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**PROPOSAL**

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From: Secretary-General of the European Commission,  
signed by Mr Jordi AYET PUIGARNAU, Director

date of receipt: 10 June 2015

To: Mr Uwe CORSEPIUS, Secretary-General of the Council of the European Union

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No. Cion doc.: COM(2015) 282 final

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Subject: Proposal for a REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL 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 (recast)

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Delegations will find attached document COM(2015) 282 final.

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Encl.: COM(2015) 282 final



EUROPEAN  
COMMISSION

Brussels, 10.6.2015  
COM(2015) 282 final

2015/0128 (COD)

Proposal for a

**REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL**

**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 (recast)**

**EN**

**EN**

## **EXPLANATORY MEMORANDUM**

1. In the context of a people's Europe, the Commission attaches great importance to simplifying and clarifying the law of the Union so as to make it clearer and more accessible to citizens, thus giving them new opportunities and the chance to make use of the specific rights it gives them.

This aim cannot be achieved so long as numerous provisions that have been amended several times, often quite substantially, remain scattered, so that they must be sought partly in the original instrument and partly in later amending ones. Considerable research work, comparing many different instruments, is thus needed to identify the current rules.

For this reason a codification of rules that have frequently been amended is also essential if the law is to be clear and transparent.

2. On 1 April 1987 the Commission decided<sup>1</sup> to instruct its staff that all acts should be codified after no more than ten amendments, stressing that this is a minimum requirement and that departments should endeavour to codify at even shorter intervals the texts for which they are responsible, to ensure that their provisions are clear and readily understandable.
3. The Conclusions of the Presidency of the Edinburgh European Council (December 1992) confirmed this<sup>2</sup>, stressing the importance of codification as it offers certainty as to the law applicable to a given matter at a given time.

Codification must be undertaken in full compliance with the normal procedure for the adoption of acts of the Union.

4. The purpose of this proposal is to undertake a codification of 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<sup>3</sup>. The new Regulation will supersede the various acts incorporated in it<sup>4</sup>, fully preserving the content of the acts being codified. At the same time, it is also necessary to make certain substantive amendments to Article 3(4) and to Article 22 of that Regulation. Therefore, the proposal is being presented in the form of a recast.
5. The recast proposal was drawn up on the basis of a preliminary consolidation, in 23 official languages, of Regulation (EC) No 1528/2007 and the instruments amending it, carried out by the Publications Office of the European Union, by means of a data-processing system. Where the Articles have been given new numbers, the correlation between the old and the new numbers is shown in a table set out in Annex IV to the recast Regulation.

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<sup>1</sup> COM(87) 868 PV.

<sup>2</sup> See Annex 3 to Part A of the Conclusions.

<sup>3</sup> Entered in the legislative programme for 2015.

<sup>4</sup> See Annex III to this proposal.

Proposal for a

## REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL

**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 (recast)**

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

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

Having regard to the proposal from the European Commission,

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

Having regard to the opinion of the European Economic and Social Committee<sup>5</sup>,

Acting in accordance with the ordinary legislative procedure,

Whereas:

~~new~~

(1) Council Regulation (EC) No 1528/2007<sup>6</sup> has been substantially amended several times<sup>7</sup>. Since further amendments are to be made, that Regulation should be recast in the interests of clarity.

1528/2007 recital 1 (adapted)

(2) ~~According to~~ According to ~~the~~ the Partnership Agreement between the members of the African, Caribbean and Pacific Group of States, of the one part, and the European Community and its Member States, of the other part, signed in Cotonou on 23 June 2000<sup>8</sup> ~~as~~ as amended by the Agreement of 22 December 2005<sup>9</sup> ~~as~~ ('ACP-EC Partnership

<sup>5</sup> OJ C [...], [...], p. [...].

<sup>6</sup> 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 (OJ L 348, 31.12.2007, p. 1).

<sup>7</sup> See Annex III.

<sup>8</sup> OJ L 317, 15.12.2000, p. 3.

<sup>9</sup> OJ L 209, 11.8.2005, p. 27.

Agreement'), Economic Partnership Agreements (EPAs) ~~☒~~ were ~~☒~~ to enter into force no later than 1 January 2008.

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▼ 1528/2007 recital 3 (adapted)

(3) Since 2002 the ~~☒~~ Union ~~☒~~ has been negotiating Economic Partnership Agreements with the ~~☒~~ African, Caribbean and Pacific ~~☒~~ (ACP) Group of States in the form of ~~☒~~ seven ~~☒~~ regions comprising the Caribbean, Central Africa, Eastern and Southern Africa, ~~☒~~ the East African Community, ~~☒~~ the Pacific Island States, the South African Development Community and West Africa. Such Economic Partnership Agreements ~~☒~~ have to ~~☒~~ be consistent with WTO obligations, support regional integration and promote the gradual integration of the ACP economies into the rules-based world trading system, thereby fostering their sustainable development and contributing to the overall effort to eradicate poverty and to enhance living conditions in the ACP countries. In a first stage, negotiations may be concluded on agreements leading to the establishment of Economic Partnership Agreements covering at least WTO compatible goods arrangements consistent with regional economic and political integration processes, to be complemented as soon as possible by complete Economic Partnership Agreements.

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▼ 1528/2007 recital 4

(4) Those agreements establishing, or leading to the establishment of, Economic Partnership Agreements for which negotiations have been concluded provide that the parties may take steps to apply the agreement, before provisional application on a mutual basis, to the extent feasible. It is appropriate to take action to apply the agreements on the basis of these provisions.

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▼ 1528/2007 recital 5 (adapted)

(5) The arrangements included in this Regulation are to be amended, as necessary, in accordance with the agreements establishing, or leading to the establishment of, Economic Partnership Agreements, as and when such agreements are signed and concluded pursuant to Article ~~☒~~ 218 ~~☒~~ of the Treaty ~~☒~~ on the Functioning of the European Union (TFEU) ~~☒~~ and are either provisionally applied or in force. The arrangements are to be terminated in whole or in part if the agreements in question do not enter into force within a reasonable period of time in accordance with the Vienna Convention on the Law of Treaties.

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▼ 1528/2007 recital 6 (adapted)

(6) For imports into the ~~☒~~ Union ~~☒~~, the arrangements in the agreements establishing, or leading to the establishment of, Economic Partnership Agreements should provide for duty free access and no tariff rate quotas for all products with the exception of arms. These arrangements are subject to transitional periods and arrangements for certain sensitive products and specific arrangements for the French Overseas Departments. In the light of the specificities of the situation of South Africa, products originating in South Africa should continue to benefit from the relevant provisions of the Agreement on Trade, Development and Cooperation between the European Community and its

Member States, of the one part, and South Africa, of the other part<sup>10</sup> ☒ as amended by the Additional Protocol of 25 June 2005<sup>11</sup> ☐ ('TDCA'), until such time as an agreement establishing, or leading to the establishment of, Economic Partnership Agreements enters into force between the ☒ Union ☐ and South Africa.

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▼ 1528/2007 recital 8 (adapted)

(7) The rules of origin applicable to imports made under this Regulation should for a transitional period be those laid down in Annex II to this Regulation. Those rules of origin should be superseded by those annexed to any agreement with the regions or states listed in Annex I ☒ to this Regulation ☐ when that agreement is either provisionally applied, or enters into force, whichever is the earliest.

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▼ 1528/2007 recital 9 (adapted)

(8) It is necessary to provide for the possibility of temporarily suspending the arrangements set out in this Regulation in the event of any failure to provide administrative cooperation, irregularities or fraud. Where a Member State supplies information to the Commission concerning possible fraud or failure to provide administrative cooperation, the relevant ☒ Union ☐ legislation should apply, in particular Council Regulation (EC) No 515/97<sup>12</sup>.

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▼ 1528/2007 recital 10 (adapted)

(9) It is appropriate that this Regulation should provide for ☒ a ☐ special transitional safeguard and surveillance mechanism ☒ for sugar ☐.

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▼ 1528/2007 recital 13 (adapted)

(10) It is also appropriate to ☒ provide for ☐ general safeguard measures for the products covered by this Regulation.

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▼ 1528/2007 recital 14

(11) In view of the particular sensitivity of agricultural products, it is appropriate that bilateral safeguard measures may be taken when imports cause or threaten to cause disturbances in the markets for such products or disturbances in the mechanisms regulating those markets.

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▼ 1528/2007 recital 15 (adapted)

(12) In accordance with Article ☒ 349 ☐ of the ☒ TFEU ☐, due account should be taken in all ☒ Union ☐ policies of the particular structural, social and economic

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<sup>10</sup> OJ L 311, 4.12.1999, p. 1.

<sup>11</sup> OJ L 68, 15.3.2005, p. 33.

<sup>12</sup> Council Regulation (EC) No 515/97 of 13 March 1997 on mutual assistance between the administrative authorities of the Member States and cooperation between the latter and the Commission to ensure the correct application of the law on customs and agricultural matters (OJ L 82, 22.3.1997, p. 1).

situations of the outermost regions of the ☒ Union ☐ specifically with reference to customs and trade policies.

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▼ 1528/2007 recital 16 (adapted)

(13) Special account should therefore be taken both of the sensitivity of agricultural products, especially sugar, and of the particular vulnerability and interests of the outermost regions of the ☒ Union ☐ when laying down the rules on bilateral safeguards in an effective manner.

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▼ new

(14) Article 134 of the Treaty establishing the European Community had been deleted by the Treaty of Lisbon without being replaced with an equivalent Article in the Treaty on European Union or the TFEU. The reference to Article 134 of the Treaty establishing the European Community in Regulation (EC) No 1528/2007 should therefore be deleted.

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▼ 38/2014 Art. 1 and Annex .5  
(adapted)  
⇒ new

(15) In order to make technical adaptations to the arrangements for products originating in certain states part of the ACP Group of States, the power to adopt acts in accordance with Article 290 of the ☒ TFEU ☐ should be delegated to the Commission in respect of amending Annex I to ☒ this ☐ Regulation in order to add or to remove regions or states, and in respect of introducing technical amendments to Annex II to ☒ this ☐ Regulation that are necessary as a result of the application of that Annex. ⇒ Moreover, the power to adopt acts in accordance with Article 290 of the TFEU should be delegated to the Commission in respect of adding an Annex to this Regulation which sets out the regime applicable to products originating in South Africa once the relevant trade provisions of the TDCA have been superseded by the relevant provisions of an agreement establishing, or leading to the establishment of, an Economic Partnership Agreement. ⇐ It is of particular importance that the Commission carry out appropriate consultations during its preparatory work, including at expert level. The Commission, when preparing and drawing up delegated acts, should ensure a simultaneous, timely and appropriate transmission of relevant documents to the European Parliament and to the Council.

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▼ 527/2013 recital 3 (adapted)

(16) ☒ Certain countries ☐ not ☒ having ☐ taken the necessary steps towards ratification of their respective Agreements ☒ have been removed from Annex I to Regulation (EC) No 1528/2007 by Regulation (EU) No 527/2013 of the European Parliament and of the Council<sup>13</sup> ☐.

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<sup>13</sup> Regulation (EU) No 527/2013 of the European Parliament and of the Council of 21 May 2013 amending Council Regulation (EC) No 1528/2007 as regards the exclusion of a number of countries from the list of regions or states which have concluded negotiations (OJ L 165, 18.6.2013, p. 59).

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➔ 527/2013 recital 5 (adapted)

(17) In order to ensure that those countries can swiftly be reinstated in Annex I to ➔ this ➔ Regulation as soon as they have taken the necessary steps towards ratification of their respective Agreements, and pending entry into force thereof, the power to adopt acts in accordance with Article 290 of the ➔ TFEU ➔ should be delegated to the Commission to reinstate the countries removed from Annex I to Regulation (EC) No 1528/2007 ➔ by ➔ Regulation ➔ (EU) No 527/2013 ➔.

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➔ 37/2014 Art. 1 and Annex .14  
(adapted)

(18) The Commission should be empowered to adopt the measures necessary for ➔ the ➔ implementation ➔ of this Regulation ➔ in accordance with Regulation (EU) No 182/2011 of the European Parliament and of the Council<sup>14</sup>.

(19) The advisory procedure should be used for the suspension of treatment given the nature of such suspensions. It should also be used for the adoption of surveillance and provisional safeguard measures given the effects of such measures. Where a delay in the imposition of measures would cause damage which would be difficult to repair, it is necessary to allow the Commission to adopt immediately applicable provisional measures,

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➔ 1528/2007

HAVE ADOPTED THIS REGULATION:

## CHAPTER I

### SUBJECT MATTER, SCOPE AND MARKET ACCESS

#### *Article 1*

##### **Subject matter**

This Regulation applies 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.

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<sup>14</sup>

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).

## *Article 2*

### **Scope**

1. This Regulation shall apply to products originating in the regions and states listed in Annex I.

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▼ 38/2014 Art. 1 and Annex .5(1)

2. The Commission shall amend Annex I by means of delegated acts in accordance with Article 24 to add regions or states from the ACP Group of States which have concluded negotiations on an agreement between the Union and that region or state which at least meets the requirements of Article XXIV GATT 1994.

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▼ 38/2014 Art. 1 and Annex .5(1)  
(adapted)

3. That region or state will remain on the list in Annex I unless the Commission adopts a delegated act in accordance with Article 24 amending Annex I to remove a region or state from that Annex, in particular where:

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▼ 1528/2007

- (a) the region or state indicates that it intends not to ratify an agreement which has permitted it to be included in Annex I;
- (b) ratification of an agreement which has permitted a region or state to be included in Annex I has not taken place within a reasonable period of time such that the entry into force of the agreement is unduly delayed; or
- (c) the agreement is terminated, or the region or state concerned terminates its rights and obligations under the agreement but the agreement otherwise remains in force.

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▼ 527/2013 Art. 1(1) (adapted)

## *Article 3*

### **Delegation of power**

The Commission shall be empowered to adopt delegated acts in accordance with Article 24 to amend Annex I to this Regulation by reinstating those regions or states from the ACP Group of States which were removed from Annex □ I to Regulation (EC) No 1528/2007 by □ Regulation (EU) No 527/2013, and which have, since such removal, taken the necessary steps towards ratification of their respective agreements.

*Article 4*

**Market access**

1. Import duties shall be eliminated on all products of Chapters 1 to 97 but not 93 of the Harmonised System originating in a region or state listed in Annex I. Such elimination shall be subject to the general safeguards mechanism provided for in Articles 11 to 22.
2. For products of Chapter 93 of the Harmonised System originating in regions or states listed in Annex I the most favoured nation duties applied shall continue to apply.
3. Paragraph 1 shall not apply to products originating in South Africa. Such products shall be subject to the relevant provisions of the TDCA. The Commission shall be empowered to adopt delegated acts in accordance with Article 24 ~~24(3)~~ to add an Annex to this Regulation setting out the regime applicable to products originating in South Africa once the relevant trade provisions of the TDCA have been superseded by the relevant provisions of an agreement establishing, or leading to the establishment of, an Economic Partnership Agreement.
4. Paragraph 1 shall not apply to products of tariff heading 0803 00 19 originating in a region or state listed in Annex I and released for free circulation in the Union's outermost regions until 1 January 2018. Paragraph 1 of this Article and Article 8 shall not apply to products of tariff heading 1701 originating in a region or state listed in Annex I and released for free circulation in the French overseas departments until 1 January 2018. Those periods shall be extended to 1 January 2028 unless otherwise agreed between the Parties to the relevant agreements. The Commission shall publish a notice in the *Official Journal of the European Union* informing interested parties of the termination of this provision.

**CHAPTER II**

**RULES OF ORIGIN AND ADMINISTRATIVE COOPERATION**

*Article 5*

**Rules of Origin**

1. The rules of origin set out in Annex II shall apply in order to determine whether products originate in the regions or states listed in Annex I.
2. The rules of origin set out in Annex II shall be superseded by those annexed to any agreement with the regions or states listed in Annex I when that agreement is either provisionally applied, or enters into force, whichever is the earlier. The Commission shall publish a notice in the *Official Journal of the European Union* to inform operators. The notice

shall specify the date of provisional application or entry into force, which shall be the date from which the rules of origin in the agreement shall apply to products originating in the regions and states listed in Annex I.

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▼ 38/2014 Art. 1 and Annex .5(2)  
(adapted)

3. The Commission shall be empowered to adopt delegated acts in accordance with Article 24 concerning technical amendments to Annex II where required to take account of amendments to other Union customs legislation.

4. Decisions on the management of Annex II may be adopted in accordance with the ~~☒~~ examination ~~☒~~ procedure referred to in Article ~~☒~~ 21(5) ~~☒~~.

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▼ 1528/2007

## *Article 6*

### **Administrative cooperation**

1. Where the Commission has made a finding, on the basis of objective information, of a failure to provide administrative cooperation and/or of irregularities or fraud, it may temporarily suspend the elimination of duties in Articles 4, 7 and 8 (hereafter referred to as the ‘relevant treatment’) in accordance with this Article.

2. For the purpose of this Article a failure to provide administrative cooperation shall mean, *inter alia*:

- (a) a repeated failure to respect relevant obligations requiring the verification of the originating status of the product(s) concerned;
- (b) a repeated refusal or undue delay in carrying out and/or communicating the results of subsequent verification of the proof of origin;
- (c) a repeated refusal or undue delay in obtaining authorisation to conduct administrative cooperation missions to verify the authenticity of documents or accuracy of information relating to the granting of the relevant treatment.

For the purpose of this Article a finding of irregularities or fraud may be made, *inter alia*, where there is a rapid increase, without satisfactory explanation, in imports of goods exceeding the usual level of production and export capacity of the region or state concerned.

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▼ 37/2014 Art. 1 and  
Annex .14(1)

3. Where the Commission, on the basis of information provided by a Member State or on its own initiative, finds that the conditions laid down in paragraphs 1 and 2 of this Article are fulfilled, the relevant treatment may be suspended in accordance with the advisory procedure referred to in Article 21(4), provided that the Commission has first:

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▼ 1528/2007 (adapted)

- (a) informed the Committee ~~☒~~ referred to ~~☒~~ in Article ~~☒~~ 21(2) ~~☒~~;
- (b) notified the region or state concerned in accordance with any relevant procedures applicable between the ~~☒~~ Union ~~☒~~ and that state or region; and
- (c) published a notice in the *Official Journal of the European Union* stating that a finding has been made of a failure to provide administrative cooperation, irregularities or fraud.

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▼ 37/2014 Art. 1 and  
Annex .14(1)

4. The period of suspension under this Article shall be limited to the period necessary to protect the Union's financial interests. It shall not exceed six months, however that period may be renewed. At the end of that period, the Commission shall decide either to terminate the suspension or to extend the period of suspension in accordance with the advisory procedure referred to in Article 21(4).

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▼ 1528/2007 (adapted)

5. The temporary suspension procedures set out in paragraphs 2 ~~☒~~ , 3 and ~~☒~~ 4 shall be superseded by those set out in any agreement with the regions or states listed in Annex I when that agreement is either provisionally applied or enters into force, whichever is the earlier. The Commission shall publish a notice in the *Official Journal of the European Union* to inform operators. The notice shall specify the date of provisional application or entry into force, which shall be the date from which the temporary suspension procedures in the agreement shall apply to products covered by this Regulation.

6. In order to implement the temporary suspension provided for in any agreement with the regions or states listed in Annex I, the Commission shall, without undue delay:

- (a) inform the Committee ~~☒~~ referred to ~~☒~~ in Article ~~☒~~ 21(2) ~~☒~~ that a finding has been made of a failure to provide administrative cooperation, irregularities or fraud; and
- (b) publish the notice in the *Official Journal of the European Union* stating that a finding has been made of a failure to provide administrative cooperation, irregularities or fraud.

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▼ 37/2014 Art. 1 and  
Annex .14(1)

The decision suspending the relevant treatment shall be adopted in accordance with the advisory procedure referred to in Article 21(4).

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 1528/2007 (adapted)

## CHAPTER III

### TRANSITIONAL ARRANGEMENTS

#### SECTION 1

##### RICE

###### *Article 7*

###### **Zero duty tariff rate quotas** and eventual elimination of duties

☒ No ☒ import duties ☒ shall be imposed ☒ on the products of tariff heading 1006.

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 1528/2007 (adapted)

#### SECTION 2

##### SUGAR

###### *Article 8*

###### **Zero duty tariff rate quotas**

☒ No ☒ import duties ☒ shall be imposed ☒ on products of tariff heading 1701.

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 1528/2007 (adapted)

###### *Article 9*

###### **Transitional safeguard mechanism for sugar**

1. ☒ Until ☒ 30 September 2015 the treatment granted in Article 8 for imports of products of tariff heading 1701 originating in regions or states listed in Annex I and which are not least-developed countries listed in Annex I to Council Regulation (EC) No 980/2005<sup>15</sup> may be suspended when:

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<sup>15</sup> Council Regulation (EC) No 980/2005 of 27 June 2005 applying a scheme of generalised tariff preferences (OJ L 169, 30.6.2005, p. 1).

(a) imports originating in regions or states which are ACP States and which are not least-developed countries listed in Annex I to Regulation (EC) No 980/2005 exceed 1,6 million tonnes in the marketing year 2014/2015; and

(b) imports originating in all ACP States exceed 3,5 million tonnes.

2. The ~~☒~~ quantity ~~☒~~ provided for in point (a) of paragraph 1 may be subdivided by region.

3. During the period referred to in paragraph 1, imports of products of tariff heading 1701 originating in regions or states listed in Annex I shall require an import licence.

4. The suspension of the treatment granted in Article 8 shall be terminated at the end of the marketing year in which it was introduced.

▼ 37/2014 Art. 1 and  
Annex .14(4)

5. The Commission shall adopt detailed rules on the subdivision of quantities provided for in paragraph 1 for the management of the system referred to in paragraphs 1, 3 and 4 of this Article, and on suspension decisions in accordance with the examination procedure referred to in Article 21(5).

▼ 1528/2007 (adapted)

## *Article 10*

### **Transitional surveillance mechanism**

1. ~~☒~~ Until ~~☒~~ 30 September 2015, imports of products of tariff headings 1704 90 99, 1806 10 30, 1806 10 90, 2106 90 59, 2106 90 98 originating in regions or states listed in Annex I shall be subject to the surveillance mechanism provided for in Article 308d of Commission Regulation (EEC) No 2454/93<sup>16</sup>.

2. On the basis of that surveillance, the Commission shall check whether there is a cumulative increase of imports of one or more of those products originating in a particular region by more than 20 % in volume during a period of twelve consecutive months compared to the average of the yearly imports over the previous three twelve-month periods.

3. If the level referred to in paragraph 2 is reached, the Commission shall analyse the pattern of trade, the economic justification and the sugar content of such imports. If the Commission concludes that such imports are used to circumvent the transitional safeguard mechanism provided for in Article 9, it may suspend the application of Article 4(1) to imports of products of tariff headings 1704 90 99, 1806 10 30, 1806 10 90, 2106 90 59, 2106 90 98 originating in regions or states listed in Annex I which are not least-developed countries listed in Annex I to Regulation (EC) No 980/2005 until the end of the marketing year concerned.

<sup>16</sup> Commission Regulation (EEC) No 2454/93 of 2 July 1993 laying down provisions for the implementation of Regulation (EEC) No 2913/92 establishing the Community Customs Code (OJ L 253, 11.10.1993, p. 1).

37/2014 Art. 1 and  
Annex .14(5) (adapted)

4. The Commission shall adopt detailed rules relating to the management of the system laid down in paragraphs 1, 2 and 3 of this Article and to suspension decisions in accordance with the examination procedure referred to in Article 21(5).

1528/2007 (adapted)

## CHAPTER IV

### GENERAL SAFEGUARD PROVISIONS

#### *Article 11*

##### **Definitions**

For the purposes of this Chapter the following definitions shall apply:

- (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 product constitutes a major proportion of the total Union production of those products;
- (b) ‘serious injury’ means a significant overall impairment in the position of Union producers;
- (c) ‘threat of serious injury’ means serious injury that is clearly imminent;
- (d) ‘disturbances’ means disorders in a sector or industry;
- (e) ‘threat of disturbances’ means 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 Union in such increased quantities and under such conditions as to cause or threaten to cause any of the following:

- (a) serious injury to the Union 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 ☒ Union ☐; 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 ☒ Union ☐ 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 ☒ Union's ☐ outermost regions, a safeguard measure may be imposed in accordance with the provisions set out in this Chapter.

### *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 ☒ Union ☐;
  - (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 ☒ Union ☐;
  - (c) the consequent impact on ☒ Union ☐ 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 ☒ Union ☐ 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 ☒ Union ☐ 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 ☒ Union ☐ 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 ~~☒~~ Union ~~☒~~ average market price of white sugar falls during two consecutive months below 80 % of the average ~~☒~~ Union ~~☒~~ 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 ~~☒~~ Union'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.

## *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.

➔ 37/2014 Art. 1 and  
Annex .14(6)

3. 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.

### *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.
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**

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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 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).

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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.

4. 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.

5. 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.

6. 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.

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▼ 37/2014 Art. 1 and  
Annex .14(8)

### *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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▼ 1528/2007

### *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 I with a view to seeking a mutually acceptable solution.

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▼ 37/2014 Art. 1 and  
Annex .14(9)

2. 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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▼ 1528/2007 (adapted)

3. Definitive measures may take one of the following forms:

(a) a suspension of the further reduction of the rate of import duty for the product concerned originating in the region or state concerned;

- (b) 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;
- (c) a tariff quota.

4. 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.

### *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 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  Union , 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  Union  surveillance.

 37/2014 Art. 1 and  
Annex .14(10)

2. The decision to impose surveillance shall be taken by the Commission in accordance with the advisory procedure referred to in Article 21(4).

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 1528/2007 (adapted)

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 ~~☒~~ Union ~~☒~~ 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.

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 37/2014 Art. 1 and Annex .14(11) (adapted)

## *Article 21*

### **Committee procedure**

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

2. For the purposes of Articles 5 and 6 ~~☒~~ and for the purposes of Articles 6(11) and (13) and 36(4) of Annex II ~~☒~~, the Commission shall be assisted by the Customs Code Committee established by Article ~~☒~~ 285(1) ~~☒~~ of Regulation ~~☒~~ (EU) ~~☒~~ No ~~☒~~ 952/2013 ~~☒~~ of the European Parliament and of the Council<sup>18</sup>. That Committee shall be a committee within the meaning of Regulation (EU) No 182/2011.

3. For the purposes of Articles 7, 8 and 9, the Commission shall be assisted by the Committee ~~☒~~ referred to in Article 229(1) of Regulation (EU) No 1308/2013 of the European Parliament and of the Council ~~☒~~<sup>19</sup>. 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.

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<sup>17</sup> Council Regulation (EC) No 260/2009 of 26 February 2009 on the common rules for imports (OJ L 84, 31.3.2009, p. 1).

<sup>18</sup> Regulation (EU) No 952/2013 of the European Parliament and of the Council of 9 October 2013 laying down the Union Customs Code (OJ L 269, 10.10.2013, p. 1).

<sup>19</sup> Regulation (EU) No 1308/2013 of the European Parliament and of the Council of 17 December 2013 establishing a common organisation of the markets in agricultural products and repealing Council Regulations (EEC) No 922/72, (EEC) No 234/79, (EC) No 1037/2001 and (EC) No 1234/2007 (OJ L 347, 20.12.2013, p. 671).

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

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▼ 1528/2007 (adapted)

### *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 ~~☒~~ Union ~~☒~~. Those measures must be strictly limited in time and must disrupt the operation of the internal market as little as possible.

## **CHAPTER V**

### **PROCEDURAL PROVISIONS**

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▼ 38/2014 Art. 1 and Annex .5(3)  
(adapted)

### *Article 23*

#### **Adaptation to technical developments**

The Commission shall be empowered to adopt delegated acts in accordance with Article 24 concerning technical amendments to Article 6 and Articles 9 to 22 which may be required as a result of differences between this Regulation and agreements signed with provisional application or concluded in accordance with Article 218 ~~☒~~ of the ~~☒~~ TFEU with the regions or states listed in Annex I to this Regulation.

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▼ 38/2014 Art. 1 and Annex .5(4)  
(adapted)  
⇒ new

### *Article 24*

#### **Exercise of the delegation**

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

2. ~~☒~~ The power to adopt delegated acts referred to in Article 3 shall be conferred on the Commission for a period of five years from 21 June 2013 and ~~☒~~ the power to adopt delegated acts referred to in Article 2(2) and (3), ~~⇒~~ Article 4(3), ~~⇒~~ Article 5(3) and Article 23 shall be conferred on the Commission for a period of five years from 20 February 2014. The Commission shall draw up a report in respect of the delegation of power not later than nine months before the end of the five-year period. The delegation of power shall be tacitly extended for periods of an identical duration, unless the European Parliament or the Council opposes such extension not later than three months before the end of each period.

3. The delegation of power referred to in Article 2(2) and (3), ~~☒~~ Article 3, ~~☒~~ ~~⇒~~ Article 4(3), ~~⇒~~ Article 5(3) and Article 23 may be revoked at any time by the European Parliament or by the Council. A decision to revoke shall put an end to the delegation of power specified in that decision. It shall take effect on the day following the publication of the decision in the *Official Journal of the European Union* or at a later date specified therein. It shall not affect the validity of any delegated acts already in force.

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

5. A delegated act adopted pursuant to ~~☒~~ Article 3, ~~☒~~ ~~⇒~~ Article 4(3), ~~⇒~~ Article 5(3) and Article 23 shall enter into force only if no objection has been expressed either by the European Parliament or the Council within a period of two months of notification of that act to the European Parliament and the Council or if, before the expiry of that period, the European Parliament and the Council have both informed the Commission that they will not object. That period shall be extended by two months at the initiative of the European Parliament or of the Council.

6. A delegated act adopted pursuant to Article 2(2) and (3) shall enter into force only if no objection has been expressed either by the European Parliament or the Council within a period of two months of notification of that act to the European Parliament and the Council or if, before the expiry of that period, the European Parliament and the Council have both informed the Commission that they will not object. That period shall be extended by four months at the initiative of the European Parliament or of the Council.

➔ 37/2014 Art. 1 and  
Annex .14(13)

## Article 25

### Report

The Commission shall include information on the implementation of this Regulation in its annual report on the application and implementation of trade defence measures presented to the European Parliament and to the Council pursuant to Article 22a of Council Regulation (EC) No 1225/2009<sup>20</sup>.

<sup>20</sup> Council Regulation (EC) No 1225/2009 of 30 November 2009 on protection against dumped imports from countries not members of the European Community (OJ L 343, 22.12.2009, p. 51).

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 1528/2007 (adapted)

## CHAPTER VI

### FINAL PROVISIONS

#### *Article 26*

##### **Repeal**

Regulation (EC) No ~~☒~~ 1528/2007 is ~~☒~~ repealed.

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References to the repealed Regulation shall be construed as references to this Regulation and shall be read in accordance with the correlation table in Annex IV.

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 1528/2007 (adapted)

#### *Article 27*

##### **Entry into force**

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

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

Done at

*For the European Parliament*  
*The President*

*For the Council*  
*The President*