

New EU Horizontal Regulation on safeguard measures in FTAs to increase efficiency and transparency

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On 14 March 2019, the EU Horizontal Safeguard Regulation 2019/287 (“HSR”)¹ entered into force to streamline the implementation of bilateral safeguard measures in EU trade agreements concluded with third countries.

Most EU Free Trade Agreements (“FTAs”) permit the introduction of bilateral safeguard measures. These allow for the temporary withdrawal of tariff preferences to protect EU domestic industry from a significant increase in imports from the FTA partner country of a specific product that is causing or threatening to cause “serious injury” to EU producers.

To date, the EU has adopted separate EU regulations to implement the safeguard mechanisms for each individual trade agreement. With the adoption of the HSR, the EU aims to streamline the introduction of safeguard measures and other mechanisms for the temporary withdrawal of tariff preferences or other preferential treatment. However, the European Commission can still agree to include “deviating provisions” in its FTAs, which will then be added to a special Annex to the HSR. At this stage, the HSR only applies to the FTAs concluded with Japan, Singapore and Vietnam.

The main elements of the Horizontal Safeguard Regulation

a) What measures are covered?

The HSR contains the EU’s internal rules and procedures for investigating and imposing safeguard measures. These measures can entail the re-introduction of Most-Favoured-Nation (“MFN”) customs rates, or (if lower) the base rate used in the FTA’s relevant tariff elimination schedule, or the suspension of a further duty reduction provided for in the FTA’s tariff elimination schedule.

Measures include (i) prior surveillance measures; (ii) provisional safeguard measures; and (iii) definitive safeguard measures.

b) Who can request an investigation?

Under the HSR, the Commission can initiate a safeguard investigation at the request of an EU Member State, an EU industry, or on its own initiative. A Joint Statement of the European Parliament (“EP”) and the Commission clarifies that, where the EP adopts a recommendation to launch a safeguard investigation, the

¹ Regulation (EU) 2019/287 of the European Parliament and of the Council of 13 February 2019 implementing bilateral safeguard clauses and other mechanisms allowing for the temporary withdrawal of preferences in certain trade agreements concluded between the European Union and third countries, available [here](#).

Commission shall consider initiating a procedure or, otherwise, explain to the relevant EP Committee why it is choosing not to do so.

c) Length of investigation and duration of measures?

Where possible, investigations should be concluded within six months, extendable by three months in exceptional circumstances (such as the involvement of an unusually high number of interested parties or complex market situations). In exceptional cases, the Commission can, at the request of a Member State, impose provisional measures within five working days.

The Commission will regularly monitor import statistics for products marked as sensitive in the relevant FTA (and report on these every year to the EP and Council); and can extend the scope of monitoring upon request by an EU industry.

The Commission can impose prior surveillance measures, and provisional and definitive safeguard measures:

- **Surveillance measures** can be imposed for a limited period normally not exceeding one year.
- **Provisional measures** can be imposed “in critical circumstances where a delay is likely to cause damage which would be difficult to repair, making immediate action necessary”, for a maximum of 200 calendar days.
- **Definitive measures** are normally imposed for a maximum period of two years, but this period can be extended by another two years pursuant to a review investigation. The total duration (including the period during which provisional measures were applied) cannot exceed four years.

d) Deviating measures?

The HSR explicitly provides that the Commission can still negotiate provisions that deviate from those set out in the HSR in future FTAs, and that the specific provisions in FTAs listed in the HSR Annex which are not in accordance with the HSR remain valid and prevail.

At this stage, the regulation only covers the implementation of the EU FTAs concluded with Japan, Singapore and Vietnam, and sets out special deviating provisions relating to measures taken during a transitional period. It is expected that other FTAs will be added to the scope of the regulation in the future.

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