



Council of the
European Union

Brussels, 10 July 2014
(OR. fr)

11668/14

**Interinstitutional File:
2014/0166 (COD)**

**CODIF 16
CODEC 1586
ECO 84
INST 324
MI 536
PARLNAT 201**

PROPOSAL

From:	Secretary-General of the European Commission, signed by Mr Jordi AYET PUIGARNAU, Director
date of receipt:	28 May 2014
To:	Mr Uwe CORSEPIUS, Secretary-General of the Council of the European Union
No. Cion doc.:	COM(2014) 321 final
Subject:	Proposal for a REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL on common rules for imports (codification)

Delegations will find attached document COM(2014) 321 final.

In accordance with the method approved on 10 June 2003, delegations are invited to send their comments on the codification proposal by 15 September 2014 to the following addresses:

SECRETARIAT.Codification@consilium.europa.eu **AND** sj-codification@ec.europa.eu

Encl.: COM(2014) 321 final



Brussels, 28.5.2014
COM(2014) 321 final

2014/0166 (COD)

Proposal for a

REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL

on common rules for imports (codification)

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 decided¹ 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 this², 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.

Given that no changes of substance may be made to the instruments affected by codification, the European Parliament, the Council and the Commission have agreed, by an interinstitutional agreement dated 20 December 1994, that an accelerated procedure may be used for the fast-track adoption of codification instruments.

4. The purpose of this proposal is to undertake a codification of Council Regulation (EC) No 260/2009 of 26 February 2009 on the common rules for imports³. The new Regulation will supersede the various acts incorporated in it⁴; this proposal fully preserves the content of the acts being codified and hence does no more than bring them together with only such formal amendments as are required by the codification exercise itself.
5. The codification proposal was drawn up on the basis of a preliminary consolidation, in 22 official languages, of Regulation (EC) No 260/2009 and the instrument 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 III to the codified Regulation.

¹ COM(87) 868 PV.

² See Annex 3 to Part A of the Conclusions.

³ Entered in the legislative programme for 2014.

⁴ See Annex II to this proposal.

Proposal for a

REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL
on common rules for imports (codification)

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

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

Having regard to the proposal from the European Commission

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

Having regard to the opinion of the European Economic and Social Committee⁵,

Acting in accordance with the ordinary legislative procedure,

Whereas:

- (1) Council Regulation (EC) No 260/2009⁶ has been substantially amended⁷. In the interests of clarity and rationality, that Regulation should be codified.
- (2) The common commercial policy should be based on uniform principles.
- (3) The European Community concluded the Agreement establishing the World Trade Organization (hereinafter referred to as the 'WTO'). Annex 1A to that Agreement contains inter alia the General Agreement on Tariffs and Trade 1994 (hereinafter referred to as 'GATT 1994') and an Agreement on Safeguards.
- (4) The Agreement on Safeguards meets the need to clarify and reinforce the disciplines of GATT 1994, and specifically those of Article XIX. That Agreement requires the elimination of safeguard measures which escape those rules, such as voluntary export restraints, orderly marketing arrangements and any other similar import or export arrangements.
- (5) The Agreement on Safeguards also covers coal and steel products. The common rules for imports, especially as regards safeguard measures, therefore also apply to those

⁵ OJ C [...], [...], p. [...].

⁶ Council Regulation (EC) No 260/2009 of 26 February 2009 on the common rules for imports (OJ L 84, 31.3.2009, p. 1).

⁷ See Annex II.

products without prejudice to any possible measures to apply an agreement specifically concerning coal and steel products.

- (6) The textile products covered by Council Regulation (EC) No 517/94⁸ are subject to special treatment at Union and international level. They should therefore be excluded from the scope of this Regulation.
- (7) The Commission should be informed by the Member States of any danger created by trends in imports which might call for Union surveillance or the application of safeguard measures.
- (8) In such instances the Commission should examine the terms and conditions under which imports occur, the trend in imports, the various aspects of the economic and trade situations and, where appropriate, the measures to be applied.
- (9) If prior Union surveillance is applied, release for free circulation of the products concerned should be made subject to presentation of a surveillance document meeting uniform criteria. That document should, on simple application by the importer, be issued by the authorities of the Member States within a certain period but without the importer thereby acquiring any right to import. The surveillance document should therefore be valid only during such period as the import rules remain unchanged.
- (10) The Member States and the Commission should exchange the information resulting from Union surveillance as fully as possible.
- (11) It falls to the Commission to adopt the safeguard measures required by the interests of the Union . Those interests should be considered as a whole and should in particular encompass the interests of Union producers, users and consumers.
- (12) Safeguard measures against a member of the WTO may be considered only if the product in question is imported into the Union in such greatly increased quantities and on such terms or conditions as to cause, or threaten to cause, serious injury to Union producers of like or directly competing products, unless international obligations permit derogation from this rule.
- (13) The terms 'serious injury', 'threat of serious injury' and ' Union producers' should be defined and precise criteria for determining injury should be laid down .
- (14) An investigation should precede the application of any safeguard measure, subject to the reservation that the Commission be allowed in urgent cases to apply provisional measures.
- (15) There should be detailed provisions on the opening of investigations, the checks and inspections required, access by exporter countries and interested parties to the information gathered, hearings for the parties involved and the opportunities for those parties to submit their views.

⁸ Council Regulation (EC) No 517/94 of 7 March 1994 on common rules for imports of textile products from certain third countries not covered by bilateral agreements, protocols or other arrangements, or by other specific Community import rules (OJ L 67, 10.3.1994, p. 1).

- (16) The provisions on investigations laid down in this Regulation are without prejudice to Union or national rules concerning professional secrecy.
- (17) It is also necessary to set time limits for the initiation of investigations and for determinations as to whether or not measures are appropriate, with a view to ensuring that such determinations are made quickly, in order to increase legal certainty for the economic operators concerned.
- (18) In cases in which safeguard measures take the form of a quota the level of the latter should be set in principle no lower than the average level of imports over a representative period of at least three years.
- (19) In cases in which a quota is allocated among supplier countries each country's quota may be determined by agreement with the countries themselves or by taking as a reference the level of imports over a representative period. Derogations from these rules should nevertheless be possible where there is serious injury and a disproportionate increase in imports, provided that due consultation under the auspices of the WTO Committee on Safeguards takes place.
- (20) The maximum duration of safeguard measures should be determined and specific provisions regarding extension, progressive liberalisation and reviews of such measures be laid down.
- (21) The circumstances in which products originating in a developing country which is a member of the WTO are to be exempt from safeguard measures should be established.
- (22) Surveillance or safeguard measures confined to one or more regions of the Union may prove more suitable than measures applying to the whole Union . However, such measures should be authorised only exceptionally and where no alternative exists. It is necessary to ensure that such measures are temporary and cause the minimum of disruption to the operation of the internal market.
- (23) In the interests of uniformity in rules for imports, the formalities to be carried out by importers should be simple and identical regardless of the place where the goods clear customs. It is therefore desirable to provide that any formalities should be carried out using forms corresponding to the specimen annexed to this Regulation.
- (24) Surveillance documents issued in connection with Union surveillance measures should be valid throughout the Union irrespective of the Member State of issue.

↓ 37/2014 Art. 1 and Annex .19 (adapted)

- (25) The implementation of this Regulation requires uniform conditions for adopting provisional and definitive safeguard measures, and for the imposition of prior surveillance measures. Those measures should be adopted by the Commission in

accordance with Regulation (EU) No 182/2011 of the European Parliament and of the Council⁹.

- (26) The advisory procedure should be used for the adoption of surveillance and provisional measures given the effects of such measures and their sequential logic in relation to the adoption of definitive safeguard 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,

↓ 260/2009 (adapted)

HAVE ADOPTED THIS REGULATION:

CHAPTER I

GENERAL PRINCIPLES

Article 1

1. This Regulation applies to imports of products originating in third countries, except for:
 - (a) textile products subject to specific import rules under Regulation (EC) No 517/94;
 - (b) the products originating in certain third countries listed in Council Regulation (EC) No 625/2009¹⁰.
2. The products referred to in paragraph 1 shall be freely imported into the Union and accordingly, without prejudice to the safeguard measures which may be taken under Chapter V, shall not be subject to any quantitative restrictions.

CHAPTER II

UNION INFORMATION AND CONSULTATION PROCEDURE

Article 2

Member States shall inform the Commission if trends in imports appear to call for surveillance or safeguard measures. This information shall contain the evidence available, as determined on the basis of the criteria laid down in Article 9. The Commission shall immediately pass this information on to all the Member States.

⁹ 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).

¹⁰ Council Regulation (EC) No 625/2009 of 7 July 2009 on common rules for imports from certain third countries (OJ L 185, 17.7.2009, p. 1).

Article 3

1. The Commission shall be assisted by a Committee on Safeguards. That Committee shall be a committee within the meaning of Regulation (EU) No 182/2011.
 2. Where reference is made to this paragraph, Article 4 of Regulation (EU) No 182/2011 shall apply.
 3. Where reference is made to this paragraph, Article 5 of Regulation (EU) No 182/2011 shall apply.
 4. Where reference is made to this paragraph, Article 8 of Regulation (EU) No 182/2011, in conjunction with Article 5 thereof, shall apply.
 5. Pursuant to Article 3(5) of Regulation (EU) No 182/2011, where recourse is made to the written procedure for adopting definitive measures pursuant to Article 16 of this Regulation, such procedure shall be terminated without result where, within the time-limit set down by the chair, the chair so decides or a majority of committee members as defined in Article 5(1) of Regulation (EU) No 182/2011 so request. Where recourse is made to the written procedure in other instances where there has been a discussion of the draft measure in the committee, that procedure shall be terminated without result where, within the time-limit set down by the chair, the chair so decides or a simple majority of committee members so request. Where recourse is made to the written procedure in other instances where there has not been a discussion of the draft measure in the committee, that procedure shall be terminated without result where, within the time-limit set down by the chair, the chair so decides or at least a quarter of committee members so request.
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CHAPTER III

⊗ UNION ⊗ INVESTIGATION PROCEDURE

Article 4

1. Without prejudice to Article 7, the ⊗ Union ⊗ investigation procedure shall be implemented before any safeguard measure is applied.
2. Using as a basis the factors referred to in Article 9, the investigation shall seek to determine whether imports of the product in question are causing or threatening to cause serious injury to the ⊗ Union ⊗ producers concerned.
3. The following definitions shall apply:

- (a) ‘serious injury’ means a significant overall impairment in the position of ☒ Union ☒ producers;
- (b) ‘threat of serious injury’ means serious injury that is clearly imminent;
- (c) ‘☒ Union ☒ producers’ means the producers as a whole of the like or directly competing products operating within the territory of the ☒ Union ☒ , or those whose collective output of the like or directly competing products constitutes a major proportion of the total ☒ Union ☒ production of those products.

Article 5

↓ 37/2014 Art. 1 and
Annex .19(3)

1. Where it is apparent to the Commission that there is sufficient evidence to justify the initiation of an investigation, the Commission shall initiate an investigation within one month of the date of receipt of information from a Member State and publish a notice in the *Official Journal of the European Union*. That notice shall:

↓ 260/2009

- (a) give a summary of the information received, and require that all relevant information is to be communicated to the Commission;
- (b) state the period within which interested parties may make known their views in writing and submit information, if such views and information are to be taken into account during the investigation;
- (c) state the period within which interested parties may apply to be heard orally by the Commission in accordance with paragraph 4.

The Commission shall commence the investigation, acting in cooperation with the Member States.

↓ 37/2014 Art. 1 and
Annex .19(3)

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 is provided to the Commission.

2. The Commission shall seek all information it deems necessary and, where it considers it appropriate, after having informed the Member States, endeavour to check that information with importers, traders, agents, producers, trade associations and organisations.

↓ 260/2009 (adapted)

The Commission shall be assisted in this task by staff of the Member State on whose territory these checks are being carried out, provided that ☒ this ☒ Member State so wishes.

3. The Member States shall supply the Commission, at its request and following procedures laid down by it, with the information at their disposal on developments in the market of the product being investigated.

4. Interested parties which have come forward pursuant to the first subparagraph of paragraph 1 and representatives of the exporting country 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 8 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.

5. The Commission may hear the interested parties. Such parties must 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.

6. When information is not supplied within the time limits set by this Regulation or by the Commission pursuant to this Regulation, or the investigation is significantly impeded, findings may be made on the basis of the facts available. Where the Commission finds that any interested party or third party has supplied it with false or misleading information, it shall disregard the information and may make use of facts available.

↓ 37/2014 Art. 1 and
Annex .19(3)

7. Where it appears to the Commission that there is insufficient evidence to justify an investigation, it shall inform the Member States of its decision within one month of the date of receipt of the information from the Member States.

↓ 260/2009

Article 6

1. At the end of the investigation, the Commission shall submit a report on the results to the Committee.

↓ 37/2014 Art. 1 and
Annex .19(4)

2. Where the Commission considers, within nine months of the initiation of the investigation, that no Union surveillance or safeguard measures are necessary, the investigation shall be terminated within a month. The Commission shall terminate the investigation in accordance with the advisory procedure referred to in Article 3(2).

3. If the Commission considers that ☒ Union ☒ surveillance or safeguard measures are necessary, it shall take the necessary decisions in accordance with Chapters IV and V, no later than nine months from the initiation of the investigation. In exceptional circumstances, this time limit may be extended by a further maximum period of two months; the Commission shall then publish a notice in the *Official Journal of the European Union* setting forth the duration of the extension and a summary of the reasons therefore.

Article 7

1. The provisions of this Chapter shall not preclude the use, at any time, of surveillance measures in accordance with Articles 10 to 14 or provisional safeguard measures in accordance with Articles 15, 16 and 17.

Provisional safeguard measures shall be applied:

- (a) in critical circumstances where delay would cause damage which would be difficult to repair, making immediate action necessary; and
- (b) where a preliminary determination provides clear evidence that increased imports have caused or are threatening to cause serious injury.

The duration of such measures shall not exceed 200 days.

2. Provisional safeguard measures shall take the form of an increase in the existing level of customs duty, whether the latter is zero or higher, if such action is likely to prevent or repair the serious injury.

3. The Commission shall immediately conduct whatever investigation measures are still necessary.

4. Should the provisional safeguard measures be repealed because no serious injury or threat of serious injury exists, the customs duties collected as a result of the provisional measures shall be automatically refunded as soon as possible. The procedure laid down in Article 79 et seq. of Regulation (EC) No 450/2008 of the European Parliament and of the Council¹¹ shall apply.

Article 8

1. Information received pursuant to this Regulation shall be used only for the purpose for which it was requested.

¹¹ Regulation (EC) No 450/2008 of the European Parliament and of the Council of 23 April 2008 laying down the Community Customs Code (Modernised Customs Code) (OJ L 145, 4.6.2008, p. 1).

↓ 37/2014 Art. 1 and Annex .19(5)

2. The Commission and the Member States, including the officials of either, shall not reveal any information of a confidential nature received pursuant to this Regulation, or any information provided on a confidential basis, without specific permission from the supplier of such information.

↓ 260/2009 (adapted)

3. Each request for confidentiality shall state the reasons why the information is confidential.

However, if it appears that a request for confidentiality is unjustified and if the supplier of the information wishes neither to make it public nor to authorise its disclosure in general terms or in the form of a summary, the information concerned may be disregarded.

4. Information shall in any case be considered to be confidential if its disclosure is likely to have a significantly adverse effect upon the supplier or the source of such information.

5. Paragraphs 1 to 4 shall not preclude reference by the ☒ Union ☒ authorities to general information and in particular to reasons on which decisions taken pursuant to this Regulation are based. Those authorities shall, however, take into account the legitimate interest of legal and natural persons concerned that their business secrets should not be divulged.

Article 9

1. Examination of the trend in imports, of the conditions in which they take place and of serious injury or threat of serious injury to ☒ Union ☒ producers resulting from such imports shall cover in particular 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,

- prices (i.e. depression of prices or prevention of price increases which would normally have occurred),
 - profits,
 - return on capital employed,
 - cash flow,
 - employment;
- (d) factors other than trends in imports which are causing or may have caused injury to the Union producers concerned.

2. Where a threat of serious injury is alleged, the Commission shall also examine whether it is clearly foreseeable that a particular situation is likely to develop into actual injury.

In this regard account may be taken of factors such as:

- (a) the rate of increase of the exports to the Union ;
- (b) the export capacity in the country of origin or export, as it stands or is likely to be in the foreseeable future, and the likelihood that that capacity will be used to export to the Union .

CHAPTER IV

SURVEILLANCE

Article 10

1. Where the trend in imports of a product originating in a third country covered by this Regulation threatens to cause injury to Union producers, and where the interests of the Union so require, import of that product may be subject, as appropriate, to:

- (a) retrospective Union surveillance carried out in accordance with the provisions laid down in the decision referred to in paragraph 2;
- (b) prior Union surveillance carried out in accordance with Article 11.

↓ 37/2014 Art. 1 and
Annex .19(6)

2. The decision to impose surveillance shall be taken by the Commission by means of implementing acts in accordance with the advisory procedure referred to in Article 3(2).

3. The 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 six months in which the measures were introduced.

Article 11

1. Products under prior Union surveillance may be put into free circulation only on production of a surveillance document. Such document shall be issued by the competent authority designated by Member States, free of charge, for any quantity requested and within a maximum of five working days of receipt by the national competent authority of an application by any Union importer, regardless of his place of business in the Union . This application shall be deemed to have been received by the national competent authority no later than three working days after submission, unless it is proved otherwise.

2. The surveillance document shall be made out on a form corresponding to the model in Annex I.

Except where the decision to impose surveillance provides otherwise, the importer's application for surveillance documents shall contain only the following:

- (a) the full name and address of the applicant (including telephone and fax numbers and any number identifying the applicant to the competent national authority), plus the applicant's VAT registration number if he is liable for VAT;
- (b) where appropriate, the full name and address of the declarant or of any representative appointed by the applicant (including telephone and fax numbers);
- (c) a description of the goods giving their :
 - trade name,
 - combined nomenclature code,
 - place of origin and place of consignment;
- (d) the quantity declared, in kilograms and, where appropriate, any other additional unit (pairs, items, etc.);
- (e) the value of the goods, CIF at Union frontier, in euro;
- (f) the following statement, dated and signed by the applicant, with the applicant's name spelt out in capital letters:

'I, the undersigned, certify that the information provided in this application is true and given in good faith, and that I am established in the Union .'

3. The surveillance document shall be valid throughout the Union , regardless of the Member State of issue.

4. A finding that the unit price at which the transaction is effected exceeds that indicated in the surveillance document by less than 5 % or that the total value or quantity of the products presented for import exceeds the value or quantity given in the surveillance document by less than 5 % shall not preclude the release for free circulation of the product in question. The Commission, having heard the opinions expressed in the Committee and taking account of the nature of the products and other special features of the transactions concerned, may fix a different percentage, which, however, should not normally exceed 10 %.

5. Surveillance documents may be used only for such time as arrangements for liberalisation of imports remain in force in respect of the transactions concerned. Such surveillance documents may not in any event be used beyond the expiry of a period which shall be laid down at the same time and by means of the same procedure as the imposition of surveillance, and shall take account of the nature of the products and other special features of the transactions.

6. Where the decision taken pursuant to Article 10 so requires, the origin of products under Union surveillance must be proved by a certificate of origin. This paragraph shall not affect other provisions concerning the production of any such certificate.

7. Where the product under prior Union surveillance is subject to regional safeguard measures in a Member State, the import authorisation granted by that Member State may replace the surveillance document.

8. Surveillance document forms and extracts thereof shall be drawn up in duplicate, one copy, marked 'Holder's copy' and bearing the number 1, to be issued to the applicant, and the other, marked 'Copy for the competent authority' and bearing the number 2, to be kept by the authority issuing the document. For administrative purposes the competent authority may add supplementary copies to form 2.

9. Forms shall be printed on white paper free of mechanical pulp, dressed for writing and weighing between 55 g and 65 g per square metre. Their size shall be 210 mm × 297 mm; the type space between the lines shall be 4,24 mm (one sixth of an inch); the layout of the forms shall be followed precisely. Both sides of copy No 1, which is the surveillance document itself, shall in addition have a yellow printed guilloche pattern background so as to reveal any falsification by mechanical or chemical means.

10. Member States shall be responsible for having the forms printed. The forms may also be printed by printers appointed by the Member State in which they are established. In the latter case, reference to the appointment by the Member State must appear on each form. Each form shall bear an indication of the printer's name and address or a mark enabling the printer to be identified.

↓ 37/2014 Art. 1 and Annex .19(7)

Article 12

Where the import of a product has not been made subject to prior Union surveillance, the Commission, in accordance with Article 17, may introduce surveillance confined to imports

into one or more regions of the Union. The Commission shall provide information to the Member States once it decides to introduce surveillance.

↓ 260/2009 (adapted)

Article 13

1. Products under regional surveillance may be put into free circulation in the region concerned only on production of a surveillance document. Such document shall be issued by the competent authority designated by the Member State(s) concerned, free of charge, for any quantity requested and within a maximum of five working days of receipt by the national competent authority of an application by any Union importer, regardless of his place of business in the Union . This application shall be deemed to have been received by the national competent authority no later than three working days after submission, unless it is proved otherwise. Surveillance documents may be used only for such time as arrangements for imports remain liberalised in respect of the transactions concerned.

2. Article 11(2) shall apply.

Article 14

1. Member States shall communicate to the Commission within the first ten days of each month in the case of Union or regional surveillance:

- (a) in the case of prior surveillance, details of the sums of money (calculated on the basis of CIF prices) and quantities of goods in respect of which surveillance documents were issued during the preceding period;
- (b) in every case, details of imports during the period preceding the period referred to in point (a).

The information supplied by Member States shall be broken down by product and by country.

Different provisions may be laid down at the same time and by the same procedure as the surveillance arrangements.

2. Where the nature of the products or special circumstances so require, the Commission may, at the request of a Member State or on its own initiative, amend the timetables for submitting this information.

3. The Commission shall inform the Member States accordingly.

CHAPTER V

SAFEGUARD MEASURES

Article 15

1. Where a product is imported into the Union in such greatly increased quantities and/or on such terms or conditions as to cause, or threaten to cause, serious injury to Union producers, the Commission, in order to safeguard the interests of the Union , may, acting at the request of a Member State or on its own initiative:

- (a) limit the period of validity of surveillance documents within the meaning of Article 11 to be issued after the entry into force of this measure;
- (b) alter the import rules for the product in question by making its release for free circulation conditional on production of an import authorisation, the granting of which shall be governed by such provisions and subject to such limits as the Commission shall lay down.

The measures referred to in (a) and (b) shall take effect immediately.

2. As regards members of the WTO, the measures referred to in paragraph 1 shall be taken only when the two conditions indicated in the first subparagraph of that paragraph are met.

3. If establishing a quota, account shall be taken in particular of:

- (a) the desirability of maintaining, as far as possible, traditional trade flows;
- (b) the volume of goods exported under contracts concluded on normal terms and conditions before the entry into force of a safeguard measure within the meaning of this Chapter, where such contracts have been notified to the Commission by the Member State concerned;
- (c) the need to avoid jeopardising the achievement of the aim pursued in establishing the quota.

Any quota shall not be set lower than the average level of imports over the last three representative years for which statistics are available unless a different level is necessary to prevent or remedy serious injury.

4. In cases in which a quota is allocated among supplier countries, allocation may be agreed with those of them having a substantial interest in supplying the product concerned for import into the Union .

Failing this, the quota shall be allocated among the supplier countries in proportion to their share of imports into the Union of the product concerned during a previous representative period, due account being taken of any specific factors which may have affected or may be affecting the trade in the product.

Provided that its obligation to see that consultations are conducted under the auspices of the WTO Committee on Safeguards is not disregarded, the Union may nevertheless depart from this method of allocation in the case of serious injury if imports originating in one or more supplier countries have increased in disproportionate percentage in relation to the total increase of imports of the product concerned over a previous representative period.

5. The measures referred to in this Article shall apply to every product which is put into free circulation after their entry into force. In accordance with Article 17 they may be confined to one or more regions of the Union .

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 and that those products which, pursuant to Articles 10 and 11, may be put into free circulation only on production of a surveillance document are in fact accompanied by such a document.

↓ 37/2014 Art. 1 and Annex .19(8)

6. Where intervention by the Commission has been requested by a Member State, the Commission, acting in accordance with the examination procedure referred to in Article 3(3), or, in cases of urgency, in accordance with Article 3(4), shall take a decision within a maximum of five working days of the date of receipt of such a request.

↓ 37/2014 Art. 1 and Annex .19(9)

Article 16

Where the interests of the Union so require, the Commission, acting in accordance with the examination procedure referred to in Article 3(3) and the terms of Chapter III, may adopt appropriate measures to prevent a product being imported into the Union in such greatly increased quantities and/or on such terms or conditions as to cause, or threaten to cause, serious injury to Union producers of like or directly competing products.

Article 15(2) to (5) shall apply.

↓ 260/2009 (adapted)

Article 17

Where it emerges, primarily on the basis of the factors referred to in Article 9, that the conditions laid down for the adoption of measures pursuant to Articles 10 and 15 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.

The measures shall be adopted in accordance with the provisions laid down in Articles 10 and 15.

Article 18

No safeguard measure may be applied to a product originating in a developing country member of the WTO as long as that country's share of Union imports of the product concerned does not exceed 3 %, provided that developing country members of the WTO with less than a 3 % import share collectively account for not more than 9 % of total Union imports of the product concerned.

Article 19

1. The duration of safeguard measures must be limited to the period of time necessary to prevent or remedy serious injury and to facilitate adjustment on the part of Union producers. The period must not exceed four years, including the duration of any provisional measure.

2. Such initial period may be extended, except in the case of the measures referred to in the third subparagraph of Article 15(4) provided it is determined that:

- (a) the safeguard measure continues to be necessary to prevent or remedy serious injury;
- (b) there is evidence that Union producers are adjusting.

3. Extensions shall be adopted in accordance with the terms of Chapter III and using the same procedures as the initial measures. A measure so extended shall not be more restrictive than it was at the end of the initial period.

4. If the duration of the measure exceeds one year, the measure must be progressively liberalised at regular intervals during the period of application, including the period of extension.

5. The total period of application of a safeguard measure, including the period of application of any provisional measures, the initial period of application and any prorogation thereof, may not exceed eight years.

↓ 37/2014 Art. 1 and Annex .19(10)

Article 20

1. While any surveillance or safeguard measure applied in accordance with Chapters IV and V is in operation the Commission may, either at the request of a Member State or on its own initiative, and no later than the mid-point of the period of application of measures of a duration exceeding three years:

- (a) examine the effects of the measure;
- (b) determine whether and in what manner it is appropriate to accelerate the pace of liberalisation;
- (c) ascertain whether application of the measure is still necessary.

Where the Commission considers that the application of the measure is still necessary, it shall inform the Member States accordingly.

2. Where the Commission considers that any surveillance or safeguard measure referred to in Articles 10, 12, 15, 16 and 17 should be revoked or amended, it shall, acting in accordance with the examination procedure referred to in Article 3(3), revoke or amend the measure.

Where the decision relates to regional surveillance measures, it shall apply from the sixth day following that of its publication in the *Official Journal of the European Union*.

↓ 260/2009

Article 21

1. Where imports of a product have already been subject to a safeguard measure, no further measure shall be applied to that product until a period equal to the duration of the previous measure has elapsed. Such period shall not be less than two years.

2. Notwithstanding paragraph 1, a safeguard measure of 180 days or less may be re-imposed for a product if:

- (a) at least one year has elapsed since the date of introduction of a safeguard measure on the import of that product; and
- (b) such a safeguard measure has not been applied to the same product more than twice in the five-year period immediately preceding the date of introduction of the measure.

CHAPTER VI

FINAL PROVISIONS

↓ 37/2014 Art. 1 and Annex .19(11)

Article 22

Where the interests of the Union so require, the Commission, acting in accordance with the examination procedure referred to in Article 3(3), may adopt appropriate measures implementing legislative acts to allow the rights and obligations of the Union or of all the

Member States, in particular those relating to trade in commodities, to be exercised and fulfilled at international level.

↓ 37/2014 Art. 1 and
Annex .19(12)

Article 23

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 1225/2009¹².

↓ 260/2009 (adapted)

Article 24

1. This Regulation shall not preclude the fulfilment of obligations arising from special rules contained in agreements concluded between the ☒ Union ☒ and third countries.

2. Without prejudice to other ☒ Union ☒ provisions, this Regulation shall not preclude the adoption or application by Member States of:

- (a) prohibitions, quantitative restrictions or surveillance measures on grounds of public morality, public policy or public security, the protection of health and life of humans, animals or plants, the protection of national treasures possessing artistic, historic or archaeological value, or the protection of industrial and commercial property;
- (b) special formalities concerning foreign exchange;
- (c) formalities introduced pursuant to international agreements in accordance with the Treaty.

The Member States shall inform the Commission of the measures or formalities they intend to introduce or amend in accordance with the first subparagraph.

In the event of extreme urgency, the national measures or formalities in question shall be communicated to the Commission immediately upon their adoption.

Article 25

1. This Regulation shall be without prejudice to the operation of the instruments establishing the common organisation of agricultural markets or of ☒ Union ☒ or national administrative provisions derived therefrom or of the specific instruments applicable to goods resulting from the processing of agricultural products. It shall operate by way of complement to those instruments.

¹² 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).

2. In the case of products covered by the instruments referred to in paragraph 1, Articles 10 to 14 and Article 21 shall not apply to those in respect of which the Union rules on trade with third countries require the production of a licence or other import document.

Articles 15, 17 and 20 to 24 shall not apply to those products in respect of which such rules provide for the application of quantitative import restrictions.

Article 26

Regulation (EC) No 260/2009 is repealed.

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 III.

Article 27

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 Brussels,

For the European Parliament
The President

For the Council
The President