

Official Journal

of the European Union

L 17



English edition

Legislation

Volume 56

19 January 2013

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I

(Legislative acts)

REGULATIONS

REGULATION (EU) No 19/2013 OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL

of 15 January 2013

implementing the bilateral safeguard clause and the stabilisation mechanism for bananas of the Trade Agreement between the European Union and its Member States, of the one part, and Colombia and Peru, 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 ⁽¹⁾,

Whereas:

(1) On 19 January 2009 the Council authorised the Commission to negotiate a multiparty trade agreement on behalf of the European Union and its Member States with the Member Countries of the Andean Community which shared the aim to reach an ambitious, comprehensive, and balanced trade agreement.

(2) Those negotiations have been concluded and the Trade Agreement between the European Union and its Member States, of the one part, and Colombia and Peru, of the other part ('the Agreement') was signed on 26 June 2012, received the consent of the European Parliament on 11 December 2012 and is to apply as provided for in Article 330 of the Agreement.

(3) It is necessary to lay down the most appropriate procedures to guarantee the effective application of certain provisions of the Agreement which concern the

bilateral safeguard clause and for applying the stabilisation mechanism for bananas that has been agreed with Colombia and Peru.

(4) It is also necessary to create appropriate safeguard mechanisms to prevent serious harm to the Union banana growing sector which is of great importance to the agricultural producers of many of the outermost regions of the Union. The limited ability of those regions to diversify, owing to their natural characteristics, makes the banana sector particularly vulnerable. It is therefore essential to create effective mechanisms to address preferential imports from third countries concerned, in order to guarantee that Union banana production is maintained under the best possible conditions, as it is a crucial employment sector in certain areas, especially in the outermost regions.

(5) The terms 'serious injury', 'threat of serious injury' and 'transitional period' as referred to in Article 48 of the Agreement should be defined.

(6) Safeguard measures should be considered only if the product in question is imported into the Union in such increased quantities, in absolute terms or relative to Union production, and under such conditions as to cause, or threaten to cause, serious injury to Union producers of like or directly competitive products as laid down in Article 48 of the Agreement.

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

(8) Safeguard measures should take one of the forms referred to in Article 50 of the Agreement.

⁽¹⁾ Position of the European Parliament of 11 December 2012 (not yet published in the Official Journal) and decision of the Council of 20 December 2012.

- (9) The tasks of following up and reviewing the Agreement, carrying out investigations and, if necessary, imposing safeguard measures should be carried out in the most transparent manner possible.
- (10) The Commission should submit an annual report to the European Parliament and to the Council on the implementation of the Agreement and the application of the safeguard measures and the stabilisation mechanism for bananas.
- (11) The challenges in Colombia and Peru as regards human, social, labour and environmental rights in connection with products from those countries require a close dialogue between the Commission and Union civil society organisations.
- (12) The importance of complying with the international labour standards drawn up and supervised by the International Labour Organisation should be stressed.
- (13) The Commission should monitor the observance by Colombia and Peru of the social and environmental standards laid down in Title IX of the Agreement.
- (14) There should be detailed provisions on the initiation of proceedings. The Commission should receive information including available evidence from the Member States of any trends in imports which might call for the application of safeguard measures.
- (15) The reliability of statistics on all imports from Colombia and Peru to the Union is therefore crucial to determining whether the conditions to apply safeguard measures are met.
- (16) In some cases, an increase of imports concentrated in one or several of the Union's outermost regions or Member States may cause, or threaten to cause, serious deterioration or serious injury in their economic situation. In the event that there is an increase of imports concentrated in one or several of the Union's outermost regions or Member States, the Commission should be able to introduce prior surveillance measures.
- (17) If there is sufficient prima facie evidence to justify the initiation of a proceeding, the Commission should publish a notice as provided for in Article 51 of the Agreement in the *Official Journal of the European Union*.
- (18) There should be detailed provisions on the initiation of investigations, access to and inspections by interested parties of the information gathered, hearings for the interested parties involved and the opportunities for those parties to submit their views as provided for in Article 51 of the Agreement.
- (19) The Commission should notify Colombia and Peru in writing of the initiation of an investigation and consult Colombia and Peru as provided for in Article 49 of the Agreement.
- (20) It is also necessary, pursuant to Article 51(4) of the Agreement, to set time limits for the initiation of an investigation and for determinations as to whether or not safeguard measures are appropriate, with a view to ensuring that such determinations are made quickly, in order to increase legal certainty for the economic operators concerned.
- (21) An investigation should precede the application of any safeguard measure, subject to the Commission being allowed to apply provisional safeguard measures in critical circumstances as referred to in Article 53 of the Agreement.
- (22) Close monitoring should facilitate a timely decision concerning the possible initiation of an investigation or imposition of measures. Therefore the Commission should regularly monitor imports of bananas from the date of application of the Agreement. Monitoring should be extended to other sectors upon a duly justified request.
- (23) There should be a possibility to suspend swiftly for a maximum period of three months the preferential customs duties when imports exceed a defined annual trigger import volume. The decision whether or not to apply the stabilisation mechanism for bananas should take into account the stability of the Union market for bananas.
- (24) Safeguard measures should be applied only to the extent, and for such time, as may be necessary to prevent serious injury and to facilitate adjustment. The maximum duration of safeguard measures should be determined and specific provisions regarding extension and review of such measures should be laid down, as referred to in Article 52 of the Agreement.
- (25) The Commission should enter into consultations with the country affected by measures.
- (26) The implementation of the bilateral safeguard clause and the stabilisation mechanism for bananas provided for in the Agreement requires uniform conditions for the

adoption of provisional and definitive safeguard measures, for the imposition of prior surveillance measures, for the termination of an investigation without measures and for suspending temporarily the preferential customs duty established under the stabilisation mechanism for bananas that has been agreed with Colombia and Peru. In order to ensure uniform conditions for the implementation of this Regulation, those measures should be adopted by the Commission in accordance with Regulation (EU) No 182/2011 of the European Parliament and of the Council of 16 February 2011 laying down the rules and general principles concerning mechanisms for control by Member States of the Commission's exercise of implementing powers ⁽¹⁾.

- (27) The advisory procedure should be used for the adoption of surveillance and provisional safeguard measures given the effects of those measures and their sequential logic in relation to the adoption of definitive safeguard measures. Where a delay in the imposition of provisional safeguard measures would cause damage which would be difficult to repair, the Commission should adopt immediately applicable implementing acts.
- (28) Given the nature and the relatively short duration of the measures provided for under the stabilisation mechanism for bananas, and in order to prevent a negative impact on the situation of the Union market for bananas, the Commission should also adopt immediately applicable implementing acts for the temporary suspension of the preferential customs duty established under the stabilisation mechanism for bananas, or to determine that such temporary suspension is not appropriate. Where such immediately applicable implementing acts are applied, the advisory procedure should be used.
- (29) The Commission should make diligent and effective use of the stabilisation mechanism for bananas in order to avoid a threat of serious deterioration or a serious deterioration for producers in the outermost regions in the Union. From 1 January 2020 the general bilateral safeguard mechanism including the special provisions for outermost regions remains applicable.
- (30) For purposes of adopting the necessary implementing rules for the application of the rules contained in Appendices 2A and 5 of Annex II (Concerning the definition of the concept of 'Originating Products' and Methods of Administrative Co-operation) and Appendix 1 (Elimination of Customs Duties) of Annex I to the Agreement, Article 247a of Council Regulation (EEC) No 2913/92 of 12 October 1992 establishing the Community Customs Code ⁽²⁾ should be applied.

- (31) This Regulation should apply only to products originating in the Union or in Colombia or Peru,

HAVE ADOPTED THIS REGULATION:

CHAPTER I

SAFEGUARD PROVISIONS

Article 1

Definitions

For the purposes of this Regulation:

- (a) 'product' means a good originating in the Union or in Colombia or Peru. A product subject to an investigation may cover one or several tariff lines or a sub-segment thereof depending on the specific market circumstances, or any product segmentation commonly applied in the Union industry;
- (b) 'interested parties' means parties affected by the imports of the product in question;
- (c) 'Union industry' means the Union producers as a whole of the like or directly competitive products, operating within the territory of the Union, Union producers whose collective output of the like or directly competitive products constitutes a major proportion of the total Union production of those products, or, where a like or a directly competitive product is only one of several products that are made by the Union producers, the specific operations that are involved in the production of the like or directly competitive product;
- (d) 'serious injury' means a significant overall impairment;
- (e) 'threat of serious injury' means serious injury that is clearly imminent;
- (f) 'serious deterioration' means significant disturbances in a sector or in Union industry;
- (g) 'threat of serious deterioration' means significant disturbances that are clearly imminent;

⁽¹⁾ OJ L 55, 28.2.2011, p. 13.

⁽²⁾ OJ L 302, 19.10.1992, p. 1.

- (h) 'transitional period' means 10 years from the date of application of the Agreement, for a product for which the tariff elimination schedules for goods originating in Colombia and Peru, as set out in Subsections 1 and 2 of Section B of Appendix 1 (Elimination of Customs Duties) of Annex I to the Agreement ('Tariff Elimination Schedule') provides for a tariff elimination period of less than 10 years, or the tariff elimination period plus three years for a product for which the Tariff Elimination Schedule provides for a tariff elimination period of 10 or more years.

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

Article 2

Principles

1. A safeguard measure may be imposed in accordance with this Regulation where a product originating in Colombia or Peru is, as a result of tariff concessions on that product under the Agreement, imported into the Union in such increased quantities, in absolute terms or relative to Union production, and under such conditions as to cause or threaten to cause serious injury to the Union industry.
2. A safeguard measure may take one of the following forms:
 - (a) a suspension of a further reduction of the rate of customs duty on the product concerned provided for in the Tariff Elimination Schedule;
 - (b) an increase in the rate of customs duty on the product concerned to a level which does not exceed the lesser of:
 - the most-favoured-nation ('MFN') applied rate of customs duty on the product in effect at the time the measure is taken, or
 - the base rate as specified in the Tariff Elimination Schedule.

Article 3

Monitoring

1. The Commission shall monitor the evolution of import statistics of bananas from Colombia and Peru. For that purpose,

it 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 to the Council on updated statistics on imports from Colombia and Peru of bananas and those sectors to which monitoring has been extended.

4. The Commission shall monitor the observance by Colombia and Peru of the social and environmental standards laid down in Title IX of the Agreement.

Article 4

Initiation of proceedings

1. A proceeding 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 a proceeding 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, and changes in the level of sales, production, productivity, capacity utilisation, profits and losses, and employment.
3. A proceeding may also be initiated in the event that there is a surge of imports concentrated in one or several Member States, or outermost regions, provided that there is sufficient *prima facie* evidence that the conditions for initiation are met, in accordance with Article 5(5).
4. A Member State shall inform the Commission if trends in imports from Colombia or Peru appear to call for safeguard measures. That information shall include the evidence available in accordance with Article 5(5).

5. The Commission shall provide that information to the Member States when it receives a request to initiate a proceeding or when it considers initiation of a proceeding to be appropriate on its own initiative pursuant to paragraph 1.

6. Where it is apparent that there is sufficient prima facie evidence in accordance with Article 5(5) to justify the initiation of a proceeding the Commission shall initiate proceedings and shall publish a notice thereof in the *Official Journal of the European Union*. Initiation shall take place within one month of receipt by the Commission of the request or information pursuant to paragraph 1.

7. The notice referred to in paragraph 6 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 proceeding;
- (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 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 of this Article.

3. The investigation shall, where possible, be concluded within six months of its initiation. 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 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 2(1), and, shall, where appropriate, endeavour to verify that information.

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 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 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 submitted information pursuant to Article 4(7)(b) and representatives of Colombia or Peru 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 submitted information may communicate their views on the information to the Commission. 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 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, 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 that 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 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 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 Colombia or Peru in writing of the initiation of an investigation and of the imposition of provisional or definitive safeguard measures.

Article 6

Prior surveillance measures

1. The Commission may adopt prior surveillance measures in regard to imports from Colombia or Peru where:

- (a) the trend in imports of a product is such that it could lead to one of the situations referred to in Articles 2 and 4; or
- (b) there is a surge of imports of bananas concentrated in one or several Member States, or in one or several of the Union's outermost regions.

2. The Commission shall adopt prior surveillance measures in accordance with the advisory procedure referred to in Article 14(2).

3. 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 six-month period following the first six months after their introduction.

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 Colombia or Peru have increased as a result of the reduction or elimination of a customs duty in accordance

with the Tariff Elimination Schedule, and such imports cause serious injury, or threat thereof, to the Union industry.

The Commission shall adopt provisional safeguard measures 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 of this Article, 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 five working days of receiving the request.

3. Provisional safeguard measures shall not apply for more than 200 calendar 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 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 for free circulation of products already on their way to the Union where the destination of such products cannot be changed.

Article 8

Termination of investigations and proceedings 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 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 2(1) are met, the Commission shall invite the authorities of Colombia or Peru to hold consultations in accordance with Article 49 of the Agreement. Where no satisfactory solution has been reached within 45 days, the Commission may 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 to Union industry and to facilitate adjustment. That period shall not exceed two years, unless it is extended under paragraph 3.

2. A safeguard measure shall remain in force, pending the outcome of the review under paragraph 3, during any extension period.

3. The initial period of duration of a safeguard measure may exceptionally 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 to facilitate adjustment, and that there is evidence that the Union industry is adjusting.

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

5. The initiation of an investigation shall be published in accordance with Article 4(6) and (7). The investigation and

any decision regarding an extension pursuant to paragraph 3 of this Article shall be made in accordance with Articles 5, 8 and 9.

6. The total duration of a safeguard measure shall not exceed four years, including any provisional safeguard measure.

7. A safeguard measure shall not be applied beyond the expiry of the transitional period.

8. No safeguard measure shall be applied to the import of a product that has previously been subject to such a measure, except for one time for a period of time equal to half of that during which such measure had been previously applied, provided that the period of non-application is at least one year.

*Article 11***Outermost regions of the Union**

Where any product originating in Colombia or Peru is being imported in such increased quantities and under such conditions as to cause or threaten to cause serious deterioration in the economic situation of one or several of the Union's outermost regions, as referred to in Article 349 TFEU, a safeguard measure may be imposed, in accordance with this Chapter.

*Article 12***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 is not 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.

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 obligations of the Agreement and of this Regulation.

2. The report shall include information about the application of provisional and definitive measures, prior surveillance measures, regional surveillance and safeguard measures and the termination of investigations and proceedings without measures.

3. The report shall include information on the activities of the various bodies responsible for monitoring the implementation of the Agreement, including on fulfilment of obligations under Title IX of the Agreement and on activities with civil society advisory groups.

4. The report shall set out a summary of the statistics and the evolution of trade with Colombia and Peru and shall include up-to-date statistics on banana imports from Colombia and Peru.

5. The European Parliament may, within one 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.

6. 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

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 ⁽¹⁾ ('the Committee'). The 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. The Committee may examine matters relating to the application of this Regulation, raised by the Commission or at the request of a Member State. Member States may request information and may exchange views in the Committee or directly with the Commission.

CHAPTER II

STABILISATION MECHANISM FOR BANANAS

Article 15

Stabilisation mechanism for bananas

1. For bananas originating in Colombia or Peru falling under heading 0803 00 19 of the Combined Nomenclature (fresh Bananas, excluding plantains) and listed under the staging category 'BA' in the Tariff Elimination Schedule, a stabilisation mechanism shall apply until 31 December 2019.

2. A separate annual trigger import volume is set for imports of products referred to in paragraph 1, as indicated in the second and third columns of the table in the Annex. Once the trigger volume for either Colombia or Peru is met during the corresponding calendar year, the Commission shall, in accordance with the urgency procedure referred to in Article 14(4), adopt an implementing act by which it may either temporarily suspend the preferential customs duty applied to products of the corresponding origin during that same year for a period of time not exceeding three months, and not going beyond the end of the calendar year or determine that such suspension is not appropriate.

3. When deciding whether measures should be applied pursuant to paragraph 2, the Commission shall take into consideration the impact of the imports concerned on the situation of the Union market for bananas. That examination shall include factors such as: effect of the imports concerned on the Union price level, development of imports from other sources, overall stability of the Union market.

⁽¹⁾ OJ L 84, 31.3.2009, p. 1.

4. Where the Commission decides to suspend the preferential customs duty applicable, it shall apply the lesser of the base rate of customs duty or the MFN rate of duty in application at the time such action is taken.

5. Where the Commission applies the actions referred to in paragraphs 2 and 4, it shall immediately enter into consultations with the affected country or countries to analyse and evaluate the situation on the basis of available factual data.

6. The application of the stabilisation mechanism for bananas set out in this Chapter is without prejudice to the application of any measures defined in Chapter I. Measures taken pursuant to the provisions of both chapters shall not, however, be applied simultaneously.

7. The measures referred to in paragraphs 2 and 4 shall be applicable only during the period ending on 31 December 2019.

CHAPTER III

IMPLEMENTING RULES

Article 16

Implementing rules

The applicable provision for the purposes of adopting the necessary implementing rules for the application of the rules contained in Appendices 2A and 5 of Annex II (Concerning the definition of the concept of 'Originating Products' and methods of administrative co-operation) and Appendix 1 (Elimination of Customs Duties) of Annex I to the Agreement shall be Article 247a of Regulation (EEC) No 2913/92.

CHAPTER IV

FINAL PROVISIONS

Article 17

Entry into force

This Regulation shall enter into force on the third day following that of 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 330 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.

Done at Strasbourg, 15 January 2013.

For the European Parliament
The President
M. SCHULZ

For the Council
The President
L. CREIGHTON

ANNEX

Table regarding trigger import volumes for the application of the stabilisation mechanism for bananas provided for in Section B of Appendix 1 of Annex I to the Agreement: for Colombia, Subsection 1 and for Peru, Subsection 2

Year	Trigger import volume for Colombia, in tonnes	Trigger import volume for Peru, in tonnes
From 1 January until 31 December 2010	1 350 000	67 500
From 1 January until 31 December 2011	1 417 500	71 250
From 1 January until 31 December 2012	1 485 000	75 000
From 1 January until 31 December 2013	1 552 500	78 750
From 1 January until 31 December 2014	1 620 000	82 500
From 1 January until 31 December 2015	1 687 500	86 250
From 1 January until 31 December 2016	1 755 000	90 000
From 1 January until 31 December 2017	1 822 500	93 750
From 1 January until 31 December 2018	1 890 000	97 500
From 1 January until 31 December 2019	1 957 500	101 250
As from 1 January 2020	Not applicable	Not applicable

COMMISSION STATEMENT

The Commission welcomes the first reading agreement between the European Parliament and the Council on Regulation (EU) No 19/2013 of the European Parliament and of the Council of 15 January 2013 implementing the bilateral safeguard clause and the stabilisation mechanism for bananas of the Trade Agreement between the European Union and its Member States, of the one part, and Colombia and Peru, of the other part ⁽¹⁾.

As envisaged in Regulation (EU) No 19/2013, the Commission will submit an annual report to the European Parliament and to the Council on the implementation of the Agreement and will be ready to discuss with the responsible committee of the European Parliament any issues arising from the implementation of the Agreement.

The Commission will attach particular importance to the effective implementation of commitments on trade and sustainable development in the Agreement, taking into account the specific information provided by the relevant monitoring bodies of the fundamental Conventions of the International Labour Organisation and the multilateral environmental agreements listed in Title IX of the Agreement. In this context, the Commission will also seek the views of the relevant civil society advisory groups.

After the expiry of the stabilisation mechanism for bananas on 31 December 2019, the Commission will assess the situation of the Union market for bananas and the state of Union banana producers. The Commission will report its findings to the European Parliament and to the Council and will include a preliminary assessment of the functioning of the 'Programme d'Options Spécifiques à l'Éloignement et l'Insularité' (POSEI) in preserving the banana production in the Union.

⁽¹⁾ See page 1 of this Official Journal.

JOINT DECLARATION

The European Parliament and the Commission agree on the importance of close cooperation in monitoring the implementation of the Agreement and Regulation (EU) No 19/2013 of the European Parliament and of the Council of 15 January 2013 implementing the bilateral safeguard clause and the stabilisation mechanism for bananas of the Trade Agreement between the European Union and its Member States, of the one part, and Colombia and Peru, of the other part ⁽¹⁾. To that end they agree on the following:

- 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 Colombia or Peru of their commitments on trade and sustainable development.
- If the European Parliament adopts a recommendation to initiate a safeguard investigation, the Commission will carefully examine whether the conditions under Regulation (EU) No 19/2013 for *ex-officio* initiation are fulfilled. If 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.

⁽¹⁾ See page 1 of this Official Journal

**REGULATION (EU) No 20/2013 OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL
of 15 January 2013**

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

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union, and in particular Article 207(2) thereof,

Having regard to the proposal from the European Commission,

After transmission of the draft legislative act to the national parliaments,

Acting in accordance with the ordinary legislative procedure ⁽¹⁾,

Whereas:

- (1) On 23 April 2007 the Council authorised the Commission to open negotiations with certain countries of Central America ('Central America') for an Agreement establishing an Association between the European Union and its Member States, on the one hand, and Central America on the other ('the Agreement') on behalf of the Union and its Member States.
- (2) Those negotiations have been concluded and the Agreement was signed on 29 June 2012, received the consent of the European Parliament on 11 December 2012 and is to apply as provided for in Article 353 of the Agreement.
- (3) It is necessary to lay down the most appropriate procedures to guarantee the effective application of certain provisions of the Agreement which concern the bilateral safeguard clause and for applying the stabilisation mechanism for bananas that has been agreed with Central America.
- (4) It is also necessary to create appropriate safeguard mechanisms to prevent serious harm to the Union banana growing sector which is of great importance to the agricultural producers of many of the outermost regions of

the Union. The limited ability of those regions to diversify, owing to their natural characteristics, makes the banana sector particularly vulnerable. It is therefore essential to create effective mechanisms to address preferential imports from third countries concerned, in order to guarantee that Union banana production is maintained under the best possible conditions, as it is a crucial employment sector in certain areas, especially in the outermost regions.

- (5) The terms 'serious injury', 'threat of serious injury' and 'transition period' as referred to in Articles 104 and 105 of the Agreement should be defined.
- (6) Safeguard measures should be considered only if the product in question is imported into the Union in such increased quantities, in absolute terms or relative to Union production, and under such conditions as to cause, or threaten to cause, serious injury to Union producers of like or directly competitive products as laid down in Article 104 of the Agreement.
- (7) Specific safeguard provisions should be available in case the product in question is imported in such increased quantities and under such conditions as to cause or threaten to cause serious deterioration in the economic situation of any of the outermost regions as referred to in Article 349 of the Treaty on the Functioning of the European Union (TFEU).
- (8) Safeguard measures should take one of the forms referred to in Article 104(2) of the Agreement.
- (9) The tasks of following up and reviewing the Agreement, carrying out investigations and, if necessary, imposing safeguard measures should be carried out in the most transparent manner possible.
- (10) The Commission should submit an annual report to the European Parliament and to the Council on the implementation of the Agreement and the application of the safeguard measures and the stabilisation mechanism for bananas.

⁽¹⁾ Position of the European Parliament of 11 December 2012 (not yet published in the Official Journal) and decision of the Council of 20 December 2012.

- (11) The challenges in Central America as regards human, social, labour and environmental rights in connection with products from that region require a close dialogue between the Commission and Union civil society organisations.
- (12) The importance of complying with the international labour standards drawn up and supervised by the International Labour Organisation should be stressed.
- (13) The Commission should monitor the observance by Central America of the social and environmental standards laid down in Title VIII of Part IV of the Agreement.
- (14) There should be detailed provisions on the initiation of proceedings. The Commission should receive information including available evidence from the Member States of any trends in imports which might call for the application of safeguard measures.
- (15) The reliability of statistics on all imports from Central America to the Union is therefore crucial to determining whether the conditions to apply safeguard measures are met.
- (16) In some cases, an increase of imports concentrated in one or several of the Union's outermost regions or Member States may cause, or threaten to cause, serious deterioration or serious injury in their economic situation. In the event that there is an increase of imports concentrated in one or several of the Union's outermost regions or Member States, the Commission should be able to introduce prior surveillance measures.
- (17) If there is sufficient prima facie evidence to justify the initiation of a proceeding, the Commission should publish a notice as provided for in Article 111(3) of the Agreement in the *Official Journal of the European Union*.
- (18) There should be detailed provisions on the initiation of investigations, access to and inspections by interested parties of the information gathered, hearings for the interested parties involved and the opportunities for those parties to submit their views as provided for in Article 111(3) of the Agreement.
- (19) The Commission should notify Central America in writing of the initiation of an investigation and notify the results of the investigations to the Association Committee as provided for in Article 116 of the Agreement.
- (20) It is also necessary, pursuant to Article 112 of the Agreement, to set time limits for the initiation of an investigation and for determinations as to whether or not safeguard measures are appropriate, with a view to ensuring that such determinations are made quickly, in order to increase legal certainty for the economic operators concerned.
- (21) An investigation should precede the application of any safeguard measure, subject to the Commission being allowed to apply provisional safeguard measures in critical circumstances as referred to in Article 106 of the Agreement.
- (22) Close monitoring should facilitate a timely decision concerning the possible initiation of an investigation or imposition of measures. Therefore the Commission should regularly monitor imports of bananas from the date of application of the Agreement. Monitoring should be extended to other sectors upon a duly justified request.
- (23) There should be a possibility to suspend swiftly for a maximum period of three months the preferential customs duties when imports exceed a defined annual trigger import volume. The decision whether or not to apply the stabilisation mechanism for bananas should take into account the stability of the Union market for bananas.
- (24) Safeguard measures should be applied only to the extent, and for such time, as may be necessary to prevent serious injury and to facilitate adjustment. The maximum duration of safeguard measures should be determined and specific provisions regarding extension and review of such measures should be laid down, as referred to in Article 105 of the Agreement.
- (25) The Commission should enter into consultations with the Central American country affected by measures.
- (26) The implementation of the bilateral safeguard clause and the stabilisation mechanism for bananas provided for in the Agreement requires uniform conditions for the adoption of provisional and definitive safeguard measures, for the imposition of prior surveillance

measures, for the termination of an investigation without measures and for suspending temporarily the preferential customs duty established under the stabilisation mechanism for bananas that has been agreed with Central America. In order to ensure uniform conditions for the implementation of this Regulation, those measures should be adopted by the Commission in accordance with Regulation (EU) No 182/2011 of the European Parliament and of the Council of 16 February 2011 laying down the rules and general principles concerning mechanisms for control by Member States of the Commission's exercise of implementing powers⁽¹⁾.

- (27) The advisory procedure should be used for the adoption of surveillance and provisional safeguard measures given the effects of those measures and their sequential logic in relation to the adoption of definitive safeguard measures. Where a delay in the imposition of provisional safeguard measures would cause damage which would be difficult to repair, the Commission should adopt immediately applicable implementing acts.
- (28) Given the nature and the relatively short duration of the measures foreseen under the stabilisation mechanism for bananas, and in order to prevent a negative impact on the situation of the Union market for bananas, the Commission should also adopt immediately applicable implementing acts for the temporary suspension of the preferential customs duty established under the stabilisation mechanism for bananas, or to determine that such temporary suspension is not appropriate. Where such immediately applicable implementing acts are applied, the advisory procedure should be used.
- (29) The Commission should make diligent and effective use of the stabilisation mechanism for bananas in order to avoid a threat of serious deterioration or a serious deterioration for producers in the outermost regions in the Union. From 1 January 2020, the general bilateral safeguard mechanism, including the special provisions for outermost regions, remains applicable.
- (30) For purposes of adopting the necessary implementing rules for the application of the rules contained in Appendix 2A of Annex II (Concerning the definition of the concept of 'originating products' and methods of administrative co-operation) and Appendix 2 of Annex I (Elimination of Customs Duties) to the Agreement, Article 247a of Council Regulation (EEC) No 2913/92 of 12 October 1992 establishing the Community Customs Code⁽²⁾ should be applied.

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

HAVE ADOPTED THIS REGULATION:

CHAPTER I

SAFEGUARD PROVISIONS

Article 1

Definitions

For the purposes of this Regulation:

- (a) 'product' means a good originating in the Union or in a Central American country. A product subject to an investigation may cover one or several tariff lines or a sub-segment thereof depending on the specific market circumstances, or any product segmentation commonly applied in the Union industry;
- (b) 'interested parties' means parties affected by the imports of the product in question;
- (c) 'Union industry' means the Union producers as a whole of the like or directly competitive products, operating within the territory of the Union, Union producers whose collective output of the like or directly competitive products constitutes a major proportion of the total Union production of those products, or, where a like or a directly competitive product is only one of several products that are made by the Union producers, the specific operations that are involved in the production of the like or directly competitive product;
- (d) 'serious injury' means a significant overall impairment;
- (e) 'threat of serious injury' means serious injury that is clearly imminent;
- (f) 'serious deterioration' means significant disturbances in a sector or in Union industry;
- (g) 'threat of serious deterioration' means significant disturbances that are clearly imminent;

⁽¹⁾ OJ L 55, 28.2.2011, p. 13.

⁽²⁾ OJ L 302, 19.10.1992, p. 1.

- (h) 'transitional period' means ten years from the date of application of the Agreement, for a product for which the Schedule of the EU Party, as set out in Annex I (Elimination of Customs Duties) to the Agreement ('Tariff Elimination Schedule') provides for a tariff elimination period of less than ten years, or the tariff elimination period plus three years for a product for which the Tariff Elimination Schedule provides for a tariff elimination period of ten or more years;
- (i) 'Central American country' means Costa Rica, El Salvador, Guatemala, Honduras, Nicaragua or Panama.

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

Article 2

Principles

1. A safeguard measure may be imposed in accordance with this Regulation where a product originating in a Central American country is, as a result of the reduction or the elimination of the customs duties on that product, imported into the Union in such increased quantities, in absolute terms or relative to Union production, and under such conditions as to cause or threaten to cause serious injury to the Union industry.
2. A safeguard measure may take one of the following forms:
 - (a) a suspension of a further reduction of the rate of customs duty on the product concerned provided for in the Tariff Elimination Schedule;
 - (b) an increase in the rate of customs duty on the product concerned to a level which does not exceed the lesser of:
 - the most-favoured-nation ('MFN') applied rate of customs duty on the product in effect at the time the measure is taken; or
 - the MFN applied rate of customs duty on the product in effect on the day immediately preceding the date of entry into force of the Agreement.
3. A safeguard measure shall not be applied within the limits of the preferential duty free tariff quotas granted by the Agreement.

Article 3

Monitoring

1. The Commission shall monitor the evolution of import statistics of bananas from Central American countries. For that purpose, it 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 to the Council on updated statistics on imports from Central American countries of bananas and those sectors to which monitoring has been extended.
4. The Commission shall monitor the observance by Central American countries of the social and environmental standards laid down in Title VIII of Part IV of the Agreement.

Article 4

Initiation of proceedings

1. A proceeding 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 a proceeding 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 and changes in the level of sales, production, productivity, capacity utilisation, profits and losses, and employment.
3. A proceeding may also be initiated in the event that there is a surge of imports concentrated in one or several Member States, or outermost regions, provided that there is sufficient *prima facie* evidence that the conditions for initiation are met, in accordance with Article 5(5).

4. A Member State shall inform the Commission if trends in imports from a Central American country appear to call for safeguard measures. That information shall include the evidence available in accordance with Article 5(5).

5. The Commission shall provide that information to the Member States when it receives a request to initiate a proceeding or when it considers initiation of a proceeding to be appropriate on its own initiative pursuant to paragraph 1.

6. Where it is apparent that there is sufficient prima facie evidence in accordance with Article 5(5) to justify the initiation of a proceeding the Commission shall initiate proceedings and shall publish a notice thereof in the *Official Journal of the European Union*. Initiation shall take place within one month of receipt by the Commission of the request or information pursuant to paragraph 1.

7. The notice referred to in paragraph 6 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 proceeding;
- (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 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 of this Article.

3. The investigation shall, where possible, be concluded within six months of its initiation. 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 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 2(1), and, shall, where appropriate, endeavour to verify that information.

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 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 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 submitted information pursuant to Article 4(7)(b) and representatives of the Central American country concerned 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 submitted information may communicate their views on the information to the Commission. 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 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, 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 that 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 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 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 Central American country concerned in writing of the initiation of an investigation.

Article 6

Prior surveillance measures

1. The Commission may adopt prior surveillance measures in regard to imports from a Central American country where:

- (a) the trend in imports of a product is such that it could lead to one of the situations referred to in Articles 2 and 4; or
- (b) there is a surge of imports of bananas concentrated in one or several Member States, or in one or several of the Union's outermost regions.

2. The Commission shall adopt prior surveillance measures in accordance with the advisory procedure referred to in Article 14(2).

3. 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 six-month period following the first six months after their introduction.

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 a Central American country have increased as a result of the reduction or elimination of a customs duty in accordance with the Tariff Elimination Schedule, and such imports cause serious injury, or threat thereof, to the Union industry.

The Commission shall adopt provisional safeguard measures 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 of this Article, 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 five working days of receiving the request.

3. Provisional safeguard measures shall not apply for more than 200 calendar 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 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 for free circulation of products already on their way to the Union where the destination of such products cannot be changed.

Article 8

Termination of investigations and proceedings 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 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 2(1) are met, the Commission shall refer the matter to the Association Committee for examination in accordance with Article 116 of the Agreement. Where no recommendation has been made by the Association Committee or no other satisfactory solution has been reached within 30 days of the referral, the Commission may 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 to Union industry and to facilitate adjustment. That period shall not exceed two years, unless it is extended under paragraph 3.

2. A safeguard measure shall remain in force, pending the outcome of the review under paragraph 3, during any extension period.

3. The initial period of duration of a safeguard measure may exceptionally 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.

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

5. The initiation of an investigation shall be published in accordance with Article 4(6) and (7). The investigation and any decision regarding an extension pursuant to paragraph 3 of this Article shall be made in accordance with Articles 5, 8 and 9.

6. The total duration of a safeguard measure shall not exceed four years, including any provisional safeguard measure.

7. A safeguard measure shall not be applied beyond the expiry of the transitional period, except with the consent of the Central American country concerned.

8. No safeguard measure shall be applied to the import of a product that has previously been subject to such a measure, unless a period of time equal to half of that during which the safeguard measure was applied for the immediately preceding period has elapsed.

Article 11

Outermost regions of the Union

Where any product originating in a Central American country is being imported in such increased quantities and under such conditions as to cause or threaten to cause serious deterioration in the economic situation of one or several of the Union's outermost regions, as referred to in Article 349 TFEU, a safeguard measure may be imposed, in accordance with this Chapter.

Article 12

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 is not 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.

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 obligations of Part IV of the Agreement and of this Regulation.

2. The report shall include information about the application of provisional and definitive measures, prior surveillance measures, regional surveillance and safeguard measures and the termination of investigations and proceedings without measures.

3. The report shall include information on the activities of the various bodies responsible for monitoring the implementation of the Agreement, including on fulfilment of obligations under Title VIII of Part IV of the Agreement and on activities with civil society advisory groups.

4. The report shall set out a summary of the statistics and the evolution of trade with Central American countries and shall include up-to-date statistics on banana imports from Central American countries.

5. The European Parliament may, within one 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.

6. 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

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 ⁽¹⁾ (‘the Committee’). The 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. The Committee may examine matters relating to the application of this Regulation, raised by the Commission or at the request of a Member State. Member States may request information and may exchange views in the Committee or directly with the Commission.

CHAPTER II

STABILISATION MECHANISM FOR BANANAS

Article 15

Stabilisation mechanism for bananas

1. For bananas originating in Central America falling under heading 0803 00 19 of the Combined Nomenclature (fresh Bananas, excluding plantains) and listed under category ‘ST’ in the Tariff Elimination Schedule, a stabilisation mechanism shall apply until 31 December 2019.

2. A separate annual trigger import volume is set for imports of products referred to in paragraph 1, as indicated in the table in the Annex. The importation of the products referred to in paragraph 1 at the preferential customs duty rate shall, in addition to the proof of origin established under Annex II (Concerning the definition of the concept of ‘originating products’ and methods of administrative co-operation) to the Agreement, be subject to the presentation of an export certificate issued by the competent authority of the Republic of the Central American country from which the products are exported. Once the trigger volume for a Central American country is met during the corresponding calendar year, the Commission shall, in accordance with the urgency procedure referred to in Article 14(4), adopt an implementing act by which it may either temporarily suspend the preferential customs duty applied to products of the corresponding origin during that same year for a period of time not exceeding three months, and not going beyond the end of the calendar year or determine that such suspension is not appropriate.

3. When deciding whether measures should be applied pursuant to paragraph 2, the Commission shall take into consideration the impact of the imports concerned on the situation of the Union market for bananas. That examination shall include factors such as: effect of the imports concerned on the Union price level, development of imports from other sources, overall stability of the Union market.

⁽¹⁾ OJ L 84, 31.3.2009, p. 1.

4. Where the Commission decides to suspend the preferential customs duty applicable, it shall apply the lesser of the base rate of customs duty or the MFN rate of duty that in application at the time such action is taken.

5. Where the Commission applies the actions referred to in paragraphs 2 and 4, it shall immediately enter into consultations with the affected Central American country or countries to analyse and evaluate the situation on the basis of available factual data.

6. The application of the stabilisation mechanism for bananas set out in this Chapter is without prejudice to the application of any measures defined in Chapter I. Measures taken pursuant to the provisions of both chapters shall not, however, be applied simultaneously.

7. The measures referred to in paragraphs 2 and 4 shall be applicable only during the period ending on 31 December 2019.

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

Done at Strasbourg, 15 January 2013.

For the European Parliament
The President
M. SCHULZ

For the Council
The President
L. CREIGHTON

CHAPTER III

IMPLEMENTING RULES

Article 16

Implementing rules

The applicable provision for the purposes of adopting the necessary implementing rules for the application of the rules contained in Appendix 2A of Annex II (Concerning the definition of the concept of 'originating products' and methods of administrative co-operation) and Appendix 2 of Annex I (Elimination of Customs Duties) to the Agreement shall be Article 247a of Regulation (EEC) No 2913/92.

CHAPTER IV

FINAL PROVISIONS

Article 17

Entry into force

This Regulation shall enter into force on the third day following that of 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 353 thereof. A notice shall be published in the *Official Journal of the European Union* specifying the date of application of the Agreement.

COMMISSION STATEMENT

The Commission welcomes the first reading agreement between the European Parliament and the Council on Regulation (EU) No 20/2013 of the European Parliament and of the Council of 15 January 2013 implementing the bilateral safeguard clause and the stabilisation mechanism for bananas of the Agreement establishing an Association between the European Union and its Member States, on the one hand, and Central America on the other ⁽¹⁾.

As envisaged in Regulation (EU) No 20/2013, the Commission will submit an annual report to the European Parliament and to the Council on the implementation of Part IV of the Agreement and will be ready to discuss with the responsible committee of the European Parliament any issues arising from the implementation of Part IV of the Agreement.

The Commission will attach particular importance to the effective implementation of commitments on trade and sustainable development in the Agreement, taking into account the specific information provided by the relevant monitoring bodies of the fundamental Conventions of the International Labour Organisation and the multilateral environmental agreements listed in Title VIII of Part IV of the Agreement. In this context, the Commission will also seek the views of the relevant civil society advisory groups.

After the expiry of the Banana Stabilisation Mechanism on 31 December 2019, the Commission will assess the situation of the Union market for bananas and the state of Union banana producers. The Commission will report its findings to the European Parliament and the Council and would include a preliminary assessment of the functioning of the 'Programme d'Options Spécifiques à l'Éloignement et l'Insularité' (POSEI) in preserving the banana production in the Union.

⁽¹⁾ See page 13 of this Official Journal.

JOINT DECLARATION

The European Parliament and the Commission agree on the importance of close cooperation in monitoring the implementation of Part IV of the Agreement and Regulation (EU) No 20/2013 of the European Parliament and of the Council of 15 January 2013 implementing the bilateral safeguard clause and the stabilisation mechanism for bananas of the Agreement establishing an Association between the European Union and its Member States, on the one hand, and Central America on the other ⁽¹⁾. To that end they agree on the following:

- 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 Central American countries of their commitments on trade and sustainable development.
- If the European Parliament adopts a recommendation to initiate a safeguard investigation, the Commission will carefully examine whether the conditions under Regulation (EU) No 20/2013 for *ex-officio* initiation are fulfilled. If 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.

⁽¹⁾ See page 13 of this Official Journal.

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