

Council Regulation (EC) No 1528/2007 of 20 December 2007 applying the arrangements for products originating in certain states which are part of the African, Caribbean and Pacific (ACP) Group of States provided for in agreements establishing, or leading to the establishment of, Economic Partnership Agreements (repealed)

CHAPTER IV

GENERAL SAFEGUARD PROVISIONS

Article 11

Definitions

For the purposes of this Chapter:

- (a) 'Community industry' shall mean the Community producers as a whole of the like or directly competitive products operating within the territory of the Community, or those Community producers whose collective output of the like or directly competitive product constitutes a major proportion of the total Community production of those products;
- (b) 'serious injury' shall mean a significant overall impairment in the position of Community producers;
- (c) 'threat of serious injury' shall mean serious injury that is clearly imminent;
- (d) 'disturbances' shall mean disorders in a sector or industry;
- (e) 'threat of disturbances' shall mean disturbances that are clearly imminent.

Article 12

Principles

1 A safeguard measure may be imposed in accordance with the provisions set out in this Chapter where products originating in regions or states listed in Annex I are being imported in the Community in such increased quantities and under such conditions as to cause or threaten to cause any of the following:

- a serious injury to the Community industry;
- b disturbances in a sector of the economy, particularly where those disturbances produce major social problems or difficulties which could bring about serious deterioration in the economic situation of the Community; or
- c disturbances in the markets of agricultural products covered by Annex I of the WTO Agreement on Agriculture or mechanisms regulating those markets.

2 In cases where products originating in regions or states listed in Annex I are being imported into the Community in such increased quantities and under such conditions as to cause or threaten to cause disturbances in the economic situation of one or several of the Community's outermost regions, a safeguard measure may be imposed in accordance with the provisions set out in this Chapter.

Status: Point in time view as at 20/02/2014.

Changes to legislation: There are currently no known outstanding effects for the Council Regulation (EC) No 1528/2007 (repealed), CHAPTER IV. (See end of Document for details)

Article 13

Determination of the conditions to impose safeguard measures

1 The determination of serious injury or a threat thereof shall cover inter alia the following factors:

- a the volume of imports, in particular where there has been a significant increase, either in absolute terms or relative to production or consumption in the Community;
- b the price of imports, in particular where there has been a significant price undercutting as compared with the price of a like product in the Community;
- c the consequent impact on Community producers as indicated by trends in certain economic factors such as production, capacity utilisation, stocks, sales, market share, the depression of prices or prevention of price increases which would normally have occurred, profits, return on capital employed, cash flow, and employment;
- d factors other than trends in imports which are causing or may have caused injury to the Community producers concerned.

2 The determination of disturbances or a threat thereof shall be based on objective factors, including the following elements:

- a the increase in the volume of imports in absolute or relative terms to Community production and to imports from other sources; and
- b the effect of such imports on prices; or
- c the effect of such imports on the situation of the Community industry or the economic sector concerned, including inter alia on the levels of sales, production, financial situation and employment.

3 In determining whether imports are made under such conditions as to cause or threaten to cause disturbances in the markets of agricultural products or mechanisms regulating those markets, including regulations creating Common Market Organisations, all relevant objective factors must be taken into consideration, including one or more of the following elements:

- a the volume of imports as compared to previous calendar or marketing years' levels, as the case may be, internal production and consumption, and future levels planned in accordance with the reform of the Common Market Organisations;
- b the level of internal prices compared to the reference or target prices if applicable, and, if not applicable, compared to the average internal market prices during the same period of previous marketing years;
- c as of 1 October 2015, in the markets for products of tariff heading 1701: situations where the Community average market price of white sugar falls during two consecutive months below 80 % of the average Community market price for white sugar prevailing during the previous marketing year.

4 In determining whether the conditions referred to in paragraphs 1, 2 and 3 are met in the case of the Community's outermost regions, the analyses shall be restricted to the territory of the outermost region(s) concerned. Particular attention shall be paid to the size of the local industry, its financial situation and the situation of employment.

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Changes to legislation: There are currently no known outstanding effects for the Council Regulation (EC) No 1528/2007 (repealed), CHAPTER IV. (See end of Document for details)

Article 14

Initiation of proceedings

1 An investigation shall be initiated upon request by a Member State or on the Commission's own initiative if it is apparent to the Commission that there is sufficient evidence to justify such initiation.

2 The Member States shall inform the Commission should trends in imports from any of the regions or states listed in Annex I appear to call for safeguard measures. That information shall include the evidence available, as determined on the basis of the criteria laid down in Article 13. The Commission shall pass that information on to all Member States within three working days.

[^{F13} Where it is apparent that there is sufficient evidence to justify the initiation of a proceeding, the Commission shall publish a notice in the *Official Journal of the European Union*. Initiation shall take place within one month of the date of receipt of information from a Member State.

The Commission shall provide information to the Member States concerning its analysis of the information normally within 21 days of the date on which the information was provided to the Commission.

4 If the Commission takes the view that the circumstances set out in Article 12 exist, it shall immediately notify the region or states listed in Annex I concerned of its intention to initiate an investigation. The notification may be accompanied by an invitation for consultations with the aim of clarifying the situation and arriving at a mutually satisfactory solution.]

Textual Amendments

- F1** Substituted by [Regulation \(EU\) No 37/2014 of the European Parliament and of the Council of 15 January 2014 amending certain regulations relating to the common commercial policy as regards the procedures for the adoption of certain measures.](#)

Article 15

The investigation

1 Following the initiation of the proceeding, the Commission shall commence an investigation.

2 The Commission may request Member States to supply information and Member States shall take whatever steps are necessary in order to give effect to any such request. Where that information is of general interest or where its transmission was requested by a Member State, the Commission shall forward it to all Member States provided it is not confidential; if it is confidential the Commission shall forward a non-confidential summary.

3 In the event of an investigation restricted to an outermost region, the Commission may request the competent local authorities to supply the information referred to in paragraph 2 via the Member State concerned.

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4 The investigation shall, whenever possible, be concluded within six months of the initiation of the investigation. In exceptional circumstances, that time limit may be extended by a further period of three months.

Article 16

Imposition of provisional safeguard measures

[^{F1} Provisional safeguard measures shall be applied in critical circumstances where a delay would cause damage which it would be difficult to repair, pursuant to a preliminary determination that circumstances set out in Article 12 as appropriate exist. Provisional measures shall be adopted in accordance with the advisory procedure referred to in Article 21(4), or in cases of urgency, in accordance with Article 21(6).

2 In view of the particular situation of outermost regions and their vulnerability to any surge in imports, provisional safeguard measures shall be applied in proceedings that concern them where a preliminary determination has shown that imports have increased. Provisional measures shall be adopted in accordance with the advisory procedure referred to in Article 21(4), or, in cases of urgency, in accordance with Article 21(6).]

3 Where a Member State requests immediate intervention by the Commission and where the conditions in paragraph 1 or 2 are met, the Commission shall take a decision within five working days of receiving the request.

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5 Provisional measures may take the form of an increase in the customs duty on the product concerned up to a level which does not exceed the customs duty applied to other WTO members, or tariff quotas.

6 Provisional measures shall not apply for more than 180 days. Where provisional measures are restricted to outermost regions, they may not apply for more than 200 days.

7 Should the provisional safeguard measures be repealed because the investigation shows that the conditions laid down in Articles 12 and 13 are not met, any duty collected as a result of those provisional measures shall be refunded automatically.

Textual Amendments

F1 Substituted by [Regulation \(EU\) No 37/2014 of the European Parliament and of the Council of 15 January 2014 amending certain regulations relating to the common commercial policy as regards the procedures for the adoption of certain measures.](#)

F2 Deleted by [Regulation \(EU\) No 37/2014 of the European Parliament and of the Council of 15 January 2014 amending certain regulations relating to the common commercial policy as regards the procedures for the adoption of certain measures.](#)

[^{F1} Article 17

Termination of investigation and proceeding without measures

Where bilateral safeguard measures are deemed unnecessary, the investigation and proceeding shall be terminated in accordance with the examination procedure referred to in Article 21(5).]

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Textual Amendments

- F1** Substituted by [Regulation \(EU\) No 37/2014 of the European Parliament and of the Council of 15 January 2014 amending certain regulations relating to the common commercial policy as regards the procedures for the adoption of certain measures.](#)

Article 18

Imposition of definitive measures

1 Where the facts as finally established show that the circumstances set out in Article 12, as appropriate, are met, the Commission shall request consultations with the region or state concerned meeting in the context of the appropriate institutional arrangement set up in the relevant agreements permitting a region or state to be included in Annex 1 with a view to seeking a mutually acceptable solution.

[^{F12} If the consultations referred to in paragraph 1 of this Article do not lead to a mutually satisfactory solution within 30 days of the matter being referred to the region or state concerned, a decision to impose definitive bilateral safeguard measures shall be taken by the Commission in accordance with the examination procedure referred to in Article 21(5) within 20 working days of the end of the consultation period.]

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5 Definitive measures may take one of the following forms:

- a suspension of the further reduction of the rate of import duty for the product concerned originating in the region or state concerned;
- an increase in the customs duty on the product concerned up to a level which does not exceed the customs duty applied to other WTO members;
- a tariff quota.

6 No bilateral safeguard measure shall be applied on the same product from the same region or state less than one year after previous such measures have lapsed or been removed.

Textual Amendments

- F1** Substituted by [Regulation \(EU\) No 37/2014 of the European Parliament and of the Council of 15 January 2014 amending certain regulations relating to the common commercial policy as regards the procedures for the adoption of certain measures.](#)

- F2** Deleted by [Regulation \(EU\) No 37/2014 of the European Parliament and of the Council of 15 January 2014 amending certain regulations relating to the common commercial policy as regards the procedures for the adoption of certain measures.](#)

Article 19

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 or disturbances. That period shall not exceed

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two years, unless it is extended under paragraph 2. Where the measure is restricted to one or several of the outermost region(s) of the Community, the period of application may not exceed four years.

2 The initial period of duration of a safeguard measure may exceptionally be extended provided it is determined that the safeguard measure continues to be necessary to prevent or remedy serious injury or disturbances.

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

The total duration of a safeguard measure may not exceed four years, including any provisional measure. In the case of a measure restricted to outermost regions, that limit shall be extended to eight years.

4 If the duration of a safeguard measure exceeds one year, it shall be progressively liberalised at regular intervals during its period of application, including any extension.

Consultations with the region or state concerned shall be held periodically in the relevant institutional bodies of the agreements, with a view to establishing a timetable for their abolition as soon as circumstances permit.

Article 20

Surveillance measures

1 Where the trend in imports of a product originating in an ACP State is such that they could cause one of the situations referred to in Article 12, imports of that product may be subject to prior Community surveillance.

[^{F12} The decision to impose surveillance shall be taken by the Commission in accordance with the advisory procedure referred to in Article 21(4).]

3 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 the measures were introduced.

4 Surveillance measures may be restricted to the territory of one or more Community outermost region(s) where necessary.

5 The decision to impose surveillance measures shall be communicated immediately to the appropriate institutional body set up in the relevant agreements permitting a region or state to be included in Annex I for information.

Textual Amendments

- F1** Substituted by [Regulation \(EU\) No 37/2014 of the European Parliament and of the Council of 15 January 2014 amending certain regulations relating to the common commercial policy as regards the procedures for the adoption of certain measures.](#)

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[^{F1}Article 21

Committee procedure

1 For the purpose of Articles 16, 17, 18 and 20 of this Regulation, the Commission shall be assisted by the Committee on Safeguards established by Article 4(1) of Council Regulation (EC) No 260/2009⁽¹⁾. That Committee shall be a committee within the meaning of Regulation (EU) No 182/2011 of the European Parliament and of the Council⁽²⁾.

2 For the purpose of Articles 4 and 5, the Commission shall be assisted by the Customs Code Committee established by Article 184 of Regulation (EC) No 450/2008 of the European Parliament and of the Council⁽³⁾. That Committee shall be a committee within the meaning of Regulation (EU) No 182/2011.

3 For the purpose of Articles 6, 7 and 9, the Commission shall be assisted by the Committee established by Council Regulation (EC) No. 1234/2007⁽⁴⁾. That Committee shall be a committee within the meaning of Regulation (EU) No 182/2011.

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

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

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

Textual Amendments

- F1** Substituted by [Regulation \(EU\) No 37/2014 of the European Parliament and of the Council of 15 January 2014 amending certain regulations relating to the common commercial policy as regards the procedures for the adoption of certain measures.](#)

Article 22

Exceptional measures with limited territorial application

Where it emerges that the conditions laid down for the adoption of bilateral safeguard measures are met in one or more Member States, the Commission may, after having examined alternative solutions, exceptionally, and in accordance with Article 134 of the Treaty, authorise the application of surveillance or safeguard measures restricted to the Member State or Member States concerned if it considers that such measures applied at that level are more appropriate than measures applied throughout the Community. Those measures must be strictly limited in time and must disrupt the operation of the internal market as little as possible.

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- (1) [^{F1}Council Regulation (EC) No 260/2009 of 26 February 2009 on the common rules for imports (OJ L 84, 31.3.2009, p. 1).
- (2) Regulation (EU) No 182/2011 of the European Parliament and of the Council of 16 February 2011 laying down the rules and general principles concerning mechanisms for control by Member States of the Commission's exercise of implementing powers (OJ L 55, 28.2.2011, p. 13).
- (3) Regulation (EC) No 450/2008 of the European Parliament and of the Council of 23 April 2008 laying down the Community Customs Code (Modernised Customs Code) (OJ L 145, 4.6.2008, p. 1).
- (4) Council Regulation (EC) No 1234/2007 establishing a common organisation of agricultural markets and on specific provisions for certain agricultural products (Single CMO Regulation) (OJ L 299, 16.11.2007, p. 1).]

Textual Amendments

- F1** Substituted by [Regulation \(EU\) No 37/2014 of the European Parliament and of the Council of 15 January 2014 amending certain regulations relating to the common commercial policy as regards the procedures for the adoption of certain measures.](#)

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