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COMMISSION DELEGATED REGULATION (EU) 2024/2634

of 29 July 2024

amending Regulation (EU) 2019/287 of the European Parliament and of the Council as regards specific provisions contained in the Economic Partnership Agreement between the European Union and the Republic of Kenya

THE EUROPEAN COMMISSION,

Having regard to the Treaty on the Functioning of the European Union,

Having regard to 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 ([1]), and in particular Article 15 thereof,

Whereas:

(1) Regulation (EU) 2019/287 lays down provisions for the implementation of bilateral safeguard clauses and other mechanisms allowing for the temporary withdrawal of preferences in certain trade agreements concluded between the European Union and one or more third countries. The provisions of Regulation (EU) 2019/287 do not affect any specific provisions contained in those trade agreements, where such provisions are not in accordance with that Regulation. Such specific provisions contained in certain trade agreements are listed in the Annex to Regulation (EU) 2019/287.

(2) The European Union and Kenya have concluded an Economic Partnership Agreement ([2]) containing certain provisions on bilateral safeguards that are not in accordance with Regulation (EU) 2019/287. Therefore, the Annex to Regulation (EU) 2019/287 should be amended accordingly,

HAS ADOPTED THIS REGULATION:

Article 1

The text in the Annex to this Regulation is added to the text in the Annex to Regulation (EU) 2019/287.

Article 2

This Regulation shall enter into force on the third 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, 29 July 2024.

For the Commission
The President
Ursula VON DER LEYEN

([1]) OJ L 53, 22.2.2019, p. 1, ELI: http://data.europa.eu/eli/reg/2019/287/oj.
([2]) OJ L, 2024/1648, 1.7.2024, ELI: http://data.europa.eu/eli/agree_internation/2024/1648/oj.

ANNEX

Economic Partnership Agreement between the European Union, of the one part, and the Republic of Kenya, Member of the East African Community, of the other Part

Date of Application	1.7.2024
Bilateral safeguard clauses and/or other mechanisms	Title VI Trade Defence Measures
Provision(s) contained in the Agreement	Article 50.1 ‘1. After having examined alternative solutions, a Party may apply safeguard measures of limited duration which derogate from Articles 10 and 11 under the conditions and in accordance with the procedures laid down in this Article.’ Article 50.2 ‘2. Safeguard measures referred to in paragraph 1 may be taken where a product originating in one Party is being imported into the territory of the other Party in such increased quantities and under such conditions as to cause or threaten to cause: (a) serious injury to the domestic industry producing like or directly competitive products in the territory of the importing Party; (b) disturbances in a sector of the economy, particularly where those disturbances produce major social problems, or difficulties which could bring about a serious deterioration in the economic situation of the importing Party; or (c) disturbances in the markets of like or directly competitive agricultural products (*) or in the mechanisms regulating those markets. (*) For the purpose of this article, agricultural products are those covered by Annex I to the WTO Agreement on Agriculture.’ Article 50.3(b) and (c) ‘3. Safeguard measures referred to in this Article shall not exceed what is necessary to remedy or prevent the serious injury or disturbances, as defined in paragraphs 2 and 5(b). The safeguard measures of the importing Party may only consist of one or more of the following: (b) an increase in the customs duty on the product concerned up to a level which does not exceed the customs duty applied to other WTO members; and (c) the introduction of tariff quotas on the product concerned.’ Article 50.4 ‘4. Without prejudice to paragraphs 1 to 3, where any product originating in the EAC Partner State(s) is being imported in such increased quantities and under such conditions as to cause or threaten to cause one of the situations referred to under paragraph 2 to one or several of the EU outermost regions, the EU may take surveillance or safeguard measures limited to the region or regions concerned in accordance with the procedures laid down in paragraphs 6 to 9.’

	Article 50.5 '5. (a) Without prejudice to paragraphs 1 to 3, where any product originating in the EU is being imported in such increased quantities and under such conditions as to cause or threaten to cause one of the situations referred to in paragraph 2 to the EAC Partner State(s), the EAC Partner State(s) may take surveillance or safeguard measures limited to their territory in accordance with the procedures laid down in paragraphs 6 to 9. (b) The EAC Partner State(s) may take safeguard measures, in accordance with the procedures laid down in paragraphs 6 to 9, where a product originating in the EU as a result of the reduction of duties is being imported into their territory in such increased quantities and under such conditions as to cause or threaten to cause disturbances to an infant industry producing like or directly competitive products. Such provision is only applicable for a period of ten (10) years from the date of entry into force of this Agreement. This period may be extended by the EPA Council for a period of a maximum of five (5) years.' Article 50.6 '6. (a) Safeguard measures referred to in this Article shall be maintained only for such a time as may be necessary to prevent or remedy serious injury or disturbances as defined in paragraphs 2, 4 and 5. (b) Safeguard measures referred to in this Article shall not be applied for a period exceeding two (2) years. Where the circumstances warranting the imposition of safeguard measures continue to exist, such measures may be extended for a further period of no more than two (2) years. Where the EAC Partner State(s) apply a safeguard measure, or where the EU applies a safeguard measure limited to the territory of one or more of its outermost regions, such measure may nevertheless be applied for a period not exceeding four (4) years and, where the circumstances warranting the imposition of safeguard measures continue to exist, may be extended for a further period of four (4) years. (c) Safeguard measures referred to in this Article that exceed one (1) year shall contain clear elements progressively leading to their elimination by the end of the set period, at the latest. (d) No safeguard measure referred to in this Article shall be applied to the import of a product that has previously been subject to such a measure for a period of at least one (1) year since the expiry of the measure.' Article 50.7 '7. For the implementation of paragraphs 1 to 6, the following provisions shall apply: (a) where a Party takes the view that one of the circumstances set out in paragraphs 2, 4 or 5 exists, it shall immediately refer the matter to the Committee of Senior Officials for examination; (b) the Committee of Senior Officials may make any recommendation needed to remedy the circumstances which have arisen; if no recommendation has been made by the Committee of Senior Officials aimed at remedying the circumstances, or no other satisfactory solution has been reached within thirty (30) days of the matter being referred to the Committee of Senior Officials, the importing Party may adopt the appropriate measures to remedy the circumstances in accordance with this Article;

	(c) before taking any measure provided for in this Article or, in the cases to which paragraph 8 of this Article applies, as soon as possible, the EAC Partner State(s) shall supply the Committee of Senior Officials with all relevant information required for a thorough examination of the situation, with a view to seeking a solution acceptable to the Parties concerned; (d) in the selection of safeguard measures pursuant to this Article, priority must be given to those which least disturb the operation of this Agreement; (e) any safeguard measure taken pursuant to this Article shall be notified in writing immediately to the Committee of Senior Officials and shall be the subject of periodic consultations within that body, particularly with a view to establishing a timetable for their abolition as soon as circumstances permit.’ Article 50.8 ‘8. Where exceptional circumstances require immediate action, the importing Party concerned may take the measures provided for in paragraph 3, 4 or 5 on a provisional basis without complying with the requirements of paragraph 7. Such action may be taken for a maximum period of one hundred and eighty (180) days where measures are taken by the EU, and of two hundred (200) days where measures are taken by the EAC Partner State(s) or where measures taken by the EU are limited to the territory of one or more of its outermost regions. The duration of any such provisional measure shall be counted as a part of the initial period and any extension referred to in paragraph 6. In the taking of such provisional measures, the interest of all Parties involved shall be taken into account, including their level of development. The importing Party concerned shall inform the other Party and shall immediately refer the matter to the Committee of Senior Officials for examination.’ Article 50.9 ‘9. If an importing Party subjects imports of a product to an administrative procedure having as its purpose the rapid provision of information on the trend of trade flows liable to give rise to the problems referred to in this Article, it shall inform the Committee of Senior Officials without delay.’ Article 50.10 ‘10. The WTO Agreement shall not be invoked to preclude a Party from adopting safeguard measures in conformity with this Article.’