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*Committee on International Trade*

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**2011/0262(COD)**

13.3.2012

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## **DRAFT REPORT**

on the proposal for a regulation of the European Parliament and of the Council implementing the bilateral safeguard clause and the stabilisation mechanism for bananas of the Trade Agreement between the European Union and Colombia and Peru  
(COM(2011)0600 – C7-0307/2011 – 2011/0262(COD))

Committee on International Trade

Rapporteur: Bernd Lange

### ***Symbols for procedures***

- \* Consultation procedure
- \*\*\* Consent procedure
- \*\*\*I Ordinary legislative procedure (first reading)
- \*\*\*II Ordinary legislative procedure (second reading)
- \*\*\*III Ordinary legislative procedure (third reading)

(The type of procedure depends on the legal basis proposed by the draft act.)

### ***Amendments to a draft act***

In amendments by Parliament, amendments to draft acts are highlighted in ***bold italics***. Highlighting in *normal italics* is an indication for the relevant departments showing parts of the draft act which may require correction when the final text is prepared – for instance, obvious errors or omissions in a language version. Suggested corrections of this kind are subject to the agreement of the departments concerned.

The heading for any amendment to an existing act that the draft act seeks to amend includes a third line identifying the existing act and a fourth line identifying the provision in that act that Parliament wishes to amend. Passages in an existing act that Parliament wishes to amend, but that the draft act has left unchanged, are highlighted in **bold**. Any deletions that Parliament wishes to make in such passages are indicated thus: [...].

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## DRAFT EUROPEAN PARLIAMENT LEGISLATIVE RESOLUTION

**on the proposal for a regulation of the European Parliament and of the Council implementing the bilateral safeguard clause and the stabilisation mechanism for bananas of the Trade Agreement between the European Union and Colombia and Peru (COM(2011)0600 – C7-0307/2011 – 2011/0262(COD))**

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

*The European Parliament,*

- having regard to the Commission proposal to Parliament and the Council (COM(2011)0600),
  - having regard to Article 294(2) and Article 207(2) of the Treaty on the Functioning of the European Union, pursuant to which the Commission submitted the proposal to Parliament (C7-0307/2011),
  - having regard to Article 294(3) of the Treaty on the Functioning of the European Union,
  - having regard to Rule 55 of its Rules of Procedure,
  - having regard to the report of the Committee on International Trade and the opinion of the Committee on Agriculture and Rural Development (A7-0000/2012),
1. Adopts its position at first reading hereinafter set out;
  2. Calls on the Commission to refer the matter to Parliament again if it intends to amend its proposal substantially or replace it with another text;
  3. Instructs its President to forward its position to the Council, the Commission and the national parliaments.

### **Amendment 1**

#### **Proposal for a regulation**

#### **Recital 3 a (new)**

*Text proposed by the Commission*

*Amendment*

***(3a) It is necessary to create appropriate safety mechanisms to prevent serious harm to Union banana growing, a sector which is of great importance to the end agricultural production of many of the outermost regions. The limited ability of these regions to diversify, owing to their natural characteristics, makes the banana***

*sector particularly vulnerable. It is therefore essential to create effective mechanisms to address preferential imports from third countries, in order to guarantee that Union banana production, which is a crucial employment sector especially in the outermost regions, is maintained under the best possible conditions.*

Or. en

### *Justification*

*As recognised by the original proposal by introducing the stabilisation mechanism for bananas, it is necessary to stress the particular situation this sector will face as a result of the trade agreement.*

## **Amendment 2**

### **Proposal for a regulation Recital 4 a (new)**

*Text proposed by the Commission*

*Amendment*

*(4a) Close monitoring of banana imports will facilitate any timely decision concerning activation of the stabilisation mechanism for bananas, the launch of an investigation or the imposition of safeguard measures. The Commission should, therefore, step up regular monitoring of imports in the banana sector from the date of application of the Agreement.*

Or. en

## **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 Title IX on "Trade and Sustainable Development" of the Agreement – particularly in respect of the social and environmental standards laid down therein – thus necessitating the imposition of safeguard measures.*

Or. en

**Amendment 4**  
**Proposal for a regulation**  
**Recital 7 a (new)**

*Text proposed by the Commission*

*Amendment*

*(7a) The Commission should submit a report once a year on the implementation of the Agreement and the application of the safeguard measures and the banana stabilisation mechanism, which should include up-to-date statistics on imports from Colombia and Peru and an assessment of their impact on market prices, employment, working conditions and the evolution of the Union's production sector, paying special attention to small-size producers and cooperatives. It should also include an analysis of the impact of the Agreement and this Regulation on organic production and consumption in the EU and Fair-Trade flows between all parties to the Agreement.*

Or. en

*Justification*

*It is important to have a report on the implementation of both the agreement and the application of the safeguard measures.*

**Amendment 5**  
**Proposal for a regulation**  
**Recital 7 b (new)**

*Text proposed by the Commission*

*Amendment*

***(7b) The extraordinary challenges in Colombia and Peru as regards human, social, labour and environmental rights in connection with products from Colombia and Peru demand a close dialogue between the Commission and EU civil society organisations.***

Or. en

**Amendment 6**  
**Proposal for a regulation**  
**Recital 8**

*Text proposed by the Commission*

*Amendment*

(8) There should be detailed provisions on the initiation of proceedings. The Commission should receive information including available evidence from the Member States of any trends in imports which might call for the application of safeguard measures.

(8) There should be detailed provisions on the initiation of proceedings. The Commission should receive information including available evidence from the Member States ***and interested parties and request from the sectors involved, information*** of any trends in imports which might call for the application of safeguard measures.

Or. en

**Amendment 7**  
**Proposal for a regulation**  
**Recital 10 a (new)**

*Text proposed by the Commission*

*Amendment*

***(10a) 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, EU labour and environment or sustainable development committees need to be included at every stage of the process.*

Or. en

## **Amendment 8**

### **Proposal for a regulation Recital 10 b (new)**

*Text proposed by the Commission*

*Amendment*

*(10b) In some cases, an increase of imports concentrated in one or several of the Union's outermost regions may cause or threaten to cause serious deterioration in their economic situation. In the event that there is an increase of imports concentrated in one or several of the Union's outermost regions, the Commission may introduce prior surveillance measures.*

Or. en

### *Justification*

*Article 349 of the Treaty on the Functioning of the European Union gives the possibility to adopt specific measures concerning the outermost regions, and this is specifically addressed both in the agreement and the safeguard regulation. In order to monitor this possible threat, it should be clearly defined that prior surveillance measures can be introduced.*

## **Amendment 9**

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

*Text proposed by the Commission*

*Amendment*

*(14a) Close monitoring should facilitate*

*any timely decision concerning the possible initiation of an investigation or the imposition of measures. Therefore the Commission should regularly monitor imports and exports in sensitive sectors, such as bananas, from the date of application of the Agreement.*

Or. en

*Justification*

*Commitments of close monitoring are omitted in the original regulation, but this is of course of importance in order to be able to act quickly in case of serious problems.*

**Amendment 10**

**Proposal for a regulation**  
**Article 1 b**

*Text proposed by the Commission*

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

*Amendment*

(b) "interested parties" means parties affected by the imports of the product in question, *including workers' organisations in the Union, civil society organisations and NGOs;*

Or. en

*Justification*

*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, EU labour and environment or sustainable development committees or groups need to be included at every stage of the process.*

**Amendment 11**

**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 Colombian and Peruvian products, in particular as regards bananas. The monitoring shall include the employment rates and working conditions for banana producers in Colombia and Peru. For this purpose, it shall cooperate and exchange data on a regular basis with Member States, the Union industry and all interested parties.***

Or. en

### **Amendment 12**

#### **Proposal for a regulation Article 2 b (new)**

*Text proposed by the Commission*

*Amendment*

#### ***Article 2b***

#### ***Dialogue on the implementation and impact of the Agreement***

***The Commission shall establish a systematic dialogue with civil society organisations as regards the implementation and impact of the Agreement.***

Or. en

### **Amendment 13**

#### **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, by any legal person or any association not having legal

1. An investigation shall be initiated upon request by a Member State, by any legal person or any association not having legal

personality, acting on behalf of the Union industry, or on the Commission's own initiative if it is apparent to the Commission that there is sufficient prima facie evidence, as determined on the basis of factors referred to in Article 4(5), to justify such initiation.

personality, acting on behalf of the Union industry, ***by the European Parliament or interested parties***, or on the Commission's own initiative if it is apparent to the Commission that there is sufficient prima facie evidence, as determined on the basis of factors referred to in Article 4(5), to justify such initiation.

Or. en

#### Justification

*In case of threat of serious injury, the impact on employment opportunities should also be evaluated. It is therefore logic that interested parties should be able to present evidence, and to request an initiation of an investigation.*

#### Amendment 14

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

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

3. An investigation may also be initiated in the event that there is a surge of imports concentrated in one or several Member States, provided that there is sufficient prima facie evidence that the conditions for initiation are met, as determined on the basis of factors referred to in Article 4(5).

###### *Amendment*

3. An investigation may also be initiated in the event that there is a surge of imports concentrated in one or several Member States ***or outermost regions***, provided that there is sufficient prima facie evidence that the conditions for initiation are met, as determined on the basis of factors referred to in Article 4(5).

Or. en

#### Amendment 15

##### 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

###### *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 and changes in the level of sales, production, productivity, capacity utilisation, profits and losses, and employment. This list is not exhaustive and other relevant factors may also be taken into consideration by the Commission for its determination of the existence of serious injury or threat of serious injury, such as stocks, prices, return on capital employed, cash flow, and other factors which are causing or may have caused serious injury, or threaten to cause serious injury to the Union industry.

bearing on the situation of the Union industry, in particular, the rate and amount of the increase in imports of the product concerned in absolute and relative terms, the share of the domestic market taken by increased imports and changes in the level of sales, production, productivity, capacity utilisation, profits and losses, and employment **and working conditions**. This list is not exhaustive and other relevant factors may also be taken into consideration by the Commission for its determination of the existence of serious injury or threat of serious injury, such as stocks, prices, return on capital employed, cash flow, **effects on employment** and other factors which are causing or may have caused serious injury, or threaten to cause serious injury to the Union industry.

Or. en

#### Justification

*In case of threat of serious injury, the impact on employment opportunities should also be evaluated. It is therefore logic that interested parties should be able to present evidence, and to request an initiation of an investigation.*

#### Amendment 16

##### 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 Colombia and Peru of the social and environmental standards laid down in Title IX of the Agreement and any consequences on prices 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 Union.***

Or. en

## Justification

*The non-compliance of social and environmental standards constitutes an unfair competitive advantage which could lead to a threat of serious injury to EU producers.*

### Amendment 17

#### Proposal for a regulation Article 9 – paragraph 4

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

4. Any extension pursuant to paragraph 3 shall be preceded by an investigation upon a request by a Member State, by any legal person or any association not having legal personality, acting on behalf of the Union industry, or on the Commission's own initiative if there is sufficient prima facie evidence that the conditions laid down in paragraph 3 are met, on the basis of factors referred to in Article 4(5).

##### *Amendment*

4. Any extension pursuant to paragraph 3 shall be preceded by an investigation upon a request by a Member State, by any legal person or any association not having legal personality, acting on behalf of the Union industry, ***by the European Parliament or interested parties***, or on the Commission's own initiative if there is sufficient prima facie evidence that the conditions laid down in paragraph 3 are met, on the basis of factors referred to in Article 4(5).

Or. en

### Amendment 18

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

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

##### *Amendment*

##### ***Article 11a***

##### ***Report***

***1. The Commission shall present an annual report on the application and implementation of the Agreement and of this Regulation to the European Parliament. The report shall include information about the application of provisional and definitive measures, prior surveillance measures, regional***

*surveillance and safeguard measures, the termination of investigations without measures, and the activities of the various bodies responsible for monitoring the implementation of the Agreement and fulfilment of the obligations arising therefrom, including information received from interested parties.*

*2. The report shall include up-to- date statistics on banana imports from Colombia and Peru and their direct and indirect impact on the development of employment and working conditions in the European production sector.*

*3. Special sections of the report shall assess the fulfilment of obligations under Title IX of the Agreement, and action taken in that respect by Colombia and Peru under their internal mechanisms and the results of the dialogue with civil society organisations as laid down in Article 282 of the Agreement.*

*4. The report shall also present a summary of the statistics and the evolution of trade with Colombia and Peru.*

*5. The European Parliament may, within one month from the Commission presenting the report, invite the Commission to an ad hoc meeting of its responsible committee to present and explain any issues related to the implementation of this Regulation.*

*6. No later than three months after presenting the report to the European Parliament, the Commission shall make the report public.*

Or. en

#### Justification

*This article is very similar to the article adopted in the Korea Safeguard regulation on the same subject, but which was not in the original proposal for this safeguard clause for the Agreement with Colombia and Peru.*

## Amendment 19

### Proposal for a regulation

#### Article 12 – paragraph 4 a (new)

*Text proposed by the Commission*

*Amendment*

***4a. Where the opinion of the committee is to be obtained by written procedure, that procedure shall be terminated without result when, within the time-limit for delivery of the opinion, the chair of the committee so decides or a majority of committee members so request.***

Or. en

Justification

*It is necessary to also specify the procedure in case the opinion of the committee is to be given through written procedure, in line with the horizontal amendments introduced in the so called Omnibus I-regulation.*

## Amendment 20

### Proposal for a regulation

#### Article 13 – paragraph 1 a (new)

*Text proposed by the Commission*

*Amendment*

***1a. The application of the stabilisation mechanism for bananas shall under no circumstances prevent the activation of measures included in the bilateral safeguard clause.***

Or. en

## Amendment 21

### Proposal for a regulation

#### Article 13 – paragraph 2

*Text proposed by the Commission*

*Amendment*

2. A separate annual trigger import volume

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is set for imports of products mentioned in paragraph 1, as indicated in the third and fourth columns of the table in the Annex to this Regulation. Once the trigger volume for either Colombia or Peru is met during the corresponding calendar year, the Commission **may**, in accordance with the examination procedure referred to in Article 12(3), temporarily suspend the preferential customs duty applied to products of the corresponding origin during that same year for a period of time not exceeding three months, and not going beyond the end of the calendar year.

is set for imports of products mentioned in paragraph 1, as indicated in the third and fourth columns of the table in the Annex to this Regulation. Once the trigger volume for either Colombia or Peru is met during the corresponding calendar year, the Commission **shall**, in accordance with the examination procedure referred to in Article 12(3), temporarily suspend the preferential customs duty applied to products of the corresponding origin during that same year for a period of time not exceeding three months, and not going beyond the end of the calendar year. ***Only reasons of force majeure shall prevent the suspension from being imposed.***

Or. en

## Amendment 22

### Proposal for a regulation

#### Article 13 – paragraph 5 a (new)

*Text proposed by the Commission*

*Amendment*

***5a. Upon a duly reasoned request from a Member State, the Union industry, the European Parliament or any interested party, the Commission shall pay particular attention to any noticeable increase in banana imports from Colombia and Peru and, if appropriate under the terms of Article 5, shall introduce prior surveillance measures.***

Or. en

## Amendment 23

### Proposal for a regulation

#### Article 13 – paragraph 5 b (new)

*Text proposed by the Commission*

*Amendment*

***5b. Prior surveillance measures shall be adopted by the Commission in accordance with the advisory procedure referred to in Article 12(2) when the trigger volume for the mechanism is reached during the corresponding calendar year.***

Or. en

## Amendment 24

### Proposal for a regulation

#### Annex I – Table

*Text proposed by the Commission*

**Table regarding trigger import volumes for the application of the Stabilisation mechanism for bananas provided for in Annex I, Appendix I, Section B: for Colombia Subsection 1A, point 1(n) and for Peru Subsection 2A, point 1(i).**

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

*Amendment by Parliament*

**Table regarding trigger import volumes for the application of the Stabilisation mechanism for bananas provided for in Annex I, Appendix I, Section B: for Colombia Subsection 1A, point 1(n) and for Peru Subsection 2A, point 1(i).**

Year	Trigger import volume for Colombia	Trigger import volume for Peru
From 1 January until 31 December 2010	<i>Not applicable</i>	<i>Not applicable</i>
From 1 January until 31 December 2011	<i>Not applicable</i>	<i>Not applicable</i>
From 1 January until 31 December 2012 <i>(depending on the entry into force of the regulation)</i>	<i>1 350 000 t.</i>	<i>67 500 t.</i>
From 1 January until 31 December 2013	<i>1 417 500 t.</i>	<i>71 250 t.</i>
From 1 January until 31 December 2014	<i>1 485 000 t.</i>	<i>75 000 t.</i>
From 1 January until 31 December 2015	<i>1 552 500 t.</i>	<i>78 750 t.</i>
From 1 January until 31 December 2016	<i>1 620 000 t.</i>	<i>82 500 t.</i>
From 1 January until 31 December 2017	<i>1 687 500 t.</i>	<i>86 250 t.</i>
From 1 January until 31 December 2018	<i>1 755 000 t.</i>	<i>90 000 t.</i>
From 1 January until 31 December 2019	<i>1 822 500 t.</i>	<i>93 750 t.</i>
As from 1 January 2020	Not applicable	Not applicable

Or. en

Justification

*It is necessary to clarify which trigger volume will be applicable on the date of entry into force of the regulation.*

## EXPLANATORY STATEMENT

On 19 January 2009 the Council authorised the Commission to open trade negotiations with the Member Countries of the Andean Community, which finally resulted in a Trade Agreement with Colombia and Peru. The Agreement was initialled on 23 March 2011. This agreement provides, *inter alia*, for the reduction and finally for the elimination of custom tariffs in the bilateral trade between the partners. It also contains a safeguard clause by which tariff preferences can be suspended or removed, if such trade liberalisation leads to an unexpected increase of imports causing a deterioration of the situation of the European industry competing with such imports and thereby also threatening employment in the EU.

A bilateral safeguard instrument is designed to provide a safety net where, as a consequence of the trade liberalisation provided for by the FTA, industry needs time to adjust to the new conditions. It will therefore only be applicable for a transitional period of ten years after the entry into force of the agreement, or slightly longer for products which are liberalised over more than ten years. In order to be operational, the safeguards needs to be incorporated into EU law, the reason behind this regulation.

In practical terms, a bilateral safeguard measures consists in the temporary reinstitution of the normal customs duty or in a suspension of the further tariff liberalisation. The measure can be applied for two years and exceptionally extended for two more years.

Typical features of bilateral safeguards are the conditions and the legitimacy for requesting the start of a procedure, the modalities to carry the investigation leading to the adoption of the measures, and the type itself of provisional and definitive measures.

The provisions proposed by the European Commission for the bilateral safeguard clause of the Peru and Colombia Trade Agreement are very similar to the pattern of the Regulation implementing the bilateral safeguard clause of the FTA between the EU and the Republic of Korea, which was the first safeguard regulation where the European Parliament acted as a co-legislator. This means that issues which were very important for the European Parliament then, such as surveillance measures, factors to take into account in an investigation and the online platform for increased exchange of information, are all included in the proposal.

There are however two important differences:

- the stabilisation mechanism for bananas - a system by which until 2019, when a specific level of import, *the trigger volume*, is reached during a given calendar year, preferences may be suspended until the end of that year, but for a period limited to three months.
- outermost regions, i.e. remote and vulnerable regions of the European Union, are granted special treatment, given the likely detrimental impact that the liberalization may initially have on them.

Furthermore, in this agreement, there is no duty-drawback clause, and sensitive sectors are not identified, as was the case in the Korea Safeguard. But the fact that the banana sector is subject to a specific mechanism, is in itself recognition that this sector is sensitive, and other products could certainly be added to the list.

At a closer look, one will also find that the Commission has left out elements which were very important for the European Parliament, such as provisions for monitoring and reporting. This is of particular importance for sensitive products, such as bananas, but also from a more general perspective, when it comes to the implementation of this regulation and the agreement itself.

Furthermore, the agreement has to be implemented in full respect of international labour and environmental conventions. To this end, the role of trade unions, NGOs and civil society organisations has to be manifested also as regards the request for investigations, the provision of information and the systematic dialogue with the European Commission under this regulation. Also, the evaluation of Colombia's and Peru's compliance with social and environmental standards should be part of an investigation.