Commission Implementing Regulation (EU) 2019/159 of 31 January 2019 imposing definitive safeguard measures against imports of certain steel products

COMMISSION IMPLEMENTING REGULATION (EU) 2019/159

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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 16 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[(2)], and in particular Article 13 thereof,

Whereas:

1. PROCEDURE

1.1. Provisional measures

(1) On 18 July 2018, Commission implementing regulation (EU) 2018/1013[(3)] imposed provisional safeguard measures with regard to imports of certain steel products ('the provisional Regulation').

(2) The investigation was initiated ex officio on 26 March 2018 ('Notice of Initiation')[(4)] into 26 different steel product categories, pursuant to Article 5 of Regulation (EU) 2015/478 of the European Parliament and of the Council and Article 3 of Regulation (EU) 2015/755 of the European Parliament and of the Council.

(3) On 28 June 2018, the Commission extended the product scope of the safeguard investigation to two additional categories ('Extension Notice')[(5)].

(4) As mentioned in recital (20) of the provisional Regulation, the investigation covered the period from 2013 to 2017 ('the period considered').

1.2. Due process

(5) The Commission received 452 questionnaire replies from interested parties in the framework of this investigation.

(6) The Commission has also received an extensive number of written comments on the findings contained in the provisional Regulation from Union producers, exporting producers, importers, users, associations and third countries' authorities.

(7) Following the adoption of provisional measures, the Commission undertook to verify more in depth the information (including the most recent data) supplied by the

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Union producers for the purpose of the final determination. Given the sheer number of EU cooperating producers, it was materially impossible to undergo verification visits at the premises of every single Union producer. Consequently, the Commission opted for checking the quality and reliability of the data by verifying those of a selected number of producers that were chosen to cover a sufficiently large production volume and the widest possible range of the product categories under investigation. On this basis, the Commission verified the questionnaire replies at the premises of ten Union producers that accounted for over 15 % of the overall sales in the Union in 2017 of the product under investigation.

(8) From June to September 2018, verification visits were carried out at the premises of the following Union producers:

— ArcelorMittal Poland S.A., Poland;
— Compañía Española de Laminación, S.L (CELSA), Spain;
— Mannesmann Precision Tubes GmbH, (Salzgitter Group), Germany;
— Mannesmann Stainless Tubes GmbH, (Salzgitter Group), Germany;
— Marcegaglia Carbon steel Spa, Italy;
— Marcegaglia Specialties Spa, Italy;
— Riva Stahl GmbH, Germany;
— SIJ Acroni d.o.o., Slovenia;
— U. S. Steel Košice, s.r.o., Slovakia; and
— Ugitech SA, France.

(9) In order to obtain the most recent information for its final determination, on 7 September 2018 the Commission requested the associations of Union producers to submit an updated set of data on the product categories under investigation.

(10) Pursuant to Article 5 of Regulation (EU) 2015/478 and Article 3 of Regulation (EU) 2015/755 all interested parties who requested a hearing within the limit set were granted such hearing. On 12, 13 and 14 September and 1 October 2018, the Commission organised 93 individual hearing sessions, during which 150 interested parties expressed their views.

(11) Comments submitted within the deadlines by interested parties, in writing or orally during the hearing sessions, were duly considered and taken into account where appropriate.

2. PRODUCT CONCERNED AND LIKE OR DIRECTLY COMPETING PRODUCT

(12) The product concerned is certain steel products belonging to the 28 steel product categories defined in the above-mentioned Notice of Initiation, as amended by the Extension Notice, taken all together. These product categories are subject to the US tariff measures under Section 232 of the Trade Expansion Act of 1962 (‘US Section 232 measures’).

2.1. A single group definition

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(13) The Commission defined the product scope of the safeguard investigation in recitals (11) to (17) of the provisional Regulation, where it presented a detailed reasoning in support of the global analysis in the light of the strong interrelations between all product categories subject to the investigation.

(14) After the publication of the provisional Regulation, several interested parties claimed that there is not one single product concerned but several products concerned. These parties observed that the Notice of Initiation does not refer to a single product concerned but uses in some passages the plural and refers to 'products concerned'.

(15) The same parties claimed that the approach followed by the Commission in the current investigation is contrary to the ruling of the Appellate Body ('AB') in US – Steel Safeguards[6]. In this case, the AB ruled that applying a global approach to the calculation of '*unforeseen developments*' could lead to the application of '*safeguard measures to a broad category of products even if imports of one or more of those products did not increase and did not result from the "unforeseen developments"*' and would not meet the requirement of Article XIX of the GATT. These parties also claimed that in the 2002 Steel safeguard investigation[7] the Commission carried out a separate analysis per product category for which reason the same individual assessment should also be carried out in this case.

(16) Finally, several interested parties contested the interrelations and interconnections between product categories that the Commission put forward to justify its single analysis. These parties, while recognising that such linkages do exist between certain product categories, were of the view that they are not present across all categories, for instance between carbon steel and stainless steel categories, or between flat products, long products and pipes.

(17) The Commission analysed these claims and rejected them on the following basis. First, the Notice of Initiation clearly states repeatedly and without doubt that the 28 product categories under investigation were treated as a single group of products for the purposes of analysing whether the conditions for adopting safeguards were warranted. In fact, the provisional Regulation refers to the 28 product categories as the 'product concerned' or 'the product categories concerned' (see recital (11) of the provisional Regulation) and the analysis therein is made on the basis of the 28 product categories concerned taken all together (see recital (22) of the provisional Regulation). Thus, the reference to 'products concerned' should be understood as the product categories examined together as part of a single product concerned.

(18) Second, the WTO Agreement on Safeguards does not impose any specific obligations with respect to the definition or the scope of the product under investigation and does not contain any guidelines with respect to this matter, as confirmed by a WTO Panel. Indeed, a safeguard measure may be applied to a product, imports of which have increased; however, a disaggregated analysis for all cases in which the definition of the product under investigation comprises more than one product is not required. Accordingly, it is the investigating authority which defines the product under investigation, as well as the way in which the relevant data should be analysed

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in the investigation[8]. Moreover, no claim has been brought explaining how, in the circumstances of the present case, the joint consideration of product categories could have affected the analysis made by the Commission and/or resulted in an inadequate determination of the increase in imports during the period of investigation. Finally, and incidentally, the Commission also notes that the Appellate Body ruling referred to by the parties concerns the analysis of unforeseen development, and not as such the issue of whether a global analysis is permitted under the WTO Agreement on Safeguards.

(19) Third, although the Commission reiterated and confirmed in its final determination the need to carry out in the present case an overall analysis of the conditions required to impose safeguards, in order to further examine the linkage between certain categories as argued by some interested parties, the Commission further decided to examine the 28 product categories under investigation, which are treated formally as a single group, also as three steel 'product families'. This decision has been taken in order to examine, in addition, whether the findings for the single group are confirmed at more disaggregated level and to dispel any doubts about the reliability of the conclusions reached at an overall level. The three steel product families regroup certain product categories showing an even stronger degree of commonalities between them.

(20) Indeed, the steel industry commonly uses three steel product families, namely: flat products, long products and tubes. In the framework of this safeguard investigation, it is considered that within each of these families, the products present similar characteristics, frequently share production processes, are often the input for other downstream products within the family, have common users or customers in the supply chain, which is why their supply and demand substitutability and intra-'family' competition is more marked than if all steel product categories were taken together in a single group.

(21) The three 'product families' are defined as follows:

Table 1

Product families

Product family	Product category
1 Flat products	1,2,3,4,5,6,7,8,9,10,11
2 Long products	12,13,14,15,16,17,18,19,27,28
3 Tubes	20,21,22,23,24,25,26

(22) Accordingly, the Commission will address the comments made by certain interested parties as regards the broad definition of the product concerned by complementing the overall assessment of the 28 product categories under investigation with an analysis per product family as defined above.

2.2. **Requests concerning specific product categories**

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(23) Several interested parties claimed that certain specific product categories should be excluded from the scope of the product concerned, due to an alleged lack or limited availability of Union production. These claims concern notably the following product categories:

— Non-grain oriented electrical sheets used in motors and generators manufacturing (falling within product category 3);

— Steel parts used as inputs in the automotive industry (falling within product category 4);

— Tin mill products (falling within product category 6);

(24) The Commission analysed carefully these claims and came to the conclusion that like or directly competing product categories are in fact produced in the Union by the Union industry. Furthermore, as it will be elaborated below in the section on Union interest, the Commission has shaped the safeguard measures in such a way as to ensure that disruption to imports is minimised and traditional import levels from trading partners are preserved. Therefore, the alleged likelihood of a shortage of some product categories is unjustified, also considering the adjustments and considerations laid down in the Union interest analysis.

(25) The Commission therefore concluded that the request to exclude certain product categories should be rejected.

(26) In the absence of further comments regarding the product concerned and the like or directly competing product, the conclusions reached in recitals (11) to (17) of the provisional Regulation are hereby confirmed.

3. INCREASE IN IMPORTS

(27) In recitals (20) to (29) of the provisional Regulation, the Commission made an overall analysis of the increase in imports for the 28 product categories concerned over the period 2013-2017. This global analysis already excluded product categories that did not show an import increase at individual level.

(28) For its definitive determination, the Commission followed the same approach but, as previously explained, complemented its analysis by examining the development of imports for each of the three product families identified in Section 2.2 to confirm the soundness of the conclusions reached on a global basis.

(29) The Commission used in its analysis the most recent statistics, namely import data covering the first half of 2018. For ensuring data comparability with previous full-year periods, the Commission established an additional ad-hoc 12-month period made of the last 6 months of 2017 and the first 6 months of 2018 (‘the most recent period’ or ‘MRP’). The Commission also corrected some minor clerical errors in the data used at provisional stage.

(30) Furthermore, in its assessment of imports evolution, the Commission has not taken into account the import volumes from a series of countries that should be excluded from the scope of the definitive measures, in particular: the European Economic Area