Commission Implementing Regulation (EU) 2020/2037 of 10 December 2020 amending Implementing Regulation (EU) 2019/159 imposing definitive safeguard measures against imports of certain steel products

COMMISSION IMPLEMENTING REGULATION (EU) 2020/2037

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amending Implementing Regulation (EU) 2019/159 imposing definitive safeguard measures against imports of certain steel products

THE EUROPEAN COMMISSION,

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

Having regard to Regulation (EU) 2015/478 of the European Parliament and of the Council of 11 March 2015 on common rules for imports[(1)], and in particular Articles 16 and 20 thereof,

Having regard to Regulation (EU) 2015/755 of the European Parliament and of the Council of 29 April 2015 on common rules for imports from certain third countries[(2)], and in particular Articles 13 and 16 thereof,

Whereas:

1. BACKGROUND

(1) On 31 January 2019, the Commission imposed definitive safeguard measures on certain steel products (the 'Definitive Safeguard Regulation')[(3)].

(2) The Commission amended the measures twice pursuant to Commission Implementing Regulation (EU) 2019/1590[(4)] and Commission Implementing Regulation (EU) 2020/894[(5)] respectively.

(3) Pursuant to the Withdrawal Agreement[(6)] between the Union and the United Kingdom ('UK'), as of 1 January 2021, the UK will no longer be part of the Union customs territory. Therefore, as of that date the territorial scope where safeguard measures are applicable will change. Since the level of the safeguard measures on certain steel products was established on the basis of the average imports into the Union of 28 Member States, i.e. including imports into the UK, during the reference period 2015-2017, the Commission finds it appropriate to adapt the volume of Tariff Rate Quotas ('TRQs') accordingly as well as the list of developing countries subject to the current safeguard measures.

(4) On 30 October 2020, the Commission published a Notice in the *Official Journal of the European Union*[(7)] explaining the rationale of the proposal and the methodology it envisaged to apply, and invited interested parties to comment. The Notice also contained the volume of recalculated TRQs that would be in place for the period 1 January to 30 June 2021.

2. DUE PROCESS

(5) The Commission received nineteen submissions from interested parties within the deadline. The Commission also undertook consultations with nine third country governments.

3. ASSESSMENT OF THE COMMENTS RECEIVED

(6) The Commission addressed the comments received, concerning either specific product categories or general aspects of the adaptation, as follows:

3.1. Category 4 – metallic coated sheets

(7) Several interested parties submitted comments with regard to the volumes calculated for categories 4A and 4B (including automotive grades) and requested the Commission to review its calculation. In particular, during consultations with third country authorities, an interested party pointed to a clerical error in the calculation. Another interested party identified a specific calculation issue or proposed a slightly different allocation between the two product categories, which better reflects its situation with respect to the volumes concerning its country-specific TRQs, having regard to the counterfactual situation in this case, namely how TRQs would have been allocated had the UK not been part of the customs territory at the time the original safeguard measures were adopted. After assessing these claims the Commission found that they were warranted and revised the volumes included in the notice of 30 October accordingly.

(8) It should be underlined that these adjustments only concern the distribution of the TRQs between sub-product categories 4A and 4B, but does not affect the level of the TRQs for the overall product category 4.

(9) The updated volumes are reflected in the TRQ volumes in Annex I.

3.2. Impact of the adaptation on TRQ volumes

(10) Some parties argued that the Commission should preserve the existing TRQ volumes and, in addition, either grant the UK its own country-specific TRQ or, where it falls under the residual TRQs, the volumes of these TRQs would need to be increased so as to include the UK's traditional trade flows.

(11) Some parties also argued that they would be negatively affected by the inclusion of the UK under the residual section of given TRQs, as it would increase the competition for a smaller TRQ volume.

(12) Other parties noted that for certain origins, the overall volume of TRQs calculated would be reduced, making the measure more restrictive.

(13) Finally, certain exporting countries complained that under the Commission's proposal, they would lose their country-specific TRQ for some specific product categories. These parties argued that the Commission should preserve their country-specific TRQ and that failing to do so would amount to making the measures more restrictive, thus breaching WTO rules.

(14) The Commission disagreed that the proposed adjustment would make the safeguard measure stricter. As stated in the Notice of 30 October, the result of the adaptation, in very few cases, would lead to some countries losing their country-specific TRQs (and vice-versa) in certain product categories. However, the Commission does not consider that the adaptation, as such, results in a more restrictive measure. The Commission explained in the Notice of 30 October the rationale of the adaptation, namely to have a volume of TRQs (both globally as well as per product category) that is proportionate to the reduction of the geographical scope of the territory where the Union's safeguard measure applies as of 1 January 2021. Furthermore, the Commission notes that the overall TRQ volumes resulting from the adaptation are 3 % higher than the ones currently in place, and that this cannot be seen as making the measure more restrictive.

(15) Moreover the Commission wishes to emphasize that if it were to accept the claims from those countries that would lose a certain country-specific TRQ, it would be discriminating them vis-a-vis any other interested parties by departing from its basic principle of granting a country-specific TRQ only when a certain threshold (5 % share of imports), in a specific period, is met[(8)]. It is the result from the application of the counterfactual that countries which had a country-specific TRQ no longer meet the objective criterion, whereas others do.

(16) The unused volumes of quotas laid down in Annex II of Implementing Regulation (EU) 2020/894, of those countries that, as a result of this adaptation would lose their country-specific quotas in a product category, were allocated to the residual tariff-rate quotas in the relevant product categories.

3.3. **Request to carry out an analysis based on EU-27 data**

(17) Some interested parties argued that if the Union is adapting its measures, it must re-assess whether all the requirements to impose safeguard measures continue to be met under a EU-27 scenario. One interested party noted in particular that such approach would lead the Union to determine that for several product categories, there would not have been an increase in imports, and therefore these should be excluded from the measures.

(18) The Commission observed in this respect that the conditions to impose a safeguard measure need to be met when a safeguard measure is imposed for the first time. In the case of this measure, the conditions were met as explained in detail in the Definitive Safeguard Regulation.

(19) The Commission disagrees with the views expressed by some interested parties that in a situation like the one at hand requires carrying out a full reassessment. In fact, as explained in the Notice of 30 October, the current proceeding is limited to adapting the TRQ volumes to the change in scope of the territory where the Union's safeguard measure applies. In this regard, the Commission insists that this proceeding by no means constitute a fully-fledged review of the measures, and therefore, it is under no legal obligation to carry out the analysis that some interested parties requested.

Changes to legislation: *There are currently no known outstanding effects for the Commission Implementing Regulation (EU) 2020/2037. (See end of Document for details)*

3.4. **Category 18 – sheet piles**

(20) Some interested parties contested the Commission's proposal to grant a country-specific TRQ to the UK in this product category on the grounds that there is allegedly no production of this product category in the UK. As a result, the volumes allocated to the UK would not be used. These companies also claimed that the reduction in TRQ volumes resulting from the adaptation did not have any justification and that the Commission should maintain the same level of TRQs as provided by Implementing Regulation (EU) 2020/894.

(21) In this respect, the Commission had explained in its Notice of 30 October the methodology and rationale behind the adaptation and the implications it could entail. If there is a reduction in overall TRQ volumes in this category, it is because imports into the UK in the reference period were deducted from the TRQ volume. Furthermore, in its Notice of 30 October the Commission explained how it established the level of UK imports into EU-27 during the reference period. The claim with respect to the absence of production in the UK was not properly substantiated and does not correspond with the statistics used by the Commission. No interested party provided any data of whether imports into the UK were consumed, further processed or subsequently sold within the Union. In any event, the volume allocated to the UK could not be transferred to other origins because this would artificially inflate the TRQ volume. Therefore this claim is immaterial to users. The Commission also rejected the claim to preserve the current TRQ volumes as it would ignore the reduction in the geographical scope of the territory covered by the safeguard measure, and it would equally result in an artificially inflated TRQ volume. Accordingly, the Commission rejects these arguments.

3.5. **Product category 9 – stainless steel cold-rolled flat products**

(22) Some interested parties noted that due to the Commission's proposal, Vietnam would lose its country-specific TRQ in this product category. These parties warned the Commission that these volumes, which will accordingly belong to the 'other countries' section of the TRQ, would likely be quickly used, in particular, by a certain origin. Accordingly these parties requested the Commission to limit the volumes that any country could use under the residual TRQ in this category.

(23) The Commission noted that the request to limit the access to incumbent exporting countries under the residual TRQ[9] falls outside the scope of this adaptation exercise, as it would amount to modifying the functioning of the measures. In any event, the Commission recalled that the same claim was made in previous proceedings and it was rejected. Therefore, the Commission does not further address the merits of this claim.

3.6. **Update of list of developing countries subject to measures**

(24) The list of product categories originating in developing countries to which the definitive measures apply needs to be updated to reflect the territorial adaptation. The Commission based its calculation on the updated data concerning the year 2019

imports dataset (i.e the same period used in Implementing Regulation (EU) 2020/894, but excluding imports into the UK).

(25) With respect to categories 4A and 4B, the Commission described in Section 4, paragraph 3 of the Notice of 30 October its provisional approach with respect to the treatment of UK imports for the purpose of the respective TRQs calculation. Following the assessment of the comments received and the consultations with third countries regarding this approach, the Commission decided to apply the same methodology for the purpose of updating the list of developing countries subject to measures in Annex II to this Regulation. In the absence of any other reliable information or documented alternative proposal by any interested party, the Commission assumed that UK imports in the year 2019 should be equally distributed between the two product categories.

(26) The volumes of country-specific tariff-rate quotas allocated to developing countries that will be excluded from the safeguard measure laid down in Implementing Regulation (EU) 2019/159 upon the entry into force of this Regulation, were allocated to the residual tariff-rate quotas in the relevant product categories.

(27) The changes to the list of developing countries subject to the measures is as follows:

— China becomes subject to the measures in product category 22,

— Turkey becomes excluded from measures in product category 25A,

— United Arab Emirates becomes excluded from measures in product categories 21 and 26.

(28) No comments were made by any interested party on this adaptation.

(29) The measures provided for in this Regulation are in accordance with the opinion of the Committee on Safeguards established under Article 3(3) of Regulation (EU) 2015/478 and Article 22(3) of Regulation (EU) 2015/755 respectively,

HAS ADOPTED THIS REGULATION:

Article 1

Implementing Regulation (EU) 2019/159 is amended as follows:

— Annex IV is replaced by the text in Annex I to this Regulation,

— Annex III.2 is amended in accordance with Annex II to this Regulation.

Article 2

This Regulation shall enter into force on 1 January 2021.

This Regulation shall be binding in its entirety and directly applicable in all Member States.