Commission Implementing Regulation (EU) 2019/1590 of 26 September 2019 amending Implementing Regulation (EU) 2019/159 imposing definitive safeguard measures against imports of certain steel products

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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) 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 that 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. A 25 % tariff duty would apply only beyond that set quantitative level of traditional trade flows on a per-product-category basis.

(2) Recital (161) and Article 9 of the definitive Regulation noted that, based on the Union interest, the Commission 'may have to adjust the level or allocation of the tariff-rate quota. .. in case of changes of circumstances during the period of imposition of the measures' and that such a review should commence 'no later than 1 July 2019'.

(3) In light of that consideration, on 17 May 2019[(4)], the Commission initiated a review of the definitive Regulation and invited parties to make their views known, submit information, and provide supporting evidence concerning the five grounds of review identified by the Commission for the 26 product categories concerned in the Notice of Initiation of the Review Investigation. As per Section 3 thereof, these grounds of review concerned:

(a) Level and allocation of TRQs for a number of specific product categories;

(b) Crowding out of traditional trade flows;

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(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; and

(e) Other changes of circumstances that may require an adjustment to the level of allocation of the TRQ.

(4) The Commission received submissions from over 150 different parties. Interested parties were also allowed to make comments on and formulate rebuttals to each other's submissions. As a result, the Commission received over 50 additional rebuttal submissions.

(5) Following an in-depth analysis of all the submissions received, the Commission arrived at the following findings. These are organized in Section 2 below within five different sub-sections corresponding to the five grounds of review identified in recital (3) above.

2. FINDINGS OF THE INVESTIGATION

2.A. Level and allocation of TRQs for a number of specific product categories

(6) As already announced in recital (161) of the definitive Regulation, the Commission's review of the existing measures concerned any product category subject to measures, including (but not limited to) product categories 3, 4, 6 and 16. For those specific product categories, the Commission had received a considerable number of comments during the investigation leading to the adoption of the definitive safeguard measures. Those product categories had also been the object of numerous exchanges in the context of bilateral consultations with the Union's trading partners.

(7) That being said, all 26 product categories had been subject to daily monitoring by the Commission.

(8) In the Notice of Initiation of the Review Investigation, the Commission announced that it would investigate whether changed circumstances had occurred since the adoption of the definitive measures, including whether there was evidence of a substantial increase or contraction in Union demand or the imposition of trade defence measures on certain product categories. Those instances would make it necessary to adjust the level or allocation of the TRQ in place.

(9) To identify substantial changes in demand, the Commission explained that it was looking into the evolution of the use of the TRQ concerned to see whether quotas had been exhausted or whether their use did not reflect traditional trade flows.

(10) At the point of initiation of the review investigation, the Commission found such potential abnormal patterns of trade in product categories 4B, 5, 13, 15, 16, 17, and 25. For those categories, either certain annual country-specific quotas or the corresponding residual quota, which was calculated to last until the end of June 2019,

had already been exhausted or were about to be exhausted within only two months from the imposition of the definitive safeguard measures.

(11) For the purposes of its review, Commission analysed in detail the development of the 26 product categories, not only on the basis of its daily monitoring, but more specifically also for their development during the period from 2 February 2019 to the end of June 2019. Through that analysis, the Commission sought to determine whether any possible abnormal use pattern originate in a genuine substantial increase of Union demand, or whether those use patterns of the TRQs are the result of speculative stockpiling activities, or, in fact, of trade diversion caused by distortive trade measures taken abroad.

Comments made by interested parties

(12) In their submissions, many interested parties requested either an increase in the level of TRQ or a different system for the allocation or use of quotas for the product categories they import. Only a few interested parties submitted meaningful evidence supporting the conclusion of a potential imbalance between the available quantitative limits set by the TRQ and existing (or developing) EU demand or other changed circumstances. The majority of these comments focused on the following product categories that will be individually discussed in this section: category 1 (hot rolled sheets and strips), category 4B (automotive metallic coated sheets), category 16 (wire rod) and category 25 (large welded tubes).

(13) For the other product categories mentioned either in the review clause or in the Notice of Initiation of the Review Investigation (that is, product categories 3 (electrical sheets), 5 (organic coated sheets), 6 (tin mill products), 13 (rebars), 15 (stainless wire rod) and 17 (angles, shapes and sections)), the comments received were limited. No submission received provided evidence pointing to problems of offer shortfall (i.e. low quantitative limits set by the TRQ concerned) caused by increased demand, or any other changed circumstances. However, numerous submissions claimed crowding-out problems with respect to product category 13 that will be also individually analyzed in this section under sub-section 2.B below.

Commission analysis

(14) At the end of the first annual period of measures on 30 June 2019, for 24 out of the 26 product categories, the actual import volumes remained below their respective quantitative level set by the TRQ, either from one or more country-specific TRQ and/or from the global TRQ. In other words, only for two product categories, i.e. category 13 (rebars) and category 14 (stainless steel bars) the total quotas (country-specific and residual) made available under the measures were fully exhausted closely towards the end of June 2019.

(15) Overall, 1,3 million tonnes of the TRQ available for the period 2 February – 30 June 2019 remained unused. In addition, the Commission confirmed that during the period when provisional measures were in place (18 July 2018 - 1 February 2019) around two million tonnes of quota space remained unused. Therefore, during the first

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year of application of the safeguard measures, over 3,2 million tonnes free-of-duty imports were not used.

(16) On that basis, the Commission concluded that the TRQ levels established pursuant to the ongoing safeguard measures did not unduly restrict trade flows but rather ensured that traditional trade flows were maintained commensurate with the Union market needs. No evidence of alleged offer shortfall caused by increased demand had been provided by interested parties.

Specific assessment: Category 1 – Hot-rolled flat products

(17) For all product categories subject to definitive safeguard measures except for category 1, the TRQ system adopted by the Commission was a combination of country-specific and residual TRQs. In so doing, the Commission aimed at preserving the traditional trade volumes not only in volume but also in origin terms.

(18) However, the Commission considered that this preferred TRQ system was not appropriate for product category 1 due to the following particular circumstances. Indeed, five of the main historical exporting countries[(5)], representing close to 60 % of imports in the period 2015-2017, had been made subject to anti-dumping and/or countervailing measures during that same period[(6)]. This significantly affected their level of imports.

(19) Therefore, the Commission concluded these countries would normally no longer be in a position to export to the Union at their historical level, i.e. based on the average level of their Union imports in the last three years (2015-2017). The Commission, therefore, decided that it was in the Union's interest to adopt a single system of global TRQs, administered on a quarterly basis, in order to avoid the risk of shortage that a country-specific allocation could unduly generate.

(20) In their comments during this review, some interested parties, including the Union industry and several exporting countries, requested the Commission to implement a system of country-specific TRQs also for product category 1. These parties argue that the current evolution of imports would create an imbalance in the import flows to the detriment of certain supplying countries that would in turn create certain market disturbances.

(21) In reaction thereto, the Commission analyzed the import evolution of product category 1 during 2018 and the first half of 2019. It observed that, vis-à-vis Russia as supplying country, despite being subjected to anti-dumping measures (which resulted in a relevant decrease of its import volume in 2017), its exports during the period January 2018-June 2019 recovered a substantial part of its historical trading volume. Russia accounted for 16 % of TRQ use in the period February-June 2019[(7)]. In addition, other countries subject to anti-dumping measures, namely Brazil and Ukraine, have continued exporting to the Union[(8)], albeit in much more limited quantities than before the imposition of anti-dumping duties.

(22) In view of the above-described evolution of imports, most notably from Russia, which could not be foreseen when the definitive safeguard measures were

adopted, the Commission found now that the level of imports significantly affected by trade defence measures is substantially lower than expected. Furthermore, given the consistently-high use rate of the TRQ in the two quarters subject to definitive safeguard measures (February-June 2019) by other exporting countries, notably Turkey, India and the Republic of Serbia with respective shares of 40 %, 15 % and 12 %, the potential risk of shortage of supply that was anticipated when imposing definitive measures is now found to be substantially lower.

(23) Accordingly, in the light of the above changed circumstances, the Commission considered that it would be in the Union's interest to amend the TRQ allocation for product category 1 and introduce a mechanism that ensures the preservation of trade flow origins akin to that used for the other product categories to the best extent possible.

(24) The Commission observed that the difficulty of introducing such a system lies in the nature of product category 1. As previously explained in recital (19), relying on the historical average imports of 2015-2017 for fixing the country-specific quotas would cause substantial offer shortfall. On the other hand, using 2018 being the first full year with anti-dumping and countervailing measures in place, could lead to an improper allocation. That is because 2018 import volumes were also influenced by the entry-into-force of the safeguard measures (in July 2018), as well as by the presence of import volumes resulting from trade diversion from third countries that was already established in the definitive Regulation with respect to category 1.

(25) In these circumstances, and in the absence of proper representative import data over a sufficiently long and reliable period, the Commission considered that the most appropriate way to ensure the preservation of traditional trade flows for category 1, in both volume and origin terms, would be to establish a limitation to the share in the global quota any single exporting country can reach during a respective quarter.

(26) In order to determine this cap, the Commission analysed the historical import data (2013-2017)[(9)] of product category 1 and found that, during this period, no exporting country exceeded 25 % on average, and also that the highest share in any single year was achieved by Turkey in 2017 with 28 %. Accordingly, the Commission considered that no single exporting country should be allowed to exceed a share of 30 % of the global TRQ available per quarter during the remaining duration of the measures.

(27) This threshold should give enough room to exporting countries to fill the market shares left open by supplying countries subjected to anti-dumping or countervailing measures, while preserving as much as possible traditional trade flows and ensuring enough diversity of supply for users in the Union, so as to minimize any potential risk of shortage of supply[(10)].

(28) Through this adjustment to the allocation of the TRQ, the Commission considered to strike an appropriate balance between the legitimate rights of the different parties in line with the Union interest.

Specific assessment: Category 4B – Metallic coated sheet used primarily in the automotive sector