Commission Implementing Regulation (EU) 2016/670 of 28 April 2016 introducing prior Union surveillance of imports of certain iron and steel products originating in certain third countries

COMMISSION IMPLEMENTING REGULATION (EU) 2016/670

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introducing prior Union surveillance of imports of certain iron and steel 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) 2015/478 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 also allows for the possibility to introduce prior surveillance where the Union's interests so require.

(2) The European Commission has published a communication on 16 March 2016 setting out possibilities how to overcome the recent challenges faced by the European steel producers[(3)].

(3) Imports into the Union of iron and steel products in general increased by 32 % between 2012 and 2015, from 41,8 million tonnes to 55,0 million tonnes. During the same period, prices of overall steel imports decreased by 17 %. On the other hand, Union exports of steel products decreased by almost 20 % on average, from 62,3 in 2012 to 50,7 million tonnes in 2015[(4)].

(4) The trends are even more marked for the steel products which were previously subject to prior Union surveillance until 2012[(5)]. For these products, imports increased by 53 % over the same period, from 13,3 million tonnes in 2012 to 20,2 million tonnes in 2015, and the corresponding import prices dropped by 22 % on average[(6)].

(5) Since the early 2000s the capacity to produce steel at global level has increased rapidly with most of the new capacity created in the People's Republic of China (‘China’). The world's nominal steelmaking capacity was estimated to reach 2 243 million tonnes

in 2014, according to the Organisation for Economic Cooperation and Development ('OECD'), a level that is more than twice as high as the capacity level of 1 060 million tonnes observed in 2000.

(6) In parallel, overall exports increased dramatically mainly from China, due to the overall economic downturn and the decreasing domestic demand. This has depressed the steel prices worldwide. China is today the first world producer of steel with 822,7 million tonnes crude steel production in 2014[(7)], which is almost half of the global steel production. The Chinese excess capacity is estimated to be around 350 million tonnes[(8)]. This represents about 40 % of China's production and almost double of the total Union yearly production of steel.

(7) Already in 2015 10 % of the Chinese exports reached the Union, accounting for more than 30 % of total Union imports. As a consequence, the modest rise of Union domestic demand was fully taken by imports. Given the fact that the Union is an important market for steel in terms of size and price, it is more than likely that any excess in steel capacity will continue to be re-directed to the Union.

(8) At the same time, access to third country markets has been reduced to a significant extent recently. Governments increasingly resort to trade policy actions in response to the crisis facing the global steel industry and many economies that previously did not use such measures are now adopting them. These measures took different forms of trade barriers, including tariff increases, anti-dumping and anti-subsidy measures, and concern markets with a significant share of the global consumption[(9)]. This is further increasing the possibilities of trade diversion of steel into the Union.

(9) Union steel industry remains a world leader in the highly technologically specialised product segment. However, the Union steel makers' competitive position on the global steel market has deteriorated in the last few years. Indeed, the financial performance of the Union steel industry has been deteriorating rapidly in the recent years. Average operating profitability is below sustainable levels, investments have been slowing down, employment levels have decreased and there is hardly any room for expansion. The Union industry has to face high energy costs and dependence on imported raw material.

(10) Furthermore, even though the production of crude steel in the Union remained relatively stable in the period 2013-2015 at around 166 to 169 million tonnes per year, during the second semester of 2015 there was a significant contraction of around 10 % as compared to the first semester.

(11) On the basis of recent trends in imports of steel products, of the current vulnerable situation of the Union industry, the continuing weak demand on the Union market and the likelihood that current and future excess capacity would be re-directed to Union if demand recovers, a threat of injury to Union producers is therefore deemed to exist.

(12) Thus, the Union interest requires that imports of certain steel products should be subject to prior Union surveillance in order to provide advanced statistical information permitting rapid analysis of import trends from all non-EU member countries. Rapid and anticipated trade data is necessary to deal with the vulnerability of the EU steel

market to sudden changes on world steel markets. This is particularly important in the present crisis situation marked by uncertainties as to whether the demand will structurally pick up and whether the EU industry will actually benefit from it.

(13) In view of the developments on the market of certain steel products, it is appropriate that the scope of the prior surveillance includes the products listed in Annex I to this Regulation.

(14) The completion of the internal market requires that the formalities to be accomplished by any importer into the Union should be identical wherever the goods may be cleared.

(15) 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 presentation of a surveillance document meeting uniform criteria. This requirement shall start to apply 21 working days after the entry into force of this Regulation in order not to prevent the release for free circulation of products on their way to the Union and to allow sufficient time to importers to request the necessary documents.

(16) That 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.

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

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

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

(20) 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 kg should be excluded from the application of this Regulation.

(21) The Union has very 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 iron and steel 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. **[**[F1]This applies to imports whose net weight exceeds 2 500 kg established for each individual TARIC code and 5 000 kg for each individual TARIC code subject to prior surveillance and falling under HS heading 7318.**]**

Changes to legislation: *There are currently no known outstanding effects for the Commission Implementing Regulation (EU) 2016/670. (See end of Document for details)*

2 The classification of the products covered by this Regulation is based on the tariff and statistical nomenclature of the Union ('TARIC'). The origin of the products covered by this Regulation shall be determined in accordance with Article 60 of the Union Customs Code[10].

3 Products originating in Norway, Iceland and Liechtenstein are exempted.

Textual Amendments

F1 Substituted by Commission Implementing Regulation (EU) 2017/1092 of 20 June 2017 amending Implementing Regulation (EU) 2016/670 introducing prior Union surveillance of imports of certain iron and steel products originating in certain third countries.

Article 2

1 The release for free circulation in the Union of the products referred to in Article 1 shall be subject to presentation of a surveillance document issued by the competent authorities of a Member State.

2 Paragraph 1 shall start to apply 21 working days after the 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, without charge and for any quantities requested, within 5 working days of 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 3 working days after submission, unless it is proven otherwise.

4 A surveillance document issued by one of the 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 to Regulation (EU) 2015/478 or Annex II to Regulation (EU) 2015/755 for imports from the third countries listed in Annex I to that Regulation.

6 The importer's application shall include the following elements:

a the full name and address of the applicant (including telephone and e-mail 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 and e-mail or fax numbers);

c a description of the goods giving their:

(1) trade name;

(2) the TARIC code;

(3) 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, 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 producing steel mill.

7 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:

a the period of validity of the surveillance document is hereby fixed at 4 months;

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

8 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.

[[F1]9 In addition to the paper version, national authorities may create electronic versions of the surveillance document to facilitate its handling and transmission.**]**

Textual Amendments

F1 Substituted by Commission Implementing Regulation (EU) 2017/1092 of 20 June 2017 amending Implementing Regulation (EU) 2016/670 introducing prior Union surveillance of imports of certain iron and steel products originating in certain third countries.

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 a basis as possible and 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.

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 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.