



**COUNCIL OF  
THE EUROPEAN UNION**

**Brussels, 15 September 2010**

**13178/10**

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**Interinstitutional File:  
2010/0032 (COD)**

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**CODEC 771  
WTO 287  
COMER 148  
COASI 150  
PE 366**

**NOTE**

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from:	General Secretariat
to:	Permanent Representatives Committee/Council
Subject:	Proposal for a Regulation of the European Parliament and of the Council implementing the bilateral safeguard clause of the EU-Korea Free Trade Agreement - Outcome of the European Parliament's Plenary session debate (Strasbourg, 6 to 9 September 2010)

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**I. INTRODUCTION**

The Rapporteur, Mr Pablo ZALBA BIDEGAÍN (EPP - ES), presented a report consisting of 54 amendments on behalf of the Committee on International Trade (amendments 1-54).

**II. DEBATE**

The rapporteur, Mr Pablo ZALBA BIDEGAÍN (EPP - ES), opened the debate and:

- Stressed the need for an effective safeguard clause
- Underlined the positive attitude of the Council at the first trilogue held on 30 August and its compromise towards reaching a smooth first reading agreement

- Indicated however that the EP should send a strong signal to the Council while leaving the door open to a first reading agreement
- Propose therefore to the Plenary to approve the proposed amendments and postpone the vote on the legislative resolution to the second Plenary session in October
- Indicated four points as the main disagreements with Council:
  - The regional clause
  - The duty drawback clause
  - The role of the Parliament in initiating an investigation
  - The issue of comitology

On behalf of the European Commission, Commissioner for Trade Karel DE GUCHT:

- Mentioned the fact that this regulation will be the first one adopted by the ordinary legislative procedure in the field of trade
- Expressed his satisfaction by the fact that the first trilogue delivered substantial progress
- Mentioned the need to take into account in the regulation all aspects of the Free Trade Agreement, such as sustainable development factors and non-tariff barriers

On behalf of the EPP group, Mr Daniel CASPARY (EPP - DE):

- Stressed that it is now for the Council to move on the file
- Underlined that the EP should have the right to initiate proceedings
- Expressed his concerns about the Co2 Regulation to be adopted by the Korean Government

On behalf of the S&D group, Mr Bernd LANGE (S&D - DE):

- Stated that this regulation constitutes a blueprint for future legislation in the field
- Stressed the important of six different points for the EP
  - The duty-drawback clause
  - The regional clause
  - The interinstitutional balance and the role of the EP, with rights equal to those of the Council

- The issue of implementation, where the EP should have full rights in comitology measures
- The issue of monitoring, including non-tariff barriers
- The involvement of civil society, including implementation of ILO standards and environmental standards
- Underlined that provisional application of the FTA should not take place until there is an agreement on the safeguard regulation.

On behalf of the ALDE group, Mr Michael THEURER (ALDE - DE):

- Stressed the support of his group for the FTA
- Expressed his concern about non-tariff barriers such as Co2 requirements
- Underlined the importance of three points for his group
  - The issue of Comitology
  - The issue of the role of the EP, which should be a strong one
  - The issue of the role of the industry
- Warned the Council against any provisional application before reaching agreement with the Parliament

On behalf of the GUE/NGL group, Mr Helmut SCHOLZ (GUE/NGL - DE):

- Stated that the issue of the role of the EP was essential
- Expressed that other issues were also important, such as:
  - Legal certainty, including environmental and social protection issues
  - The regional clause
  - The right of the EP to initiate proceedings
  - The role of civil society, including trade unions

On behalf of the EFD group, Ms Anna ROSBACH (EFD - DK):

- Expressed her satisfaction about the agreement, that should in her view be adopted before Korea adopts a similar agreement with the USA
- Stated that account should be taken of social standards

On behalf of the European Commission, Commissioner for Trade Karel DE GUCHT took again the floor to answer to the previous interventions and:

- Stressed that the issue of the Korean Co2 emissions regulation was being very closely followed by the Commission and would be taken into account for the final agreement
- Stated that agreement in interinstitutional negotiations on the duty-drawback clause was very near
- Clearly expressed his reluctance to accept regional clauses and the right of Parliament to initiate proceedings
- Called on the EP to dialogue directly with Council as regards provisional application

To close the debate, the rapporteur, Mr Pablo ZALBA BIDEGAÍN (EPP - ES), took again the floor and:

- Stressed that the Parliament will do its utmost to reach an agreement in first reading
- Called on Council and Commission to make new proposals for the pending issues

### III. VOTE

On Tuesday 7 September 2010, the Parliament voted 54 amendments (amendments 1-54) to the Commission's proposal, but did not proceed to the vote on the draft legislative resolution.

Therefore, the Parliament did not conclude its first reading and the matter was referred back to the Committee on International Trade pursuant to subparagraph 2 of Rule 55(2) of the Parliament's Rules of Procedure<sup>1</sup>.

The text of the amendment adopted and the European Parliament's legislative resolution are set out in the Annex hereto. The amendment is presented in the form of a consolidated text where added wordings are highlighted in ***bold and italics***, the symbol "■" indicates deleted text and the symbol "||" indicates changes of a linguistic or clerical nature.

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<sup>1</sup> Subparagraph 2 of Rule 55(2) reads: "The first reading is concluded if the draft legislative resolution is adopted. If Parliament does not adopt the legislative resolution, the proposal shall be referred back to the committee responsible."

## **Bilateral safeguard clause in the EU-Korea free trade agreement \*\*\*I**

**Proposal for a regulation of the European Parliament and of the Council implementing the bilateral safeguard clause of the EU-Korea Free Trade Agreement (COM(2010)0049 – C7-0025/2010 – 2010/0032(COD))**

**(Ordinary legislative procedure: first reading)**

The proposal was amended on 7 September 2010 as follows<sup>1</sup>:

### **Amendment 1**

**Proposal for a regulation**  
**Recital 3 a (new)**

*Text proposed by the Commission*

*Amendment*

***(3a) Trade barriers in the home market of a trading partner tend to support exports from that market abroad and if it is to the EU they might thereby generate conditions for the application of the safeguard clause.***

### **Amendment 2**

**Proposal for a regulation**  
**Recital 5**

*Text proposed by the Commission*

*Amendment*

(5) Safeguard measures may be considered only if the product in question is imported into the Union in such increased quantities and under such conditions as to cause, or threaten to cause, serious injury to the Unions producers of like or directly competing products as laid down in Article 3.1. Chapter 3 of the Agreement;

(5) Safeguard measures may be considered only if the product in question is imported into the Union in such increased quantities ***or the economic activity in question is increased in such a measure***, and under such conditions as to cause, or threaten to cause, serious injury to the Unions producers of like or directly competing products ***or economic activities*** as laid down in Article 3.1. Chapter 3 of the

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<sup>1</sup> The matter was then referred back to committee pursuant to Rule 57(2), second subparagraph (A7-0210/2010).

### **Amendment 3**

#### **Proposal for a regulation Recital 5 a (new)**

*Text proposed by the Commission*

*Amendment*

***(5a) Serious injury or the threat of serious injury to Union producers may also be caused by the non-fulfilment of specific obligations under Chapter 13 of the Agreement – particularly in respect of the social and environmental standards laid down therein – thus necessitating the imposition of safeguard measures.***

### **Amendment 4**

#### **Proposal for a regulation Recital 5 b (new)**

*Text proposed by the Commission*

*Amendment*

***(5b) Whether there is serious injury or the threat of serious injury to producers or specific sectors of the economy in the Union also depends on whether the Agreement's rules on non-tariff barriers to trade are observed. This consideration could necessitate the imposition of safeguard measures.***

### **Amendment 5**

#### **Proposal for a regulation Recital 6 a (new)**

*Text proposed by the Commission*

*Amendment*

***(6a) The tasks of following up and reviewing the Agreement and, if necessary, imposing safeguard measures should be carried out in the most transparent manner possible and with the involvement of civil society. To that end, the Domestic Advisory Group and the Civil Society Forum need to be included***

*at every stage of the process.*

## **Amendment 6**

### **Proposal for a regulation Recital 6 b (new)**

*Text proposed by the Commission*

*Amendment*

*(6b) The Commission should submit a report once a year on the application and implementation of the Agreement and the application of the safeguard measures. Should it become apparent that the safeguard measures are insufficient, the Commission should submit a comprehensive proposal for more far-reaching safeguard measures, such as limits on quantities, quotas, import authorisation arrangements or other corrective measures.*

## **Amendment 7**

### **Proposal for a regulation Recital 7 a (new)**

*Text proposed by the Commission*

*Amendment*

*(7a) The reliability of statistics on all imports from Republic of Korea to the EU is therefore crucial to determine the existence of a threat of serious injury to Union industry as a whole or its different sectors from the day of entry into force of the Agreement.*

## **Amendment 8**

### **Proposal for a regulation Recital 13 a (new)**

*Text proposed by the Commission*

*Amendment*

*(13a) Close monitoring and regular assessments will facilitate and shorten the initiation of proceedings and the investigation phase. Therefore the Commission should regularly monitor*

*import and export statistics and assess the impact of the Agreement on different sectors from the day of its entry into force.*

## **Amendment 9**

### **Proposal for a regulation**

#### **Recital 13 b (new)**

*Text proposed by the Commission*

*Amendment*

*(13b) The Commission, the Member States and the Union producers should monitor and evaluate, on an ongoing basis, the import and export statistics on sensitive product lines covered by the Agreement from the day that it comes into force, so that any serious injury or threat of serious injury to Union producers can be identified in good time.*

## **Amendment 10**

### **Proposal for a regulation**

#### **Recital 13 c (new)**

*Text proposed by the Commission*

*Amendment*

*(13c) It is necessary to lay down certain procedures relating to the application of Article 14 (Drawback of, or exemption from, customs duties) of the Protocol concerning the definition of 'originating products' and methods of administrative co-operation of the Agreement (hereinafter the "Rules of Origin Protocol") in order to ensure the effective operation of the mechanisms provided for therein and to provide for a comprehensive exchange of information with relevant stakeholders.*

## **Amendment 11**



**Proposal for a regulation**  
**Recitals 13 d and e (new)**

*Text proposed by the Commission*

*Amendment*

*(13d) Because it will not be possible to limit customs duty drawback until five years after the Agreement comes into force, it may be necessary, on the basis of this Regulation, to impose safeguard measures in response to a serious injury or threat of serious injury to Union producers that is caused by duty drawback or exemption from duty. Therefore, from the day of the Agreement's entry into force, the Commission should monitor particularly closely, in particular in sensitive sectors, the rate of inclusion in products imported from the Republic of Korea of components or materials from third countries, any changes in that rate and the impact of such changes on the market situation.*

*(13e) Therefore the Commission should monitor Korean and third party statistics and list the range of products potentially affected by duty drawback from the day of entry into force of the Agreement.*

**Amendment 12**

**Proposal for a regulation**  
**Recital 13 f (new)**

*Text proposed by the Commission*

*Amendment*

*(13f) If a Commission's investigation concludes that damage occurred in the Union's industry as a result of the Agreement, then only for the purposes of the Regulation (EC) No 1927/2006 of the European Parliament and of the Council of 20 December 2006 on establishing the European Globalisation Adjustment Fund<sup>1</sup> ("EGAF Regulation"), it shall be understood that:*

*(a) "major structural changes in world trade patterns due to globalisation", as used in Article 1(1) of the EGAF*

*Regulation shall include an increase in Korean imports to Europe, or failure to increase EU exports to Korea;*

*(b) redundancies in the automotive industry:*

*– have "significant adverse impact on the regional or local economy," and "serious impact on employment and the local economy", as used in, respectively, Articles 1(1) and 2(c) of the EGAF Regulation; and*

*– are "exceptional circumstances" as used in Article 2(c) of the EGAF Regulation.*

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<sup>1</sup> OJ L 406, 30.12.2006, p.1.

## **Amendment 13**

### **Proposal for a regulation Recital 13 g (new)**

*Text proposed by the Commission*

*Amendment*

*(13g) In order to prevent serious injury or the threat of serious injury to producers or sectors of the economy in the Union, the Commission should closely monitor production capacities in those third countries in which components or materials which are included in products covered by the Agreement are manufactured, as well as the observance in those countries of ILO and UN standards in relation to social and working conditions and environmental standards.*

## **Amendment 14**

### **Proposal for a regulation Recitals 13 h-j (new)**

*Text proposed by the Commission*

*Amendment*

*(13h) Article 11.1.2 of Chapter Eleven of the Agreement establishes a requirement*

*that the Parties maintain in their respective territories comprehensive competition laws which effectively address restrictive agreements, concerted practices and abuse of dominance by one or more enterprises.*

*(13i) Article 11.6.2 of Chapter Eleven establishes an obligation on the Parties to co-operate in relation to their respective enforcement policies and in the enforcement of their respective competition laws, including through enforcement cooperation, notification, consultation and exchange of non-confidential information based on the Agreement between the European Community and the Government of the Republic of Korea concerning cooperation on anti-competitive activities signed on 23 May 2009 (the "Cooperation Agreement").*

*(13j) The purpose of the Cooperation Agreement is to contribute to the effective enforcement of the competition laws of each Party through promoting cooperation and coordination between the competition authorities of the Parties.*

## **Amendment 15**

### **Proposal for a regulation**

#### **Recital 14**

*Text proposed by the Commission*

*(14) The measures necessary for the implementation of this Regulation should be adopted in accordance with Council decision 1999/468/EC of 28 June 1999 laying down the procedures for the exercise of implementing powers conferred on the Commission.*

*Amendment*

*(14) The implementation of the bilateral safeguard clause of the Agreement requires that uniform conditions for the adoption of provisional and definitive safeguard measures, for the imposition of surveillance measures, and for the termination of an investigation and a proceeding without measures, should be adopted by the Commission. According to Article 291 of the Treaty on the Functioning of the European Union, rules and general principles concerning mechanisms for the control by Member States of the Commission's exercise of*

*implementing powers shall be laid down in advance by a regulation adopted in accordance with the ordinary legislative procedure. Pending the adoption of that new regulation, Council Decision 1999/468/EC of 28 June 1999 laying down the procedures for the exercise of implementing powers conferred on the Commission continues to apply, with the exception of the regulatory procedure with scrutiny, which is not applicable,*

## Amendment 16

### Proposal for a regulation Recital 14 a (new)

*Text proposed by the Commission*

*Amendment*

*(14a) This regulation should extend only to goods produced in the European Union and in the Republic of Korea. It should not cover products, parts or components the production of which is contracted out to manufacturing zones such as Kaesong. Before the scope of this Regulation can be extended to include products contracted out to external manufacturing zones, it should be amended in accordance with the ordinary legislative procedure. In any extension of the regulation's scope, it should be ensured that obligations under Chapter 13 of the Agreement are also met in external manufacturing zones.*

## Amendment 17

### Proposal for a regulation Article 1 – point a

*Text proposed by the Commission*

*Amendment*

(a) "Union industry" means the Union producers as a whole of the like or directly competitive products operating within the territory of the Union, or those Union producers whose collective output of the like or directly competitive products constitutes a major proportion of the total

(a) "Union industry" means the Union producers as a whole of the like or directly competitive products operating within the territory of the Union, or those Union producers whose collective output of the like or directly competitive products constitutes a major proportion of the total Union production of those products. **In**

Union production of those products;

*cases where the like or directly competitive product is only one of several products that are made by the producers who constitute the Union industry, the industry shall be defined as the specific operations that are involved in the production of the like or directly competitive product;*

## Amendment 18

### Proposal for a regulation

#### Article 1 – point c

*Text proposed by the Commission*

(c) "threat of serious injury" means serious injury that is clearly imminent; a determination of the existence of a threat of serious injury shall be based on facts and not merely on allegation, conjecture or remote possibility;

*Amendment*

(c) "threat of serious injury" means serious injury that is clearly imminent; a determination of the existence of a threat of serious injury shall be based on **verifiable** facts and not merely on allegation, conjecture or remote possibility; **forecasts, estimations and analyses made on the basis of factors laid down in Article 4(5), should inter alia, be taken into account to determine the existence of a threat of serious injury;**

## Amendment 19

### Proposal for a regulation

#### Article 1 – point e a (new)

*Text proposed by the Commission*

*Amendment*

**(ea) "interested parties" means parties affected by the imports of the product in question;**

## Amendment 20

### Proposal for a regulation

#### Article 1 - point e b (new)

*Text proposed by the Commission*

*Amendment*

**(eb) "products" means goods produced in the European Union and the Republic of Korea. It does not include goods or**

*components the production of which is contracted out to external manufacturing zones. Before the regulation's scope can be extended to include products contracted out to external manufacturing zones, it shall be amended in accordance with the ordinary legislative procedure;*

## Amendment 21

### Proposal for a regulation

#### Article 1 - point e c (new)

*Text proposed by the Commission*

*Amendment*

*(ec) "such conditions as to cause or threaten to cause" includes such factors as the production capacity, utilisation rates, currency practices and labour conditions of a third country with regard to the manufacturing of components and materials incorporated into the product concerned;*

## Amendment 22

### Proposal for a regulation

#### Article 1 - point e d (new)

*Text proposed by the Commission*

*Amendment*

*(ed) "region(s)" means one or more Member States in the Union.*

## Amendment 23

### Proposal for a regulation

#### Article 2 - paragraph 1

*Text proposed by the Commission*

*Amendment*

1. A safeguard measure may be imposed in accordance with the provisions set out in this Regulation where a product originating in Korea is, as a result of the reduction or the elimination of the customs duties on that product, being imported in the Union in such increased quantities, in absolute terms or relative to domestic production, and under such conditions as to cause or

1. A safeguard measure may be imposed in accordance with the provisions set out in this Regulation where a product **or an economic activity** originating in Korea is, as a result of the reduction or the elimination of the customs duties on that product **or activity** being imported in the Union in such increased quantities, in absolute terms or relative to domestic

threaten to cause serious injury to the Union industry producing a like or directly competitive product.

production, and under such conditions as to cause or threaten to cause serious injury to the Union industry producing a like or directly competitive product *or activity*.

## **Amendment 24**

### **Proposal for a regulation**

#### **Article 2 – paragraph 1 a (new)**

*Text proposed by the Commission*

*Amendment*

*1a. Where it emerges, primarily on the basis of the factors referred to in Article 4(5), that the conditions laid down for the adoption of measures pursuant to Article 2(1) are met in one or more regions of the Union, the Commission, after having examined alternative solutions, may exceptionally authorise the application of surveillance or safeguard measures limited to the region(s) concerned if it considers that such measures applied at that level are more appropriate than measures applied throughout the Union. These measures must be temporary and must disrupt the operation of the internal market as little as possible. They shall be adopted in accordance with the provisions laid down in Article 2(2).*

## **Amendment 25**

### **Proposal for a regulation**

#### **Article 2 - paragraphs 2 a and b (new)**

*Text proposed by the Commission*

*Amendment*

*2a. For safeguard measures to be used effectively, the Commission (Eurostat) shall present an annual monitoring report to the European Parliament and the Council on updated statistics on imports*

*from Korea impacting sensitive sectors in the EU as a result of the Agreement.*

*2b. In case of a proven threat of injury reported to the Commission by the Union industry, the Commission may consider broadening the scope of the monitoring for other impacted sectors (interested parties).*

## Amendment 26

### Proposal for a regulation

#### Article 2 a (new)

*Text proposed by the Commission*

*Amendment*

#### *Article 2a*

#### *Monitoring*

*The Commission shall monitor the evolution of import and export statistics of Korean products, and shall cooperate and exchange data on a regular basis with Member States and the Union industry. The Commission shall ensure that Member States provide adequate and good quality statistical data diligently.*

*The Commission shall closely monitor Korean and third party statistics and forecasts for the range of products potentially affected by duty drawback from the day of entry into force of the Agreement.*

## Amendment 27

### Proposal for a regulation

#### Article 3 – paragraph 1

*Text proposed by the Commission*

*Amendment*

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

1. An investigation shall be initiated upon request by a Member State, ***the European Parliament, the Domestic Advisory Group, by any legal person or any association not having legal personality,***



initiation.

***acting on behalf of the Union industry and representing at least 25% of it*** 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 laid down in Article 4(5)***, to justify such initiation.

## Amendment 28

### Proposal for a regulation

#### Article 3 – paragraph 1 a (new)

*Text proposed by the Commission*

*Amendment*

***1a. The request to initiate an investigation shall contain evidence of the meeting of the conditions for imposing the safeguard measure within the meaning of Article 2(1). The request shall generally contain the following information: the rate and amount of the increase in imports of the product concerned in absolute and relative terms, the share of the domestic market taken by increased imports, changes in the level of sales, production, productivity, capacity utilisation, profits and losses and employment.***

## Amendment 29

### Proposal for a regulation

#### Article 3 – paragraph 1 b (new)

*Text proposed by the Commission*

*Amendment*

***1b. In applying paragraph 1 , and for a period of five years after the Agreement's entry into force, the Commission shall pay particular attention to finished products from the Republic of Korea being imported into the European Union at an increased rate where such an increase is attributable to increased use in the finished products of parts or components imported into the Republic of Korea from third countries which have not concluded a free trade agreement with the European Union and which are covered by the***

## Amendment 30

### Proposal for a regulation Article 3 – paragraph 2

#### *Text proposed by the Commission*

2. The Member States shall inform the Commission should trends in imports from the Republic of Korea appear to call for safeguard measures. That information shall include the evidence available as determined on the basis of factors laid down in Article 4. The Commission shall **pass** that information on to all Member States **within three working days**.

#### *Amendment*

2. The Member States, **or the Union industry** shall inform the Commission should trends in imports from the Republic of Korea appear to call for safeguard measures. That information shall include the evidence available as determined on the basis of factors laid down in Article 4(5). The Commission shall, **within three working days, upload** that information on **to the online-platform referred to in Article 9 (the Online-Platform), and shall send an upload notification** to all Member States, **the Union industry, and the European Parliament**.

## Amendment 31

### Proposal for a regulation Article 3 - paragraph 3

#### *Text proposed by the Commission*

3. Consultation with the Member States shall take place within eight working days of the Commission's sending the information **to Member States** as provided for in paragraph 2 within the Committee referred to in Article 10 on the basis of the procedure referred to in *Article 11.1*. Where, after consultation, 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 **receipt of information from** a Member State.

#### *Amendment*

3. Consultation with the Member States shall take place within eight working days of the Commission's sending the information as provided for in paragraph 2 within the Committee referred to in Article 10 on the basis of the procedure referred to in *Article 11(1)*. Where, after consultation, it is apparent that there is sufficient evidence **determined on the basis of factors laid down in Article 4(5)** to justify the initiation of a proceeding the Commission shall publish a notice in the **Online-Platform and in the Official Journal of the European Union**. Initiation shall take place within one month of the **request** by a Member State, **the European Parliament, or by the Union industry**.

## Amendment 32

### Proposal for a regulation Article 3 - paragraph 4 a (new)

*Text proposed by the Commission*

*Amendment*

***4a. Evidence collected for the purpose of initiating proceedings in accordance with Article 14(2) of the Rules of Origin Protocol annexed to the Agreement (Drawback of, or exemption from, customs duties) may also be used for investigations with a view to the imposition of safeguard measures where the conditions stipulated in this article are met.***

## Amendment 33

### Proposal for a regulation Article 4 – paragraph 1

*Text proposed by the Commission*

*Amendment*

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

1. Following the initiation of the proceeding, the Commission shall commence an investigation. ***The investigation period as set in Article 4(3) shall start on the day the decision to initiate the investigation is published in the Official Journal.***

## Amendment 34

### Proposal for a regulation Article 4 – paragraph 2

*Text proposed by the Commission*

*Amendment*

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

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 European Parliament or the Union industry***, the Commission shall ***upload the***

confidential. If the information is confidential the Commission shall **forward** a non-confidential summary.

**information onto the Online-Platform** provided it is not confidential. If the information is confidential the Commission shall **upload** a non-confidential summary.

## Amendment 35

### Proposal for a regulation Article 4 – paragraph 3

#### *Text proposed by the Commission*

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

#### *Amendment*

3. The investigation shall be concluded within ***200 days*** of the initiation of the investigation.

## Amendment 36

### Proposal for a regulation Article 4 – paragraph 5

#### *Text proposed by the Commission*

5. In the investigation the Commission shall evaluate all relevant factors of an objective and quantifiable nature having a bearing on the situation of the Union industry, in particular, the rate and amount of the increase in imports of the product concerned in absolute and relative terms, the share of the domestic market taken by increased imports, changes in the level of sales, production, productivity, capacity utilisation, profits and losses, and employment.

#### *Amendment*

5. In the investigation the Commission shall evaluate all relevant factors of an objective and quantifiable nature having a bearing on the situation of the Union industry, in particular, the rate and amount of the increase in imports of the product concerned in absolute and relative terms, the share of the domestic market taken by increased imports, changes in the level of sales, production, productivity, capacity utilisation, profits and losses, and employment. ***This list is not exhaustive and other relevant factors may also be taken into consideration by the Commission for its injury determination, 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. In the event that third-country content commonly accounts for a significant amount of the manufacturing cost of the product concerned, the***

*Commission should also evaluate, as bearing on the situation of the Union industry, the production capacity, utilisation rates, currency practices and labour conditions of the third countries concerned.*

#### **Amendment 37**

##### **Proposal for a regulation Article 4 – paragraph 5 a (new)**

*Text proposed by the Commission*

*Amendment*

*5a. Moreover, in the investigation, the Commission shall evaluate, the observance by the Republic of Korea of the social and environmental standards laid down in Chapter 13 of the Agreement and any consequent effects on price building or unfair competitive advantages potentially leading to serious injury or the threat of serious injury to producers or specific sectors of the economy in the European Union.*

#### **Amendment 38**

##### **Proposal for a regulation Article 4 – paragraph 5 b (new)**

*Text proposed by the Commission*

*Amendment*

*5b. In the investigation, the Commission shall also evaluate observance of the Agreement's rules on non-tariff barriers to trade and any serious injury to producers or individual sectors of the economy in the European Union that may result therefrom.*

#### **Amendment 39**

##### **Proposal for a regulation Article 4 – paragraph 6**

*Text proposed by the Commission*

*Amendment*

6. Interested parties which have come

6. Interested parties which have come

forward pursuant to Article 3 (4) (b) and representatives of the Republic of Korea may, upon written request, inspect all information made available to the Commission in connection with the investigation other than internal documents prepared by the authorities of the Union or its Member States, provided that that information is relevant to the presentation of their case and not confidential within the meaning of Article 9 and that it is used by the Commission in the investigation. Interested parties which have come forward may communicate their views on the information in question to the Commission. Those views *may* be taken into consideration where they are backed by sufficient evidence.

forward pursuant to Article 3 (4) (b) and representatives of the Republic of Korea may, upon written request, inspect all information made available to the Commission in connection with the investigation other than internal documents prepared by the authorities of the Union or its Member States, provided that that information is relevant to the presentation of their case and not confidential within the meaning of Article 9 and that it is used by the Commission in the investigation. Interested parties which have come forward may communicate their views on the information in question to the Commission. Those views *shall* be taken into consideration where they are backed by sufficient evidence.

#### Amendment 40

##### Proposal for a regulation Article 4 – paragraph 7

###### *Text proposed by the Commission*

7. The Commission *may* hear *the* interested parties. Such parties shall be heard 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.

###### *Amendment*

7. The Commission *shall* hear interested parties. Such parties shall be heard 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 reasons for them to be heard orally.

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

#### Amendment 41

##### Proposal for a regulation Article 4 a (new)

###### *Text proposed by the Commission*

###### *Amendment*

###### *Article 4a*

### *Surveillance measures*

- 1. Where the trend in imports of a product originating in the Republic of Korea is such that they could lead to one of the situations referred to in Article 2, imports of that product may be subject to prior European Union surveillance.*
- 2. The decision to impose surveillance shall be taken by the Commission on the basis of the procedure referred to in Article 11(1).*
- 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 regions of the Union where necessary.*

## **Amendment 42**

### **Proposal for a regulation Article 5 – paragraph 1**

#### *Text proposed by the Commission*

1. 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 there is **clear** evidence that imports of an originating good from the Republic of Korea have increased as the result of the reduction or elimination of a customs duty under the Agreement, and such imports cause serious injury, or threat thereof, to the domestic industry. Provisional measures shall be taken on the basis of the procedure referred to in *Article 11.1*.

#### *Amendment*

1. 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 **on the basis of the factors laid down in Article 4(5)** that there is **sufficient** evidence that imports of an originating good from the Republic of Korea have increased as the result of the reduction or elimination of a customs duty under the Agreement, and such imports cause serious injury, or threat thereof, to the domestic industry. Provisional measures shall be taken on the basis of the procedure referred to in *Article 11(1)*.

## Amendment 43

### Proposal for a regulation

#### Article 5 – paragraph 2

##### *Text proposed by the Commission*

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

##### *Amendment*

2. Where a Member State, ***the European Parliament, or the Union industry*** requests immediate intervention by the Commission and where the conditions in paragraph 1 are met, the Commission shall take a decision within five working days of receiving the request. ***The investigation period as set in Article 4(3) shall start on the day the decision to apply provisional safeguard measures is taken.***

## Amendment 44

### Proposal for a regulation

#### Article 5 – paragraph 4 a (new)

##### *Text proposed by the Commission*

##### *Amendment*

***4a. The measures referred to in this Article shall apply to every product which is put into free circulation after their entry into force. However, such measures shall not prevent the release for free circulation of products already on their way to the Union provided that the destination of such products cannot be changed.***

## Amendment 45

### Proposal for a regulation

#### Article 6

##### *Text proposed by the Commission*

##### *Amendment*

Where bilateral safeguard measures ***are deemed unnecessary*** the investigation and proceeding shall be terminated on the basis of the procedure referred to in ***Article 11.2.***

***1.*** Where bilateral safeguard measures ***do not meet the requirements of this Regulation,*** the investigation and proceeding shall be terminated on the basis of the procedure referred to in ***Article 11(1).***



***2. Without prejudice to paragraph 1, if the European Parliament expresses an objection to the draft decision not to impose bilateral safeguard measures, on the grounds that this decision would negate the intention of the legislator, the Commission shall re-examine the draft decision. Taking the reasons for the objection into account and within the time-limits of the procedure underway, the Commission may submit a new draft decision to the committee or submit a proposal to the European Parliament and the Council in accordance with the Treaty. The Commission shall inform the European Parliament, the Council and the committee of the action which it intends to take and of its reasons for doing so.***

***3. The Commission shall publish a report setting forth its findings and reasoned conclusions reached on all pertinent issues of fact and law with due regard to the protection of confidential information within the meaning of Article 9.***

#### **Amendment 46**

##### **Proposal for a regulation Article 7**

###### *Text proposed by the Commission*

Where the facts as finally established show that the circumstances set out in Article 2.1 are met, a decision to impose definitive bilateral safeguard measures shall be taken in accordance with the procedure referred to in **Article 11.2**.

###### *Amendment*

Where the facts as finally established show that the circumstances set out in Article 2.1 are met, a decision to impose definitive bilateral safeguard measures shall be taken in accordance with the procedure referred to in **Article 11(1)**.

***The Commission shall make public, with due regard to the protection of confidential information within the meaning of Article 9, a report with a summary of the material facts and considerations relevant to the determination.***

## Amendment 47

### Proposal for a regulation

#### Article 8 – paragraph 1 a (new)

*Text proposed by the Commission*

*Amendment*

***1a. A safeguard measure shall remain in force, pending the outcome of the review, during any extension period.***

## Amendment 48

### Proposal for a regulation

#### Article 9 – paragraph 1 a (new)

*Text proposed by the Commission*

*Amendment*

***1a. The Commission shall ensure that all data and statistics which are required for the investigation are available, comprehensible, transparent and verifiable. The Commission shall undertake, as soon as the necessary technical framework is in place, to set up a password-protected online portal, which it shall manage and through which all relevant, non-confidential information within the meaning of this Article shall be disseminated. Member States, registered Union industry, the Domestic Advisory Group, and the European Parliament must be granted access to this Online-Platform on request. The information includes statistical information relevant for determining if evidence fulfils the requirements as stated in Article 2(1), as well as all further information relevant in connection with an investigation.***

***Information received through this Online-Platform shall be used only for the purpose for which it was requested. Any information of a confidential nature or any information provided on a confidential basis received pursuant to this Regulation shall not be disclosed without specific permission from the supplier of such information.***

## Amendment 49

### Proposal for a regulation Article 10

#### *Text proposed by the Commission*

The Commission shall be assisted by the Committee provided for in Article 4(1) of Council Regulation (EC) No 260/2009 on the common rules for imports. ***Article 4 of Council Regulation (EC) No 260/2009 shall apply mutatis mutandis.***

#### *Amendment*

The Commission shall be assisted by the Committee provided for in Article 4(1) of Council Regulation (EC) No 260/2009 on the common rules for imports.

## Amendment 50

### Proposal for a regulation Article 10 a (new)

#### *Text proposed by the Commission*

#### *Amendment*

#### ***Article 10a***

#### ***Report***

- 1. The Commission shall make public an annual report on the application and implementation of the Agreement. The report shall include information about the activities of the various bodies responsible for monitoring the implementation of the Agreement and fulfilment of the obligations arising therefrom, including obligations concerning barriers to trade.***
- 2. Special sections of the report shall deal with the fulfilment of obligations under Chapter 13 of the Agreement and with the activities of the Domestic Advisory Group and the Civil Society Forum.***
- 3. The report shall also present a summary of the statistics and the evolution of trade with Korea. Specific mention shall be made of the results of the monitoring of duty drawback.***
- 4. The European Parliament or the Council may, within one month, invite the Commission to an ad hoc meeting of the competent committee of Parliament or of the Council to present and explain any issues related to implementation of the***

*Agreement.*

**Amendment 51**

**Proposal for a regulation  
Article 11 – paragraph 2**

*Text proposed by the Commission*

*Amendment*

**2. When reference is made to this paragraph, Articles 4 and 7 of Decision 1999/468/EC shall apply.**

**deleted**

**Amendment 52**

**Proposal for a regulation  
Article 11 – paragraph 3**

*Text proposed by the Commission*

*Amendment*

**3. The period laid down in Article 5(6) of Decision 1999/468/EC shall be set at one month.**

**deleted**

**Amendment 53**

**Proposal for a regulation  
Article 11 a (new)**

*Text proposed by the Commission*

*Amendment*

**Article 11a**

**Reporting**

**1. The Commission shall make public an annual report on the application and functioning of the safeguard clause. The report shall include a summary of the requests to initiate proceedings, investigations and its results, termination of investigations and proceedings without measures, imposition of provisional safeguard measures or definitive measures, and the justification for each**

*decision on these issues accompanied by a summary of the relevant information and facts.*

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

*3. The European Parliament or the Council may convene the Commission within one month for an ad hoc meeting of the competent committee of the European Parliament or of the Council to present and explain any issue related to the application of the safeguard clause, the duty drawback, or the Agreement in general.*

#### **Amendment 54**

#### **Proposal for a regulation Article 11 b (new)**

*Text proposed by the Commission*

*Amendment*

#### **Article 11b**

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

***1. For the purpose of applying Article 14 (Drawback of, or exemption from, customs duties) of the Rules of Origin Protocol, the Commission shall monitor closely the evolution of relevant import and export statistics both in value and as appropriate in quantities and regularly share these data with, and report its***

*findings, to the European Parliament, the Council and the Union industries concerned. Monitoring shall start from the time of provisional application and data shall be shared on a bimonthly basis.*

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

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

*3. A difference of 10 percentage points shall be considered as "significant" for the purposes of application of paragraph 2.1(a) of Article 14 of the Rules of Origin Protocol when assessing the increased rate of imports of parts or components to/into Korea as compared with the increased rate of exports from Korea to the EU of finished products. An increase of 10% shall be considered as "significant" for the purposes of application of paragraph 2.1(b) of Article 14 of the Rules of Origin Protocol when assessing the increase of exports from Korea to the EU of finished products in absolute terms, or relative to domestic*

*production. Increases below these thresholds may also be considered as "significant" on a case-by-case basis.*