Commission Implementing Regulation (EU) 2020/1686 of 12 November 2020 making imports of certain hot-rolled flat products of iron, non-alloy or other alloy steel originating in Turkey subject to registration

COMMISSION IMPLEMENTING REGULATION (EU) 2020/1686

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THE EUROPEAN COMMISSION,

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

Having regard to Regulation (EU) 2016/1036 of the European Parliament and of the Council of 8 June 2016 on protection against dumped imports from countries not members of the European Union[(1)] ('the basic Regulation'), and in particular Article 14(5) thereof,

After informing the Member States,

Whereas:

(1) On 14 May 2020, the European Commission ('the Commission') announced, by a notice published in the *Official Journal of the European Union*[(2)] ('the Notice of Initiation'), the initiation of an anti-dumping proceeding ('the anti-dumping proceeding') with regard to imports into the Union of certain hot-rolled flat products of iron, non-alloy or other alloy steel originating in Turkey following a complaint lodged on 31 March 2020 by Eurofer ('the complainant') on behalf of producers representing more than 25 % of the total Union production of certain hot-rolled flat products of iron, non-alloy or other alloy steel.

1. PRODUCT SUBJECT TO REGISTRATION

(2) The products subject to registration ('the product concerned') are flat-rolled products of iron, non-alloy steel or other alloy steel, whether or not in coils (including 'cut-to-length' and 'narrow strip' products), not further worked than hot-rolled, not clad, plated or coated. These products are currently falling under CN codes 7208 10 00, 7208 25 00, 7208 26 00, 7208 27 00, 7208 36 00, 7208 37 00, 7208 38 00, 7208 39 00, 7208 40 00, 7208 52 10, 7208 52 99, 7208 53 10, 7208 53 90, 7208 54 00, 7211 13 00, 7211 14 00, 7211 19 00, ex 7225 19 10 (TARIC code 7225 19 10 90), 7225 30 90, ex 7225 40 60 (TARIC code 7225 40 60 90), 7225 40 90, ex 7226 19 10 (TARIC code 7226 19 10 90), 7226 91 91 and 7226 91 99. The CN and TARIC codes are given for information only.

(3) Not subject to registration are: (i) products of stainless steel and grain-oriented silicon electrical steel; (ii) products of tool steel and high-speed steel; (iii) products, not in coils, without patterns in relief, of a thickness exceeding 10 mm and of a width of

600 mm or more; and (iv) products, not in coils, without patterns in relief, of a thickness of 4,75 mm or more but not exceeding 10 mm and of a width of 2 050 mm or more.

2. REQUEST

(4) On 17 September 2020, the complainant submitted a registration request pursuant to Article 14(5) of the basic Regulation. The complainant requested that imports of the product concerned be made subject to registration so that measures may be applied against those imports retroactively from the date of such registration.

(5) The following interested parties submitted comments in reaction to the request: the Government of Turkey, the Consortium of Users (users), Colakoglu and Erdemir Groups and Habas (exporting producers), the Turkish Steel Exporters' Association ('ÇİB') and the Turkish Steel Producers Association ('TCUD').

3. GROUNDS FOR REGISTRATION

(6) According to Article 14(5) of the basic Regulation, the Commission may direct the customs authorities to take the appropriate steps to register imports, so that measures may subsequently be applied against those imports from the date of such registration, provided all conditions set out in the basic Regulation are met. Imports may be made subject to registration following a request from the Union industry, which contains sufficient evidence to justify such action.

(7) The complainant alleged that, on the basis of the most recent available statistics, there had been a substantial rise in imports following the initiation of the investigation which was likely to seriously undermine the remedial effect of definitive duties. Moreover the complainant argued that there was a history of dumping from Turkey over an extended period and that importers were, or should have been, aware of the dumping practices from Turkey.

(8) The Commission examined the request in the light of Article 10(4) of the basic Regulation. The Commission verified whether the importers were aware, or should have been aware, of the dumping as regards the extent of the dumping and the injury alleged or found. It also analysed whether there was a further substantial rise in imports which, in the light of its timing as well as volume and other circumstances, was likely to seriously undermine the remedial effect of an eventual definitive anti-dumping duty to be applied.

3.1. Awareness of the importers of the dumping, the extent thereof and the alleged injury

(9) At this stage, the Commission has at its disposal sufficient evidence that imports of the product concerned from Turkey are being dumped. The complaint provided sufficient evidence of dumping based on a comparison of the normal value thus established with the export price (at ex-works level) of the product concerned when sold for export to the Union. As a whole, and given the extent of the alleged dumping margins ranging from 4 % to 8 %, this evidence provided sufficient support that the exporting producers practice dumping.

(10) The complaint also provided sufficient evidence of alleged injury to the Union industry, including a negative development of key performance indicators of the Union industry.

(11) That information was contained both in the non-confidential version of the complaint and in the Notice of Initiation published on 14 May 2020. By its publication in the *Official Journal of the European Union*, the Notice of Initiation is a public document accessible to all importers. Furthermore, as interested parties in the investigation, importers have access to the non-confidential version of the complaint and the non-confidential file. Therefore, the Commission considered that, on this basis, importers, were aware, or should have been aware, of the dumping, the extent thereof and the alleged injury[(3)].

(12) As stated in recital 5 several interested parties submitted comments to the request for registration. With regard to the first criterion, the Government of Turkey, Habas, CIB and the Colakoglu and Erdemir Groups highlighted that the mere initiation of an anti-dumping investigation does not automatically mean that dumping is actually taking place, as certain investigations (some concerning Turkey) are terminated without the imposition of duties. Rather it would be only a 'one-sided allegation'. Thus, an importer cannot be aware of something ('dumping practices') that the investigation has not yet established. The Government of Turkey, Habas and CIB also contested certain additional evidence provided by Eurofer in the request, including the claim that the CEO of a Turkish exporting producer was aware of the upcoming anti-dumping investigation and the information that imports of the product concerned are subject to trade defence measures in third countries. Lastly, TCUD noted that some of the claims made by Eurofer regarding anti-dumping measures against Turkish imports of the product concerned were not truthfully described in the submission. In this respect, TCUD argued that one company was exempted from the US measures following a challenge before the relevant courts and that another third country (Morocco) removed the anti-dumping duties against Turkey following the ruling of a WTO panel.

(13) Article 14(5) of the basic Regulation stipulates that, as of the initiation of the investigation and having informed the Member States in due time, the Commission may direct the customs authorities to take the appropriate steps to register imports, so that measures may subsequently be applied against those imports from the date of such registration. The main objective of registration in this case is to allow the possibility to retroactively impose provisional measures up to 90 days preceding their application in accordance with Article 10(4) of the basic Regulation. In light of this provision, the Commission cannot register imports after a provisional duty has already been imposed.

(14) If, as suggested by some parties, registration is only possible after a finding of dumping has been made by an investigation, then by definition it could never take place prior to the imposition of provisional duties. Such approach would completely deprive the registration tool of its *effet utile*[(4)]. Therefore, the Commission needs to take a decision on whether to register imports or not before any provisional duty is in place. In this respect the Commission noted that at the stage when the complainant filed the

request for registration the best information available was that of the complaint, on the basis of which, as provided in the Notice of Initiation, the Commission initiated the anti-dumping investigation, and which indicated the existence of evidence tending to show injurious dumping. Therefore, the Commission rejected these claims as unfounded. Moreover, in view of this finding, the Commission did not need to assess the additional evidence referred to above regarding imports of the Turkish exporting producers to third countries and the related arguments.

(15) The Commission thus concluded that the first criterion for registration was met.

3.2. **Further substantial rise in imports**

(16) The Commission analysed this criterion based on the statistical data for the product concerned available in the Surveillance 2 database. For assessing whether a further substantial increase had taken place since the initiation of the investigation, the Commission first defined the periods of time to be compared. On the one hand, it assessed the import data from Turkey following the initiation of the anti-dumping investigation (i.e. the point in time as of when importers were aware, or should have been aware, of dumping practices) until the most recent period, i.e. the period June-mid-October 2020. On the other hand, the Commission calculated Turkish imports for the same period during the investigation period[(5)] (i.e. June-mid-October 2019) and the monthly average import volumes in the full investigation period.

(17) The Commission considered that, in this case, a comparison between the post-initiation average monthly import volumes with the average monthly Turkish import volumes in the entire investigation period would not be sufficient to assess whether there was a substantial increase in imports in view of the market developments and stockpiling effect derived from the ongoing safeguard measures affecting the product concerned. Thus, the Commission considered it appropriate to base its determination on the comparison between the post-initiation average monthly import volumes with the same period in the investigation period in order to better reflect the potential influence of the ongoing safeguard measures on the behaviour of import flows from Turkey in the period assessed[(6)]. Comparing the post-initiation import volumes with import volumes in the same period of the previous year would, in addition, take due account of possible seasonality effects, if any[(7)].

(18) Regarding the influence of the safeguard measures on the Turkish import flows, the Commission noted that throughout the whole year 2019 (the investigation period), Turkey's imports of the product concerned were affected by numerous adjustments to the functioning of the safeguard measures that impacted the export behaviour from Turkey.

(19) First, January 2019, by far the best-performing month of Turkish imports of the product concerned, coincided with the last month of provisional safeguard measures. In this respect, there was uncertainty in the market as to the shape definitive measures would take. The Commission noted that any volume of free-of-duty Tariff-Rate Quota ('TRQ') not sold by the end of that month would not have been carried over to the next

period, i.e. volumes of free-of-duty TRQ would have been 'lost'. A similar situation, i.e. last month(s) prior to a new period of the measures, occurred in the quarter February-March 2019. Second, in February, April, July and October of the year 2019 there were openings of new free-of-duty TRQ batches. Under the safeguard measures on certain steel products, every opening of TRQ has generally lead to large volumes being imported in the early stages of each of the quarters. Last, the Commission announced in August 2019, in the framework of the first review investigation of the steel safeguard measures, that it would make Turkish imports of the product concerned subject to a 30 % cap over the TRQ available under the relevant product category, thus also leading to an increase in imports ahead of such change in the TRQ administration.

(20) The Commission further highlighted that the above events impacted the flow of import volumes as shown in the statistics. Notably, the months of January, March and September rank first, second and fourth in terms of volumes exported monthly by Turkey in 2019 (in some cases being substantially higher than any other month in that year)[(8)]. Hence the Commission concluded that all these regulatory actions in the framework of the steel safeguard measures influenced significantly the behaviour of market operators and the trend of import flows across the year.

(21) The situation in a substantially shorter period (between June and mid-October) was less affected by regulatory changes in the management of the TRQs. Thus, the Commission compared the monthly average Turkish import volume in the period June-mid-October 2020 with the monthly average volume of imports in the same period of the preceding year, 2019.

(22) The comparison shows that the monthly average import volume from Turkey in this period increased by 6 %.

Import volumes *(monthly average)*	**Investigation period (2019)**	**June – mid-October 2019**	**June-mid-October 2020**	**Delta**	
				June-mid-October 2020 vs investigation period	**June-mid-October 2020 vs June-mid-October 2019[a]**
Turkey (tonnes)	227 875	164 897	174 986	-23 %	+6 %

a This comparison is considered more appropriate, see recitals 17 to 21 above.

Source: Surveillance 2 database.

(23) The Commission further examined the import trends in the selected period and the respective period within the investigation period in order to determine whether that 6 % increase constituted a substantial increase in imports in this case. In particular,