Commission Implementing Regulation (EU) 2019/1382 of 2 September 2019 amending certain Regulations imposing anti-dumping or anti-subsidy measures on certain steel products subject to safeguard measures

COMMISSION IMPLEMENTING REGULATION (EU) 2019/1382

of 2 September 2019

amending certain Regulations imposing anti-dumping or anti-subsidy measures on certain steel products subject to safeguard measures

THE EUROPEAN COMMISSION,

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

Having regard to Regulation (EU) 2015/477 of the European Parliament and of the Council of 11 March 2015 on measures that the Union may take in relation to the combined effect of anti-dumping or anti-subsidy measures with safeguard measures[(1)],

After consulting the Committee on Safeguards,

Whereas:

1. BACKGROUND AND PROCEDURE

(1) By Regulation (EU) 2019/159[(2)], the Commission imposed safeguard measures with respect to certain steel products for a period of three years. Those measures take the form of tariff-rate quotas applicable for specified periods, by which an above-quota tariff duty of 25 % is payable when imports exceed a specified threshold corresponding to the average level of imports in the years 2015 to 2017.

(2) Anti-dumping and/or countervailing measures are currently in place for some of the product categories covered by the safeguard measures. Consequently, for those products, once the tariff quotas established under the safeguard measures are exceeded, both the above-quota tariff duty and the anti-dumping or countervailing duty would become payable on the same imports. As highlighted in Regulation (EU) 2019/159[(3)], such cumulation of anti-dumping and/or anti-subsidy measures with the safeguard measures imposed by the same regulation may lead to an effect on trade greater than desirable, thus warranting examination in due course.

(3) Accordingly, on 24 April 2019, the Commission published a Notice[(4)] concerning the potential combined effects of anti-dumping and/or anti-subsidy measures with the safeguard measures on the product categories concerned. For ease of reference, those product categories are listed in Annex 1.A. In its Notice of 24 April 2019, the Commission confirmed that there are grounds to consider that the combination of these measures could indeed have an effect greater than that intended or desirable in terms of the Union's trade defence policy and objectives, as laid down in Regulation (EU) 2015/477, and that it may be appropriate to amend existing anti-dumping and

countervailing measures covering those product categories also affected by safeguard measures to ensure the proportionality of the measures concerned.

(4) By the same Notice, the Commission invited interested parties to make known their views in writing on the above considerations.

2. COMMENTS OF INTERESTED PARTIES

(5) The Commission received comments from 12 interested parties and duly considered their arguments. Amongst these parties are five exporting producers, one foreign government, one European association of steel producers, four users or importers of steel in the EU, as well as one association of steel users.

(6) The majority of the interested parties agreed that the combination of anti-dumping or anti-subsidy measures with safeguard measures, on the same products, could have an effect greater than that intended or desirable in terms of the Union's trade defence policy and objectives. Some interested parties note that such a combination of measures could place an undesirably onerous burden on certain exporting producers seeking to export to the Union, which may have the effect of denying them access to the Union market.

(7) One importer from Lithuania agreed that a combination of anti-dumping/anti-subsidy and safeguard measures is not desirable, and requested a retroactive correction of the combined effect of measures by reimbursing the importer with the outstanding amount of the duty paid.

(8) In response to that request, the Commission noted that Article 2 of the Regulation (EU) 2015/477 clearly limits any measure adopted pursuant to that regulation to apply from its date of entry into force and that it cannot serve as a basis for the reimbursement of duties collected prior to that date, unless otherwise provided by the Commission. Since, consequently, any effects arising from the present review are limited to a prospective application of the concurrent measures concerned, the claim of the exporting producer was rejected.

(9) One exporting producer from Russia argued that in order to ensure predictability and legal certainty, and to avoid at all costs the combined effect of anti-dumping and/or anti-subsidy measures with the safeguard measures, the Commission should immediately amend the existing anti-dumping measures, regardless of whether or not tariff-rate quotas for products covered by the safeguard in question are exhausted.

(10) This exporting producer specifically referred to anti-dumping duties imposed on imports of certain hot-rolled flat products of iron, non-alloy or other alloy steel originating in Brazil, Iran, Russia and Ukraine imposed by the Commission Regulation (EU) 2017/1795[(5)].

(11) The Commission recalled, in this regard, that the effect of safeguard measures arise only once the relevant level of the tariff-rate quota is exhausted (specific or *erga omnes*) and the applicable above-quota tariff duty is imposed. Until that moment, the Commission considers that the full level of the applicable anti-dumping/anti-subsidy

measures continues to be necessary and justified, in order to remedy the effect of unfairly dumped/subsidised imports. The question of a combined effect, therefore, becomes relevant only once the applicable quantitative threshold is exhausted and additional safeguard duties applied.

(12) The Commission added, by way of further observation, that the level of imports of the product categories exported by the Russian exporting producer so far has remained below the level of the applicable tariff-rate quota. This claim was therefore rejected.

(13) Several interested parties argued that they are subject to double remedies as, for some products originating in the United States, both the above-quota tariff duty as well as the so-called 'rebalancing measures' introduced pursuant to Commission Implementing Regulation (EU) 2018/886[(6)] apply. They therefore argued that the Commission should also suspend the latter measures within the scope of this Regulation.

(14) The Commission observed that 'rebalancing measures' and anti-dumping/anti-subsidy measures fundamentally pursue different policy objectives and so do not fall within the scope of a review seeking to assess the proportionality of combined anti-dumping/anti-subsidy measures alongside safeguard measures introduced by Regulation (EU) 2019/159. In this regard, it is recalled that anti-dumping/anti-subsidy measures seek to tackle 'unfair' trade actions from particular operators or countries. In contrast thereto, 'rebalancing measures' seek to equilibrate the balance of concessions and obligations between the Union and another WTO member by way of suspension of substantially-equivalent concessions or other obligations[(7)] after unilateral action taken by that WTO member disturbing said balance of concessions and obligations. This is also reflected in the different legal bases of the latter measures, namely Regulation (EU) No 654/2014 of the European Parliament and of the Council[(8)]. However, the provisions of Regulation (EU) 2015/477, which constitutes the legal basis for this Regulation, specifically relates solely to the combined effect of anti-dumping and/or anti-subsidy measures and safeguard measures on the same product categories listed in Annex 1.A. Given the different underlying situation and purpose of these different measures, a suspension of the 'rebalancing measures' concerned falls outside the scope of this review. The combined effect of safeguard and rebalancing measures can therefore not be addressed under the specific legal framework of Regulation (EU) 2015/477. The claim was accordingly rejected.

3. CONCLUSIONS

(15) Based on the above, and having duly taken into account all of the submissions made by the parties concerned, the Commission confirms that there are sufficient grounds to consider that the combination of anti-dumping and/or anti-subsidy measures and safeguard measures introduced by Regulation (EU) 2019/159 for the product categories listed in Annex 1.A would indeed have an effect greater than that intended or desirable in terms of the Union's trade defence policy and objectives, as laid down in Regulation (EU) 2015/477. The Commission therefore considers that it is appropriate

Changes to legislation: *There are currently no known outstanding effects for the Commission Implementing Regulation (EU) 2019/1382. (See end of Document for details)*

to put in place measures to prevent the concurrent application of the anti-dumping and/or countervailing measures listed in Annex 2 with the above-quota tariff duty for the steel product categories listed in Annex 1.A.

(16) Consequently, where the rate of the above-quota tariff duty referred to in Article 1(6) of Regulation (EU) 2019/159 becomes applicable to the product categories listed in Annex 1.A and exceeds the equivalent rate of the higher of the anti-dumping and/or countervailing duty rate applicable to the same product categories, only the above-quota tariff duty shall be collected. In other words, in a scenario where the above-quota tariff duty represents 25 % and the equivalent rate of the anti-dumping and/or countervailing duty applicable to the same product categories represents 10 %, only the above-quota tariff duty shall be collected. In such a situation, the collection of the applicable anti-dumping and/or anti-subsidy measure shall be suspended for the period of application of the above-quota tariff duty.

(17) Where the rate of the above-quota tariff duty referred to in Article 1(6) of Regulation (EU) 2019/159 becomes applicable to the product categories listed in Annex 1.A and is lower than the equivalent rate of the anti-dumping and/or countervailing duty applicable to the same product categories, the full above-quota tariff duty should be due, topped-up by the difference between the above-quota tariff duty and the level of the higher of the anti-dumping/anti-subsidy duty in place, as provided for in Annex 2. In other words, where the above-quota tariff duty represents 25 % and the higher of the equivalent rate of the anti-dumping and/or countervailing duty rate applicable to the same product categories represents 35 %, the above-quota tariff duty of 25 % should be alongside the topped-up difference of 10 % between the above-quota tariff duty and the equivalent rate of the applicable anti-dumping and/or countervailing duty rate. In such a situation, collection of the part of the applicable anti-dumping and/or anti-subsidy measure not applicable should be suspended in such a way as to ensure that the combined effect of the two measures does not exceed the higher level of the anti-dumping/anti-subsidy duty in place.

(18) For the avoidance of doubt, once the above-quota safeguard tariff duty ceases to apply, the suspended collection of the respective anti-dumping/anti-subsidy measure ceases with immediate effect. From that point in time, collection of the applicable anti-dumping/anti-subsidy measures apply as usual.

(19) Where combined anti-dumping and anti-subsidy measures are applicable on the same product from certain countries, the relevant regulations listed in Annex 1.B provide the modalities of their application in order to avoid double-counting. In cases where the rate of the above-quota tariff duty is lower than the combined anti-dumping and countervailing duties, the application of the latter, or part of it, shall have priority over the former.

(20) Where the applicable anti-dumping and/or anti-subsidy measures consist of a fixed duty, the Commission converted the latter into an ad-valorem duty and has compared the resulting ad-valorem duty to the above-quota tariff duty. Where the resulting ad-valorem duty was higher than the above-quota tariff duty, the reduced anti-

dumping and/or anti-subsidy duty pursuant to recital (16) was converted back to a fixed duty.

(21) The measures provided for in this Regulation are in accordance with the opinion of the Trade Defence Instruments Committee,

HAS ADOPTED THIS REGULATION:

Article 1

1 Where the above-quota tariff duty referred to in Article 1(6) of Regulation (EU) 2019/159 becomes applicable to product categories set out in Annex 1 to Regulation (EU) 2019/159 and exceeds the equivalent ad valorem level of the anti-dumping/anti-subsidy duties listed in Annex 2, only the above-quota tariff duty referred to in Article 1(6) of Regulation (EU) 2019/159 shall be collected.

2 During the period of application of paragraph 1, the collection of the duties imposed pursuant to the Regulations listed in Annex 1.B to this Regulation shall be suspended.

3 Where the above-quota tariff duty referred to in Article 1(6) of Regulation (EU) 2019/159 becomes applicable to product categories set out in Annex 1 to Regulation (EU) 2019/159 and is set at a level lower than the equivalent ad valorem level of the anti-dumping/anti-subsidy duties listed in Annex 2, the above-quota tariff duty referred to in Article 1(6) of Regulation (EU) 2019/159 shall be collected in addition to the difference between that duty and the higher of the equivalent ad valorem level of the anti-dumping/anti-subsidy duties listed in Annex 2.

4 The part of the amount of anti-dumping/anti-subsidy duties not collected pursuant to paragraph 2 shall be suspended.

5 The suspensions referred to in paragraphs 2 and 4 shall be limited in time to the period of application of the above-quota tariff duty referred to in Article 1(6) of Regulation (EU) 2019/159.

Article 2

Any measure adopted pursuant to this Regulation shall apply from this Regulation's date of entry-into-force and shall not have retroactive effect.

Any measure adopted pursuant to this Regulation shall not serve as basis for the reimbursement of duties collected prior to the date of entry-into-force of this Regulation.

Article 3

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

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