Commission Implementing Regulation (EU) 2020/894 of 29 June 2020 amending Implementing Regulation (EU) 2019/159 imposing definitive safeguard measures against imports of certain steel products

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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) By Implementing Regulation (EU) 2019/159 ('the definitive Regulation')[(3)], the Commission imposed safeguard measures on certain steel imports (26 steel product categories). The measures consist of a system of tariff-rate quotas per-product-category ('TRQs') set at a level to ensure that disruption to imports were minimised and traditional import levels from trading partners were preserved. A 25 % out-of-quota tariff applies for imports exceeding the TRQs.

(2) By Implementing Regulation (EU) 2019/1590 (the 'first Review Regulation')[(4)], the Commission reviewed the measures for the first time and introduced a series of adjustments taking into account changed circumstances and Union interest in order to make their functioning more effective.

(3) By Implementing Regulation (EU) 2020/35 (the 'end-use Regulation')[(5)], the Commission revoked the adjustment previously made to the administration of the TRQ in product category 4, as it had proven impracticable.

2. THE SECOND REVIEW PROCEDURE

(4) According to Article 8 of the definitive Regulation, the Commission may review the measures in case of change of circumstances during the period of imposition of the measures.

(5) On 14 February 2020, the Commission initiated the second Review of the safeguard measures by publishing a Notice of Initiation[(6)] in which it invited interested

parties to make their views known and submit evidence concerning five grounds of review[7].

(6) Due process took place under a two-stage written procedure. In the first stage, the Commission received around 90 submissions. In the second stage, interested parties were also allowed to rebut other parties' initial submissions. The Commission received over 30 additional submissions.

(7) The written phase of the proceeding ended on 18 March 2020, while the Union and other countries were imposing strict lockdowns and confinements to stop the spread of the COVID-19 pandemic.

(8) In order to take into account in the framework of the Review the economic effects of this unexpected development resulting in a drastic change of circumstances in the functioning of the Union steel market and the current safeguard measures, on 30 April 2020 the Commission opened an additional and extraordinary period for interested parties to submit their views on the economic effects of the COVID-19 pandemic on the steel market.

3. FINDINGS OF THE INVESTIGATION

(9) Following an in-depth analysis of all the submissions received, the Commission arrived at the following conclusions. They are organized in six different sub-sections. The first concerns the economic effects of the COVID-19 pandemic (Section 3.1 below), the following five (Sections 3.2 to 3.6) corresponding to the five grounds of review identified in the Notice of Initiation of the second Review, namely: A) Level and allocation of TRQs; B) Crowding out of traditional trade flows; C) Potential detrimental effects in achieving the integration objectives pursued with preferential trading partners; D) Update of the list of developing WTO member countries excluded from the scope of the measures based on updated import statistics concerning 2019; and E) Other changes of circumstances that may require an adjustment to the level of allocation of the TRQ.

3.1. The effects of the COVID-19 pandemic on the Union steel market and the functioning of the current safeguard measures

Comments from interested parties

(10) The Commission received about 200 submissions on the economic effects of the COVID-19 pandemic and its impact on the functioning of the current safeguard measures. The large majority of them were from exporters, importers, users and traders. Several exporting countries, as well as associations of the Union steel producers industry ('the Union industry') and downstream steel users also submitted comments.

(11) A large majority of the comments strongly opposed the request made by the Union industry to drastically reduce the volume of TRQs. These comments indicated that this reduction of TRQs would not only constitute a de facto ban on imports in violation of WTO rules, but would also be contrary to the Union interest, since it would ignore the interest of the downstream markets where steel manufacturing activities would be very negatively impacted. Several parties also stressed that additional changes

to the administration of TRQs would be totally unjustified and considered that the elimination of the carry-over mechanism of unused quotas from one quarter to another would make the measures more restrictive in violation of WTO rules. Many parties highlighted that the impact of the COVID-19 pandemic is still uncertain and difficult to predict, and will have different effects depending on the steel segment. Some parties therefore suggested to postpone any adjustments until there is clarity about the impact, and alerted that a reduction in the level of TRQs would compromise supply contracts already concluded.

Commission position

(12) When the Commission adopted the first package of adjustments to the Union steel safeguard measures in October 2019, the forecast for the steel industry indicated a decline in demand as the global economy was gradually slowing down. Apart from an adaptation of the liberalisation pace to this predicted slowdown of growth, the Commission also introduced several other adjustments aimed at preserving traditional trade flows and preventing that certain export origins crowded others out in the use of the TRQs available under the measures in a progressively deteriorating economic context.

(13) It was unpredictable at that time that several months later, the COVID-19 pandemic would plunge the world economy into the most severe recession since the Global Financial Crisis of 2008. The strict controls decreed by the authorities all over the world to mitigate or suppress the disease since the outbreak of the pandemic during the first quarter of 2020 were taking a heavy toll. The economic effects of the lockdown and confinement measures have been immediate and harsh. The magnitude and sharpness of the economic shock has been very significant in terms of output, fixed investment, lay-offs, and demand.

(14) According to Oxford Economics, global GDP is expected ‘to contract by almost 7 % in the first half of the year, almost double the decline recorded during the global financial crisis, this reflects broad-based revisions across the major economies’[8]. This contraction is underway in all major industrial sectors and orders have dried up completely. In March 2020, the J.P.Morgan Global Composite Output Index fell to a 133-month low of 39,4, and the month-on-month drop in the index level (6,7 points) was the second steepest in the series history[9]. ‘The severity of the impact was emphasized by series-record month-on-month declines in the levels of indices tracking output (down 10,1 points), new orders (down 9,4), outstanding business (7,3 lower), new export orders (down 10,4) and future activity (13,1 lower)’[10]. The IHS Markit Global sector PMI published in May confirms this impact and shows record falls in output in every sector monitored except healthcare services[11].

(15) Union steel producers predict a stalling demand with falls in southern Europe exceeding 60 % and in northern Europe around 50 % during the second half of 2020, mainly driven by a dramatic slump in demand in the automotive segment of around 80 % as a result of a sharp decline in its vehicle sales and production. This is in line with the findings of Morgan Stanley in its recent report on the steel sector[12] which notes that ‘steel end markets are facing severe disruption with automotive

Changes to legislation: *There are currently no known outstanding effects for the Commission Implementing Regulation (EU) 2020/894. (See end of Document for details)*

demand (18 % of Union steel demand) plummeting by 40-85 % YoY in March, while Construction, Oil & Gas and Aerospace segments are also facing severe headwinds'. The above-mentioned lasting slump in the demand for steel appears to be plausible and corroborated by the evolution of the seasonally adjusted Global Steel Users PMI, which is a composite indicator designed to give an accurate overview of operating conditions at manufacturers identified as heavy users of steel. This indicator fell to a 133-month low of 43,7 in April, from 49,3 in March, driven by the stalling demand both on domestic and export markets, the latter declining at the fastest rate since the end of 2008[13].

(16) The ensuing severe economic damage will be recorded by companies and countries during the first half of 2020. A change in trend can only be expected in the late second quarter with a possible rise in activity in very few countries, if any. The Spring 2020 Economic Forecast of the European Commission predicts a deep and uneven recession and an uncertain recovery, with the unemployment rate in the Union rising from 6,7 % in 2019 to 9 % in 2020 and then fall to around 8 % in 2021[14].

(17) The economic forecasts for the remaining duration of the safeguard measures ending on 30 June 2021 are bleak. The Spring 2020 Economic Forecast of the European Commission also predicts that the Union economy will contract by 7,5 % in 2020 and grow by around 6 % in 2021. Therefore, the EU economy is not expected to have fully made up for the crisis losses by the end of 2021. Investment will remain subdued and the labour market will not have completely recovered[15]. Growth projections of the Commission for the Union and euro area have been revised down by around nine percentage points compared to the Autumn 2019 Economic Forecast.

(18) The gravity of the massive economic fallout resulting from the COVID-19 pandemic is nevertheless difficult to predict at this stage. As Oxford Economics notes 'the key uncertainty now is not the size of the falls in the second half of 2020, but the speed and timing of the subsequent recovery[16]'. In its recent uncertainty analysis, IHS Markit notes that uncertainty rockets to General Financial Crisis levels and describes how 'firms are now more fearful than ever of a recession and largely expectant that the downturn will persist throughout the coming year'[17].

(19) Although since mid-May 2020 countries have started to implement exit strategies for the more stringent pandemic control measures, there are indeed still many uncertainties about the recovery. First, it is difficult to calibrate at this stage with clarity the depth of the damage caused to the national industries and the domestic and international supply chains. Second, it is not excluded that new virus waves appear later in the year, as controls are progressively eased, which could lead to successive reinstatements of lockdowns and confinement measures including in a stop and go sequence that could nip the recovery in the bud and cause more lasting damage.

(20) In the light of the forgoing analysis, the Commission finds that the economic shock produced by the COVID-19 pandemic represents a fundamental and exceptional change in circumstances drastically impacting the functioning of the steel market within the Union and worldwide. For this reason, the Commission considers it necessary to

carefully take into consideration the economic effects of the COVID-19 pandemic when shaping the adjustments under the second Review of the safeguard measures.

(21) As previously explained, in the first Review of the safeguard measures, as a result of an already observed downturn in the steel market contrary to the expectations at the time of adopting the definitive measures, the Commission had introduced adjustments to remedy limited crowding-out effects observed during the first year of measures. However, those effects will be further exacerbated in the current economic context in the absence of adjustments.

(22) Whereas the economic shock of the pandemic has been relatively symmetric, in that the pandemic has affected all countries in the world with sudden and very significant output and demand falls, the strength of the rebound in 2021 is likely to be asymmetric. This will depend not only on the evolution of the pandemic in every country, but also on the structure of the national economies and their capacity to respond with recovery policies.

(23) In the current situation of slump in demand and ensuing drastic reduction in sales affecting virtually all steel product categories, coupled with a horizon of high uncertainty and likely strong geographical asymmetries in the speed and timing of the recovery, it is plausible to expect[(18)] that some exporters of steel to the Union will adopt an even stronger aggressive commercial behaviour to 'empty the market' to the detriment of other market participants when activity resumes after the pandemic.

(24) In particular, it is reasonable to expect[(19)] that some exporters, notably in geographical areas resuming activities comparatively earlier than others, will frontload sales in the Union market more forcefully than in the past to first exhaust country-specific quotas as early as possible, and be ready to immediately tap into the residual quotas when they become available.

(25) This opportunistic behaviour of exporters from certain origins risks more than ever displacing other market participants and unduly occupy market shares that in normal circumstances would correspond to other traditional trade flow areas or to domestic production. This is a real risk, as exporters will desperately try to gain larger shares of a smaller market to make up for absolute sales losses due to depressed demand.

(26) Apart from endangering the preservation of traditional trade flows in terms of origins, the above-mentioned opportunistic behaviour, unduly displacing traditional trade flows and domestic production, is also liable to causing very serious imbalances in the Union steel market, which could ultimately compromise the remedial effects of the original safeguard measures in terms of protection against a new sudden surge of imports.

(27) In these circumstances, in order to guarantee an orderly return to the market of all suppliers, both domestic industry and exporters, and minimise undue opportunistic conduct, the Commission considers it necessary to introduce two general adjustments to the TRQs administration. The first one is to move to a quarterly, rather than yearly management of all country-specific quotas; this adjustment, whilst preserving the total