on the twentieth 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, 13 February 2019.

For the European Parliament

The President

A. TAJANI

For the Council

The President

G. CIAMBA

Changes to legislation: *There are currently no known outstanding effects for the Regulation (EU) 2019/287 of the European Parliament and of the Council. (See end of Document for details)*

- (1) 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](#)).
- (2) 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](#)).

Changes to legislation:

There are currently no known outstanding effects for the Regulation (EU) 2019/287 of the European Parliament and of the Council.