Commission Implementing Regulation (EU) 2020/104 of 23 January 2020 making imports of certain hot rolled stainless steel sheets and coils originating in the People's Republic of China, Taiwan and Indonesia subject to registration

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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 12 August 2019, 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 proceeding') with regard to imports into the Union of certain hot rolled stainless steel sheets and coils originating in the People's Republic of China ('the PRC'), Taiwan and Indonesia following a complaint lodged on 28 June 2019 by Eurofer, the European Steel Association ('the complainant') on behalf of four Union producers representing the entirety of Union production of certain hot rolled stainless steel sheets and coils.

(2) On 10 October 2019, the Commission announced the initiation of an anti-subsidy proceeding with regard to imports into the Union of the same product originating in the PRC and Indonesia[(3)] ('the parallel anti-subsidy proceeding'), pursuant to Article 10 of Regulation (EU) 2016/1037 of the European Parliament and of the Council of 8 June 2016 on protection against subsidised imports from countries not members of the European Union[(4)] ('the basic anti-subsidy Regulation').

1. PRODUCT CONCERNED AND LIKE PRODUCT

(3) The product subject to registration ('the product concerned') is flat-rolled products of stainless steel, whether or not in coils (including products cut-to-length and narrow strip), not further worked than hot-rolled and excluding products, not in coils, of a width of 600 mm or more and of a thickness exceeding 10 mm. These products are currently falling under HS codes 7219 11, 7219 12, 7219 13, 7219 14, 7219 22, 7219 23, 7219 24, 7220 11 and 7220 12. These HS codes are given for information only.

2. REQUEST

(4) The complainant already requested in its complaint the registration of imports. On 31 October 2019, the complainant submitted a separate registration request, with regard to the imports which are subject to this proceeding 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 subsequently be applied against those imports from the date of such registration. Further communication in support of this request was submitted on 22 November and 10 December 2019.

(5) On 14 November 2019, Marcegaglia Specialties ('Marcegaglia'), a user of the product concerned, which is cooperating with the anti-dumping proceeding, submitted comments in relation to the complainant's request for registration of imports.

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. Imports may be made subject to registration following a request from the Union industry, which contains sufficient evidence to justify such action.

(7) According to the complainant registration is justified as the product concerned originating in the PRC, Taiwan and Indonesia is being dumped. It argued that significant injury to the Union industry is being caused by an acceleration of low-priced imports which will undermine the remedial effect of potential definitive duties by allowing stockpiling.

(8) The Commission examined the request in the light of Article 10(4) of the basic Regulation. The Commission verified whether 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 and volume and other circumstances, is likely to seriously undermine the remedial effect of the definitive anti-dumping duty to be applied.

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

(9) The Notice of Initiation for this proceeding published on 12 August 2019 highlighted that the dumping margins calculated are significant for all countries. As a whole, and given the extent of the alleged dumping margins ranging from 15,1 % to 54,3 %, the evidence in the complaint provides sufficient support at this stage that the exporting producers practice dumping.

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

(11) 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, who are experienced professionals, were aware, or should have been aware, of the alleged dumping practices, the extent thereof and the alleged injury.[(5)]

(12) It thus concluded that the first criterion for registration was met.

3.2. **Further substantial rise in imports**

(13) The Commission analysed this criterion on the basis of statistical data available in the Surveillance 2 database, pursuant to the information collected for the product concerned. When analysing import volumes in view of the registration request, complete statistical data were available up to and including November 2019. The Commission considered that the level of imports as from August 2019, the month in which the investigation was initiated, until the most recent period, i.e. November 2019 should be considered and that those volumes should be compared with the volumes of imports during the investigation period. To compare the level of imports during the period August 2019 to November 2019 with the level of imports during the same months in the preceding year was considered inappropriate, as there were no indications on the file that imports of certain hot rolled stainless steel sheets and coils are subject to seasonal fluctuations. Imports from the countries concerned developed as follows:

IMPORT VOLUMES FROM THE COUNTRIES CONCERNED (TONNES)

Origin	Investigation Period (IP)	Monthly average	Post-initiation[a]	Monthly Average	ΔIP – post-initiation
PRC	220 705	18 392	110 568	27 642	+50 %
Indonesia	107 107	8 926	9 011	2 253	-75 %
Taiwan	36 542	3 045	13 932	3 483	+14 %
Countries Concerned	364 354	30 363	133 511	33 378	+10 %

a August 2019 – November 2019
Source: Surveillance 2 database

(14) On the basis of these statistical data, the Commission found that the average monthly volume of imports of certain hot rolled stainless steel sheets and coils from the countries concerned to the Union in the period from September 2019 to November 2019, i.e. after initiation of the case, was 10 % higher than the average monthly volume of imports to the Union during the investigation period.

(15) In investigations involving more than one country concerned, whether or not imports from these countries will be cumulated for the purpose of the analysis described in the recitals above, will depend on whether the Commission decides to cumulate these imports in the underlying investigation. The Commission also noted that, in its judgment in *Stemcor*, the General Court ruled that the 'further substantial rise in imports' within

the meaning of Article 10(4)(d) of the basic regulation must be assessed as a whole, in order to determine whether the imports, taken as a whole, are likely to seriously undermine the remedial effect of the definitive duties and thus create additional injury for the Union industry, without considering the individual and subjective position of the importers in question[6]. As the above table shows, there is no question as to whether the cumulated imports from the countries concerned have shown a further substantial rise.

(16) Marcegaglia argued that a further substantial rise in imports was not evidenced in the complainant's submission and was unlikely to occur because the applicable safeguard tariff quotas ('the quotas') on certain steel products[7], which, inter alia, cover the product concerned, are set at levels, for each of the countries concerned, significantly below the export volumes observed during the investigation period. Any quantity imported in excess of the quotas will be subject to a safeguard duty of 25 %. Therefore, imports of the product concerned are, according to Marcegaglia, likely to decrease to the level set by the quotas, which is 25 % below the import volume observed in the investigation period. Marcegaglia added that although in July and August 2019, or, in general, in any given month, the volume of imports (could) exceed these monthly averages, this should not warrant the conclusion that imports are likely to increase.

(17) The Commission recalls that the quotas in question are tariff quotas, which provide that any import made beyond the threshold set by them is not prohibited but is subject to an additional ad valorem duty rate of 25 %. This means that importers are allowed to import volumes well beyond the applicable thresholds, subject to the payment of the safeguard duty. In any event, the fact that the product concerned is subject to tariff-rate quotas is linked to the need to avoid serious injury for the Union industry to materialise. The same increase in imports after the initiation of the current investigation may lead to the need for retroactive collection of the eventual duties because of the material injury found and the need for an effective remedy. Moreover, in view of the dumping and injury margins that have been estimated by the complainant (see recital (30) below), the 25 % safeguard duty may not be sufficient to remedy the full extent of dumping and injury. Subsequently, a duty of 25 % will in all likelihood not deter importers from importing additional volumes.

(18) Further in response to Marcegaglia's comments, the Commission also recalls that the present Regulation concerns the registration of imports and is without prejudice to the decision as to whether or not anti-dumping duties will be collected, which is only taken at the stage of any definitive measures.

(19) Therefore, in view of the further substantial rise in imports from the countries concerned, the Commission concluded that the second criterion for registration was also met.

3.3. Undermining of the remedial effect of the duty

(20) The Commission has at its disposal sufficient evidence at this stage that additional injury has already been caused by the continuing rise in imports at further decreasing prices.