Commission Implementing Regulation (EU) 2020/35 of 15 January 2020 amending Implementing Regulation (EU) 2019/159 imposing definitive safeguard measures against imports of certain steel products

COMMISSION IMPLEMENTING REGULATION (EU) 2020/35

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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 Article 20(2) 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 Article 16(2) thereof,

Whereas:

(1) By Implementing Regulation (EU) 2019/159, the European Commission ('the Commission') imposed definitive safeguard measures on certain steel products ('the definitive Regulation')[(3)]. The measures imposed by the definitive Regulation consist of a tariff-rate quota ('TRQ') with respect to 26 steel product categories, set at a level high enough to preserve traditional trade flows. In particular, the quantitative thresholds were established by reference to the imports during the period 2015-2017, increased by 5 % in order to permit enough supply and ensure competition on the EU market. A 25 % tariff duty would apply only beyond that set quantitative thresholds on a per-product-category basis.

(2) By Implementing Regulation (EU) 2019/1590[(4)] (the 'amending Regulation'), the Commission amended these measures, following a review investigation, in order to reflect the intervening changed circumstances during the period of imposition of the measures and to make the measures more effective, based on the Union interest.

(3) In the framework of this review investigation, some parties, including the European Automobile Manufacturers' Association ('ACEA'), requested the exclusion of product category 4B (covering metallic coated sheets used primarily in the automotive sector) from the scope of the measures. ACEA argued that the use of that product category by the Union's automotive industry was vital for the continuation of the normal commercial operations of this industry. While the Commission recognised that it was in the Union's interest that traditional trade flows of product types used by the automotive industry were ring-fenced, it found no ground for such a straightforward exclusion from the TRQ system. After consultation with all interested parties, instead of an exclusion, the Commission, accordingly, decided that the use of category 4B (which could also include

Changes to legislation: *There are currently no known outstanding effects for the Commission Implementing Regulation (EU) 2020/35. (See end of Document for details)*

products for other uses) should be restricted only to imports that can demonstrate an end-use in the automotive sector. Therefore, through the amending Regulation, the corresponding imports were placed under the end-use procedure referred to in Article 254 of Regulation (EU) No 952/2013 of the European Parliament and of the Council[(5)]. The automotive sector and its steel suppliers generally welcomed this solution since it would ensure the exclusive use of the TRQ for product category 4B by the Union's automotive industry, as well as protect traditional trade flows. The result of the consultations with WTO Members also showed no opposition to this change with respect to category 4B.

(4) After the entry into force of the amending Regulation, the Commission remained in close contact with ACEA and the exporters (in particular Korean) of steel products falling under category 4B. Given that the user industry was not directly importing the product subject to the end-use requirement, the implementation of that procedure required close cooperation between all parties involved in the importation process, from initial orders up to the moment imports reached the end-user of the product. The Commission was made aware of the fact that the necessary close cooperation among various operators (involving the extension of existing authorisations granted to the Union's automotive industry, the granting of new authorisations in favour of importers, and/or the transfer of rights and obligations between the various parties involved in the related supply chain) has not functioned as originally expected. As a result, an important proportion of imports under product category 4B could not take place after the entry into force of the amended measures, despite the fact that the Commission, exporters, steel importers, and the national customs authorities of the EU Member States and third countries were closely cooperating to solve those issues. It was also not possible to speed up the administrative process in order to obtain the necessary end-use authorisations.

(5) It has further appeared that any solution to implement an effective end-use procedure would still require some time, without any guarantee of adequate and immediate remedies. In the meantime, a significant proportion of category 4B products is held at the Union's customs border awaiting customs clearance. That seriously and negatively affects, or even disrupts, supply chains based on a 'just-in-time' system, in particular because the Union's automobile industry heavily relies on highly specialised steel grades. Given the resulting potential negative economic consequences and the fact that such constraints are clearly in contradiction with the Commission's objective to ensure traditional trade flows in the Union's interest, having heard the views of all interested parties involved in this matter, the Commission considers that the end-use procedure for this category should be revoked.

(6) Implementing Regulation (EU) 2019/159 and its annexes should therefore be amended again so as to adequately reflect the situation which prevailed before the introduction of the end-use requirement for categories 4A and 4B through the amending regulation.

(7) Following consultations with Korea, the exporting country mostly affected by the end-use mechanism, the Commission considered that the allocation of the TRQ volume between product categories 4A and 4B for this country, as established pursuant to

Implementing Regulation (EU) 2019/159, should also be amended. This is necessary in order to take into account the volume of automotive steel grades that were imported under product category 4A since the entry into force of the amending Regulation, given the impossibility to import them under the product category 4B subject to the end-use mechanism.

(8) The Commission remains of the view that, in the Union interest, a specific mechanism, either the end-use procedure (once the implementation issues are resolved), or an alternative system, however set up, may be required at a later stage in order to ring-fence imports of automotive steel grades under product category 4B. These issues will accordingly, be re-assessed in the context of a future review investigation, based on the comments and proposals made by the interested parties, as well as other developments affecting this product category. In this respect, it is also noted that the Commission recently initiated an anti-circumvention investigation of anti-dumping measures on imports of certain corrosion resistant steel originating in the People's Republic of China, which fall within product category 4[(6)].

(9) The present Regulation should be given retroactive effect, thereby revoking, as from 1 October 2019, the end-use requirement introduced by the amending Regulation. This will also allow the refund of any eventual safeguard duties which could have been paid on the basis of the TRQ established by the amending Regulation but no longer justified after the entry into force of this Regulation.

(10) 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

1 Article 1(2) of Implementing Regulation (EU) 2019/159 is replaced as follows:

2. For each of the product categories concerned, and with the exception of product category 1 and product category 25, a part of each tariff-rate quota is allocated to the countries specified in Annex IV.

2 The section related to categories 4A and 4B of Annex IV.1 — Volumes of tariff-rate quotas of Implementing Regulation (EU) 2019/159 is replaced by the Annex to this Regulation.

Article 2

This Regulation shall enter into force on the day following that of its publication in the *Official Journal of the European Union*.

It shall apply from 1 October 2019.

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

***Changes to legislation:** There are currently no known outstanding effects for the Commission Implementing Regulation (EU) 2020/35. (See end of Document for details)*

Done at Brussels, 15 January 2020.

For the Commission

The President

Ursula VON DER LEYEN