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from: General Secretariat
to: Permanent Representatives Committee/Council

Subject: Proposal for a regulation of the European Parliament and of the Council implementing the bilateral safeguard clause and the stabilisation mechanism for bananas of the Agreement establishing an Association between the European Union and its Member States on the one hand, and Central America on the other - Outcome of the European Parliament's first reading (Strasbourg, 10 to 13 September 2012)

I. INTRODUCTION

The Rapporteur, Mr Jörg LEICHTFRIED (S&D - AT), presented a report consisting of 36 amendments to the proposal for a Regulation, on behalf of the Committee on International Trade. In addition, the EUL/NGL political group tabled five amendments (amendments 37 - 41).

II. DEBATE

The debate, which took place on 12 September 2012, was a joint debate, which is summarised in document 13671/12.

III. VOTE

When it voted on 13 September 2012, the plenary adopted 36 amendments to the proposal for a Regulation (amendments 1-36).

Rather than vote on the draft legislative resolution, however, the Parliament decided to refer the matter back to the Committee for reconsideration pursuant to Rule 57(2) of the Parliament's Rules of Procedure.

Implementation of the bilateral safeguard clause and the stabilisation mechanism for bananas of the Association Agreement between the EU and Central America ***I

Amendments adopted by the European Parliament on 13 September 2012 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 Agreement establishing an Association between the European Union and its Member States on the one hand, and Central America on the other (COM(2011)0599 – C7-0306/2011 – 2011/0263(COD))¹

(Ordinary legislative procedure: first reading)

Amendment 1

Proposal for a regulation

Recital 3

Text proposed by the Commission

(3) It is necessary to lay down the procedures *for applying* certain provisions of the Agreement which concern the bilateral safeguard clause and for applying the Stabilisation Mechanism for Bananas that has been agreed with Central America.

Amendment

(3) It is necessary to lay down the *most appropriate* procedures *to guarantee the effective application of* certain provisions of the Agreement which concern the bilateral safeguard clause and for applying the Stabilisation Mechanism for Bananas that has been agreed with Central America.

Amendment 2

Proposal for a regulation

Recital 3 a (new)

Text proposed by the Commission

Amendment

(3a) It is necessary to create appropriate safeguard 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

¹ The matter was referred back to the committee responsible for reconsideration pursuant to Rule 57(2), second subparagraph (A7-0237/2012).

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 is maintained under the best possible conditions, as it is a crucial employment sector in certain areas, especially in the outermost regions.

Amendment 3

Proposal for a regulation Recital 4 a (new)

Text proposed by the Commission

Amendment

(4a) Serious injury or the threat of serious injury to Union producers may also be caused by the non-fulfilment of specific obligations under Title VIII on “Trade and Sustainable Development” of Part IV of the Agreement – particularly in respect of the labour and environmental standards laid down therein – thus necessitating the imposition of safeguard measures.

Amendment 4

Proposal for a regulation Recital 5

Text proposed by the Commission

Amendment

(5) Safeguard measures should be considered only if the product in question is imported into the Union in such increased quantities, in absolute terms or relative to Union production, and under such conditions as to cause, or threaten to cause, serious injury to Union producers of like or directly competitive products as laid down in Article 104 of the Agreement.

(5) Safeguard measures should be considered only if the product in question is imported into the Union in such increased quantities, in absolute terms or relative to Union production, and under such conditions as to cause, or threaten to cause, serious injury to Union producers of like or directly competitive products as laid down in Article 104 of the Agreement.
Pursuant to Article 349 of the Treaty on the Functioning of the European Union and with regard to the products and economic sectors of the outermost regions, safeguard measures should be introduced as soon as imports into the

Union of the product in question cause or threaten to cause injury to producers of like or directly competitive products in the outermost regions of the Union.

Amendment 5

Proposal for a regulation

Recital 6

Text proposed by the Commission

(6) Safeguard measures should take one of the forms referred to in Article 104(2) of the Agreement.

Amendment

(6) Safeguard measures should take one of the forms referred to in Article 104(2) of the Agreement. ***Specific safeguard measures should be provided for when there is a threat to the products or economic sectors of the outermost regions, pursuant to Article 349 of the Treaty on the Functioning of the European Union.***

Amendment 6

Proposal for a regulation

Recital 7

Text proposed by the Commission

(7) The tasks of carrying out investigations and, if necessary, imposing safeguard measures should be carried out in the most transparent manner possible.

Amendment

(7) The tasks of ***following up and reviewing the Agreement and*** carrying out investigations and, if necessary, imposing safeguard measures should be carried out in the most transparent manner possible.

Amendment 7

Proposal for a regulation

Recital 8

Text proposed by the Commission

(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.

Amendment

(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*** of any trends in imports which might call for the application of safeguard measures.

Amendment 8

Proposal for a regulation Recital 8 a (new)

Text proposed by the Commission

Amendment

(8a) In the event that the European Parliament adopts a recommendation to initiate a safeguard investigation, the Commission will carefully examine whether the conditions under the Regulation for ex-officio initiation are fulfilled. In the event that the Commission considers that the conditions are not fulfilled, it will present a report to the responsible committee of the European Parliament including an explanation of all the factors relevant to the initiation of such an investigation.

Amendment 9

Proposal for a regulation Recital 10 a (new)

Text proposed by the Commission

Amendment

(10a) In some cases, an increase of imports concentrated in one or several of the Union's outermost regions or Member States may cause or threaten to cause serious injury or 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 or Member States, the Commission may introduce prior surveillance measures.

Amendment 10

Proposal for a regulation Recital 12

Text proposed by the Commission

Amendment

(12) It is also necessary, pursuant to 112 of the Agreement, to set time limits for the initiation of investigations and for determinations as to whether or not

(12) It is also necessary, pursuant to *Article* 112 of the Agreement, 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.

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 ***and to ensure that the measures are effective.***

Amendment 11

Proposal for a regulation Recital 14

Text proposed by the Commission

(14) Safeguard measures should be applied only to the extent, and for such time, as may be necessary to prevent serious injury and to facilitate adjustment. The maximum duration of safeguard measures should be determined and specific provisions regarding extension and review of such measures should be laid down, as referred to in Article 105 of the Agreement.

Amendment

(14) Safeguard measures should be applied only to the extent, and for such time, as may be necessary to prevent serious injury and to facilitate adjustment. The maximum duration of safeguard measures should be determined and specific provisions regarding extension and review of such measures should be laid down, as referred to in Article 105 of the Agreement.
Specific provisions should apply with regard to safeguard measures triggered to protect produce and economic sectors in the outermost regions, in accordance with Article 349 of the Treaty on the Functioning of the European Union.

Amendment 12

Proposal for a regulation Recital 14 a (new)

Text proposed by the Commission

Amendment

(14a) Close monitoring will 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, including bananas, from the date of application of the Agreement.

Amendment 13

Proposal for a regulation Recital 14 b (new)

Text proposed by the Commission

Amendment

(14b) The importance of adhering to the international labour standards drawn up and supervised by the International Labour Organisation should be stressed. Defending decent work for all should be an absolute priority and bananas imported from Central America should be produced under decent social and environmental conditions and for a fair wage to ensure Union producers are not the victims of dumping, a disadvantage they would not be in a position to compensate for and which would permanently damage their competitiveness in the global banana market.

Amendment 14

**Proposal for a regulation
Recital 16 a (new)**

Text proposed by the Commission

Amendment

(16a) The Commission should submit a report once a year on the implementation of the Agreement and on the application of the safeguard measures and the banana stabilisation mechanism, which should include up-to-date and reliable statistics on imports from Central America and an assessment of their impact on market prices, employment, working conditions in the Union and the evolution of the Union's production sector, paying special attention to small-size producers and cooperatives. The Commission should do its utmost to include an analysis of the impact of the Agreement and this Regulation on organic production and consumption in the Union and Fair-Trade flows between all parties to the Agreement.

Amendment 15

**Proposal for a regulation
Recital 16 b (new)**

(16b) The Commission should make diligent and effective use of the Stabilisation Mechanism for Bananas in order to avoid a threat of serious deterioration or a serious deterioration for producers in the outermost regions in the Union and, from January 2020, use existing instruments such as the safeguard clause or, if necessary, think about developing new instruments which, in the event of serious market disruption, will make it possible to preserve the competitiveness of production sectors in the Union and particularly in the outermost regions.

Amendment 16

Proposal for a regulation Article 1 - point 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 civil society organisations, NGOs and workers' organisations***;

Amendment 17

Proposal for a regulation Article 1 – point e a (new)

Text proposed by the Commission

Amendment

((ea) "serious deterioration" means significant disturbances in a sector or industry; "threat of serious deterioration" means significant disturbances that are clearly imminent.

Amendment 18

Proposal for a regulation Article 2 a (new)

Article 2a

Monitoring

1. The Commission shall monitor the evolution of import and export statistics of Central American products, in particular in sensitive sectors including bananas. For this purpose, it shall cooperate and exchange data on a regular basis with Member States and the Union industry and all interested parties.

2. Upon a duly justified request by the industries concerned, the Commission may consider extending the scope of the monitoring to other sectors.

3. The Commission shall present an annual monitoring report to the European Parliament and the Council on updated statistics on imports from Central America of products in the sensitive sectors and those sectors to which monitoring has been extended, including bananas.

4. In its monitoring report, the Commission shall do its utmost to include the employment rates and working conditions for banana producers in Central America to avoid all forms of dumping.

Amendment 19

Proposal for a regulation

Article 3 – paragraph 1

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

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, **by the European Parliament**, 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.

justify such initiation.

When appropriate, the European Parliament may consult and source analysis from independent bodies, such as trade unions, the ILO, academics or human rights organisations.

Amendment 20

Proposal for a regulation Article 3 – paragraph 2

Text proposed by the Commission

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

Amendment

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

Amendment 21

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).

Amendment 22

Proposal for a regulation

Article 4 – paragraph 4

Text proposed by the Commission

4. The Commission shall seek all information it considers necessary to make a determination with regard to the conditions set out in Article 2(1), and, **where it considers it appropriate**, endeavour to verify that information.

Amendment

4. The Commission shall seek all information it considers necessary to make a determination with regard to the conditions set out in Article 2(1) and endeavour to verify that information.

Amendment 23

Proposal for a regulation

Article 4 – paragraph 5

Text proposed by the Commission

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

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, **such as meeting the trigger volumes described within the framework of the stabilisation mechanism for bananas included in Chapter II of this Regulation.**

Amendment 24

Proposal for a regulation

Article 4 – paragraph 7

Text proposed by the Commission

7. The Commission shall ensure that all data and statistics which are used for the investigation are available, comprehensible, transparent and verifiable.

Amendment

7. The Commission shall ensure that all data and statistics which are used for the investigation are available, comprehensible, transparent, ***up-to-date, reliable*** and verifiable.

Amendment 25

Proposal for a regulation

Article 5 – paragraph 1 a (new)

Text proposed by the Commission

Amendment

1a. In the event that there is a surge of imports of products falling into sensitive sectors concentrated in one or several Member States or outermost regions, the Commission may introduce prior surveillance measures.

Amendment 26

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 interested parties, by the European Parliament***, 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 27

**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. Special sections of the report shall deal with the fulfilment of obligations under Title VIII “Trade and Sustainable development” of Part IV of the Agreement and with action taken in that respect by Central America under its internal mechanisms and by the Civil Society Dialogue Forum.***
- 3. The report shall also present a summary of the statistics and the evolution of trade with Central America.***
- 4. The report shall include up-to-date and reliable statistics on banana imports from Central America and their direct and indirect impact on the development of employment and working conditions in the Union production sector.***

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 the Agreement and this Regulation.

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

Amendment 28

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.

Amendment 29

Proposal for a regulation Chapter I a – Article 12 a (new)

Text proposed by the Commission

Amendment

Chapter Ia

Article 12a

12 a. The applicable provision for the purposes of adopting the necessary implementing rules for the application of the rules contained in Appendix 2A of Annex II "Concerning the Concept of 'Originating Products' and Methods of Administrative Co-operation" and Appendix 2 of Annex I "Elimination of customs duties" of the Agreement is Article 247a of Council Regulation (EEC) No 2913/92 of 12 October 1992 establishing the Community Customs

Amendment 30

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.

Amendment 31

Proposal for a regulation Article 13 – paragraph 2

Text proposed by the Commission

Amendment

2. A separate annual trigger import volume is set for imports from Central American country for products mentioned in paragraph 1 as indicated in the table in the Annex to this Regulation. The importation of the products mentioned in paragraph 1 at the preferential customs duty rate shall, in addition to the proof of origin established under Annex III (Definition of the concept of ‘originating products’ and methods of administrative co-operation) of the Agreement with Central America, be subject to the presentation of an export certificate issued by the competent authority of the Republic of the Central American country from which the products are exported. Once the trigger volume 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 during that same year for a period of time not exceeding three months, and not going beyond the end of the calendar year.

2. A separate annual trigger import volume is set for imports from Central American country for products mentioned in paragraph 1 as indicated in the table in the Annex to this Regulation. The importation of the products mentioned in paragraph 1 at the preferential customs duty rate shall, in addition to the proof of origin established under Annex III (Definition of the concept of "originating products" and methods of administrative co-operation) of the Agreement with Central America, be subject to the presentation of an export certificate issued by the competent authority of the Republic of the Central American country from which the products are exported. Once the trigger volume is met during the corresponding calendar year, the Commission ***shall*** temporarily suspend the preferential customs duty 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.***

Amendment 32

Proposal for a regulation
Article 13 – paragraph 2

Text proposed by the Commission

2. A separate annual trigger import volume is set for imports from Central American country for products mentioned in paragraph 1 as indicated in the table in the Annex to this Regulation. The importation of the products mentioned in paragraph 1 at the preferential customs duty rate shall, in addition to the proof of origin established under Annex III (Definition of the concept of "originating products" and methods of administrative co-operation) of the Agreement with Central America, be subject to the presentation of an export certificate issued by the competent authority of the Republic of the Central American country from which the products are exported. Once the trigger volume 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 during that same year for a period of time not exceeding three months, and not going beyond the end of the calendar year.

Amendment

2. A separate annual trigger import volume is set for imports from Central American country for products mentioned in paragraph 1 as indicated in the table in the Annex to this Regulation. The importation of the products mentioned in paragraph 1 at the preferential customs duty rate shall, in addition to the proof of origin established under Annex III (Definition of the concept of "originating products" and methods of administrative co-operation) of the Agreement with Central America, be subject to the presentation of an export certificate issued by the competent authority of the Republic of the Central American country from which the products are exported. ***This requirement to present an export certificate should not, however, result in additional red tape, higher costs or other de facto trade restrictions affecting the exporter.*** Once the trigger volume 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 during that same year for a period of time not exceeding three months, and not going beyond the end of the calendar year.

Amendment 33

Proposal for a regulation
Article 13 – paragraph 5 a (new)

Text proposed by the Commission

Amendment

5a. The Commission shall closely monitor the evolution of statistics for banana imports from Central America. Employment rates and working conditions, as well as organic production and consumption and Fair-Trade flows shall be part of the monitoring process. For this purpose, the Commission shall cooperate and exchange information on a

regular basis with the Member States, the Union industries and interested parties.

Amendment 34

Proposal for a regulation Article 13 – paragraph 5 b (new)

Text proposed by the Commission

Amendment

5b. Upon a duly reasoned request from the European Parliament, a Member State, the Union industry, any interested party or on its own initiative, the Commission shall pay particular attention to any noticeable increase in banana imports from Central America and, if appropriate under the terms of Article 5, shall take prior surveillance measures.

Amendment 35

Proposal for a regulation Article 13 – paragraph 5 c (new)

Text proposed by the Commission

Amendment

5c. 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.

Amendment 36

Proposal for a regulation Article 13 – paragraph 5 d (new)

Text proposed by the Commission

Amendment

5d. The European Parliament may invite the Commission, within one month of the publication of the latter's report, to an ad hoc meeting of Parliament's responsible committee to present and explain any issues related to implementation of the Agreement which affect the banana sector.