Commission Implementing Regulation (EU) 2018/640 of 25 April 2018 introducing prior Union surveillance of imports of certain aluminium products originating in certain third countries

COMMISSION IMPLEMENTING REGULATION (EU) 2018/640

of 25 April 2018

introducing prior Union surveillance of imports of certain aluminium products originating in certain third countries

THE EUROPEAN COMMISSION,

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

Having regard to Regulation (EU) 2015/48 of the European Parliament and of the Council of 11 March 2015 on common rules for imports[(1)], and in particular Article 10 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 7 thereof,

After consulting the Committee on Safeguards and Common Rules for exports,

Whereas:

(1) According to Article 10 of Regulation (EU) 2015/478 prior Union surveillance may be introduced where the trend in imports of a product threatens to cause injury to Union producers and where the interest of the Union so require. Article 7 of Regulation (EU) 2015/755 allows for the possibility to introduce prior surveillance where the Union's interests so require.

(2) Imports into the Union of aluminium products increased by 28 % between 2013 and 2017, from 7,1 million tonnes to 9,1 million tonnes. During the same period, prices of aluminium imports decreased by 5 %.

(3) Since the early 2000s, there has been a significant oversupply of especially primary aluminium. Most of the new capacity was created in the People's Republic of China (‘China’). The primary (smelting) capacity of China has increased rapidly over the past decade, during which 90 % of all new capacity was installed in China. China accounts for over half of the world's supply of primary aluminium, up from 11 % in 2006. In the Union, out of the 26 smelters operating in 2008, only 16 are still operating and a number of them are under risk of closure.

(4) World market prices for primary aluminium dropped by 37 % from September 2011 to September 2016. In 2017, they have risen by 25 %, back to almost 90 % of their 2011 level, which is nevertheless a decline of approximately 25 % in real terms since 2011.

(5) Although China, due to export taxes, exports very little primary aluminium directly, its overcapacity reduces world prices as aluminium is a globally traded commodity and

its transport costs are low. In addition, the overcapacity in primary aluminium reduces the prices of downstream semi-finished and finished aluminium products exported by China to other markets.

(6) The United States of America ('United States') opened in April of 2017 an investigation concerning the effect of imports of aluminium on national security under Section 232 of the United States Trade Expansion Act of 1962 ('Section 232'). This investigation has resulted in additional import duties of 10 % for a broad range of aluminium products, as announced by the President of the United States on 1 March 2018. These measures entered into force on 23 March 2018. They will have a further discouraging effect on exports of aluminium products to the United States. Given the scope of the United States' measures, they may also lead to substantial trade diversion and price depression on the Union market.

(7) On the basis of recent trends in imports of aluminium products, the current excess capacity, the current vulnerable situation of the Union industry and the potential trade diversion triggered by the United States measures under Section 232, a threat of injury to Union producers may develop in the near future.

(8) Thus, the Union interest requires that imports of aluminium products should be subject to prior Union surveillance in order to provide advanced statistical information permitting rapid analysis of import trends from all third countries. Rapid and anticipated trade data is necessary to deal with the vulnerability of the Union aluminium market to sudden changes on world aluminium markets. This is particularly important in the present situation marked by uncertainties as to the potential trade diversion that may be caused by the United States measures under Section 232.

(9) In view of the developments on the market of certain aluminium products, it is appropriate that the scope of this system includes the products listed in Annex I.

(10) The internal market requires that the formalities to be accomplished by Union importers are identical wherever the goods may be cleared.

(11) In order to facilitate the collection of data, the release for free circulation of the products covered by this Regulation should be made subject to the presentation of a surveillance document meeting uniform criteria. This requirement should start to apply 15 calendar days after the entry into force of this Regulation in order not to prevent release for free circulation of products on their way to the Union and to allow sufficient time for importers to request the necessary documents.

(12) This document should, on simple application by the importer, be endorsed by the authorities of the Member States within a certain period but without the importer thereby acquiring any right to import. The document should therefore be valid only as long as the import rules remain unchanged.

(13) The surveillance documents issued for the purposes of prior Union surveillance should be valid throughout the Union, regardless of the Member State of issue.

(14) The Member States and the Commission should exchange the information resulting from prior Union surveillance as fully as possible.

(15) The issuance of surveillance documents, while subject to standard conditions at Union level, is to be the responsibility of the national authorities.

(16) In order to minimise unnecessary constraints and not disturb excessively the activities of companies close to the borders, imports whose net weight does not exceed 2 500 kilograms should be excluded from the application of this Regulation.

(17) The Union has a close economic integration with Norway, Iceland, and Liechtenstein within the European Economic Area ('EEA'). Furthermore, pursuant to the EEA Agreement, EEA members do, in principle, not apply trade defence measures in their mutual relations. For those reasons, products originating in Norway, Iceland, and Liechtenstein should be excluded from the application of this Regulation,

HAS ADOPTED THIS REGULATION:

Article 1

1 The release for free circulation in the Union of certain aluminium products listed in Annex I to this Regulation shall be subject to prior Union surveillance in accordance with Regulation (EU) 2015/478 and Regulation (EU) 2015/755. This applies to imports whose net weight exceeds 2 500 kg established for each individual tariff and statistical nomenclature of the Union ('TARIC') code subject to prior surveillance.

2 The classification of the products covered by this Regulation is based on TARIC. The origin of the products covered by this Regulation shall be determined in accordance with Article 60 of Regulation (EU) No 952/2013 of the European Parliament and of the Council[(3)].

3 Products originating in Norway, Iceland and Liechtenstein are exempted from the obligation set out in paragraph 1.

Article 2

1 Products referred to in Article 1 shall be put into free circulation in the Union only on production of a surveillance document issued by the competent authority designated by a Member State.

2 Paragraph 1 shall start to apply 15 calendar days after entry into force of this Regulation.

3 The surveillance document referred to in paragraph 1 shall be issued automatically by the competent authorities in the Member States, free of charge and for any quantities requested, within five working days of the presentation of an application by any importer into the Union, wherever it may be established in the Union. This application shall be deemed to have been received by the competent national authority no later than three working days after submission, unless it is proven otherwise.

4 The surveillance document issued by one of the competent authorities listed in Annex II shall be valid throughout the Union.

5 The surveillance document shall be made out on a form corresponding to the model in Annex I of Regulation (EU) 2015/478 or in Annex II of Regulation (EU) 2015/755 for imports from the third countries listed in Annex I to Regulation (EU) 2015/755. The importer's application shall include the following elements:

a the full name and address of the applicant (including telephone, email or fax numbers and any number identifying the applicant to the competent national authority), plus the applicant's VAT registration number if he is liable for VAT;

b where appropriate, the full name and address of the declarant or of any representative appointed by the applicant (including telephone, email or fax numbers);

c a description of the goods giving their:

— trade name,

— the TARIC code,

— place of origin and place of consignment;

d the quantity declared, in kilograms, and, where appropriate, any other additional unit (pairs, items, etc.);

e the value of the goods, Cost, Insurance and Freight ('CIF') at the Union frontier, in euro;

f the following statement, dated and signed by the applicant, with the applicant's name spelt out in capital letters:

> I, the undersigned, certify that the information provided in this application is true and given in good faith, and that I am established in the Union.

The importer shall also submit commercial evidence of the intention to import, such as a copy of the contract of sale or purchase or of the *pro forma* invoice. If so requested, for example in cases where the goods are not directly purchased in the country of production, the importer shall present a certificate of production issued by the aluminium producer.

6 Without prejudice to possible changes in the import regulations in force or decisions taken in the framework of an agreement or the management of a quota:

— the period of validity of the surveillance document is hereby fixed at four months,

— unused or partly used surveillance documents may be renewed for an equal period.

7 The competent authorities may allow the submission of declarations or requests to be transmitted or printed by electronic means, under the conditions fixed by them. However, all documents and evidence must be made available to the competent authorities upon request.

8 In addition to the paper version, national authorities may create electronic versions of the surveillance document to facilitate its handling and transmission.

Article 3

1 A finding that the unit price at which the transaction is effected varies from that indicated in the surveillance document by less than 5 % in either direction or that the total quantity of the products presented for import exceeds the quantity given in the surveillance document by less than 5 % shall not preclude the release for free circulation of the products in question.

2 Applications for surveillance documents and the documents themselves shall be confidential. They shall be restricted to the competent authorities and the applicant.

Article 4

1 The Member States shall communicate to the Commission on as regular and up-to-date basis as possible. At least by the last day of each month, details of the quantities and values (calculated in euro) for which surveillance documents have been issued shall be communicated to the Commission. The information provided by Member States shall be broken down by product, TARIC code and by country.

2 The Member States shall give notification of any anomalies or cases of fraud which they discover and, where relevant, the basis on which they have refused to grant a surveillance document.

Article 5

Any notices to be given under this Regulation shall be given to the European Commission and shall be communicated electronically via the integrated network set up for this purpose, unless for imperative technical reasons it is necessary to use other means of communication temporarily.

Article 6

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 apply from the day following its publication in the *Official Journal of the European Union* until 15 May 2020.

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

Done at Brussels, 25 April 2018.

For the Commission

The President

Jean-Claude JUNCKER