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Committee on Import Licensing

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EUROPEAN UNION – STEEL IMPORT LICENSING SYSTEM

REPLIES BY THE EUROPEAN UNION TO THE QUESTIONS FROM THE RUSSIAN FEDERATION CONCERNING PRIOR SURVEILLANCE OF IMPORTS OF CERTAIN IRON AND STEEL PRODUCTS ORIGINATING IN CERTAIN THIRD COUNTRIES

The following notification, dated 22 February 2017, is being circulated at the request of the delegation of the European Union.

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2. GENERAL QUESTIONS

11. Please, clarify what is the added value of this measure when official trade statistics comes within a short time lag (for example, in the Russian Federation it is available within 1.5 months)?

EU reply: The EU interest requires that imports of certain steel products be subject to prior Union surveillance in order to provide early and advanced statistical information permitting rapid analysis of import trends from all non-EU member countries, already at the level of the intention to import. Rapid and anticipated trade data is necessary to deal with the vulnerability of the EU steel market. This is particularly important in the present serious overcapacity situation marked by uncertainties as to whether the demand will structurally pick up.

12. According to Article 1 of the Regulation (EU) 2016/670 "[t]he 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. This applies to imports whose net weight exceeds 2 500 kg." In this case the questions are:

12.1 Why the licensing measure is applied only to imports whose net weight exceeds 2500 kg?

12.2 Please, clarify the grounds for choosing such weight threshold.

EU reply: the EU considered appropriate to exempt transactions up to a certain threshold in order to minimise unnecessary constraints and not disturb excessively the activities of companies.

The EU already set the 2500 kilograms threshold in the previous surveillance system originally established by Regulation (EC) No 1915/2006[1], and that was in force until 31 December 2012. At that time, this threshold was established on the basis of the requests received from the economic operators. The EU considers that, in the absence of any counter indications, such threshold appears still the appropriate level.

13. According to paragraph 7(a) of Article 2, "[w]ithout 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…".

13.1 What is the reason for limitation of license validity period?

[1] http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32006R1915&qid=1481709421791&from=EN

EU reply: In order to obtain meaningful information about the expected/intended import levels on the steel market, it is necessary to set a certain time-limit to these documents. Such limitation is also required by the Regulation (EU) No 2015/478[2] that is the EU Regulation setting common rules for imports.

According to Article 11(5) of this regulation *"surveillance documents may not in any event be used beyond the expiry of a period which shall be laid down at the same time and by means of the same procedure as the imposition of surveillance".* Similar provisions are laid down under Article 8(5) of Regulation (EU) 755/2015[3] that is the EU Regulation setting common rules for imports from certain third countries.

14. According to Article 6, "[t]his Regulation shall apply from the day following its publication in the Official Journal of the European Union until 15 May 2020".

14.1 Please, explain the reasons for choosing such period of application of the system.

14.2 Can the measure be prolonged beyond 15 May 2020?

EU reply: Considering that overcapacity in the steel sector is unlikely to be resolved in the short term, the EU considered that the application of the system should remain in place for a period of 4 years. The EU will examine closer (and just prior) to the expiration date whether a prolongation would be necessary or not on the basis of the global steel overcapacity situation at that time.

15. According to the paragraph 2 of Article 4, "the member States shall give… where relevant, the basis on which they have refused to grant a surveillance document". However, this provision does not include an exhaustive list of such bases.

15.1 Please, provide the exhaustive list of grounds for denial of granting license.

EU reply: As explained in the annual questionnaire submitted in accordance to Art. 7.3 of the Import Licensing Agreement (G/LIC/N/3/EU/5, point. 8 at page 24), the granting of a licence can only be refused if the ordinary criteria specified in Article 2.6 of Regulation (EU) No 2016/670 are not met. Therefore, a refusal of granting a license could be justified if it does not meet one or more of these requirements.

Moreover, it has to be noted that the license's issuance falls under the responsibilities of the EU Member States' competent national authorities, and that it is up to them to determine whether these requirements are met.

3 REQUIREMENTS TO SUBMIT ORIGINAL DOCUMENTS

16. We have been informed that the authorities of the European Union Member States (for example, in Italy[4]) frequently require submission of original versions of contracts and other commercial documents (with genuine signatures and stamps) as a prerequisite for granting surveillance documents. That does not correspond to Article 2(f) of the Regulation (EU) 2016/670, which states that "the importer shall also submit commercial evidence of the intention to import, such as a copy of the contract of sales or purchase or of the pro forma invoice".

17. In light of the foregoing, we kindly ask the European Union to provide answers to the following questions:

17.1 What discretion is allowed to the authorities of the Member States in the course of implementation of the measure?

[2] http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32015R0478&qid=1481707191362&from=EN

[3] http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32015R0755&qid=1481707397611&from=EN

[4] Ministry of Economic Development of Italy, Protocol No. 12326 of 5 May 2016.

EU reply: Regulation (EU) No 2016/670 sets the rules to be implemented by the EU Member States. Their margin of discretion for the implementation is limited to the conditions laid down in this Regulation.

17.2 How does the European Union ensure that within its territory the implementation of the measure is carried out in a uniform manner?

EU reply: The EU legislation referring to surveillance of movements of goods at import and export is integrated (codified) into the TARIC database. All the EU Member States use this database for validating the customs declarations at the time of putting the goods into the free circulation.

This process ensures that all customs declarations lodged within the EU customs territory are treated in the same manner if they refer to the same product.

17.3 Please describe the universe of "commercial evidence" that may be requested by the authorities, in particular mentioning whether they are entitled to request original documents.

EU reply: Examples of commercial evidence are provided in the last paragraph of Article 2(6) of Regulation (EU) No 2016/670. The list is not exhaustive. It lies in the discretion of the EU Member States to decide what constitutes sufficient grounds to demonstrate the intention to import, including whether they request the presentation of original documents.

17.4 How the requirements to provide original documents serve for the proper functioning of the licensing system, in particular, given that it is aimed at, as the European Union stated, "collect[ing] advanced statistical information on the intention to import"?

EU reply: Article 2(6) of Regulation (EU) 2016/670 refers to *copy of the contract of sale or purchase*, but this is only an example of what would constitute commercial evidence. It cannot be excluded that Member States may require an original document for example if they have identified specific risks associated to a certain transaction which would require more than just a copy.

17.5 Should the importer make a repeated application for surveillance document if the contract has been amended and such amendments have affected the information submitted in the first application?

EU reply: A new import license should be requested when the amendments to the underlying contract go beyond the requirements laid down by Article 3(1) of Regulation (EU) 2016/670.

4 REQUIREMENTS TO SUBMIT DETAILED CUSTOMS CODES OF IMPORTED PRODUCTS

18. Article 2.6(c)(2) of the Regulation (EU) 2016/670 requires that the description of the imported goods should include their TARIC code. We recall that Article 1.5 of the Agreement on Import Licensing Procedures establishes that only the information that is "strictly necessary" for the proper functioning of the licensing system may be required upon application.

19. We thus request the European Union to clarify the following:

19.1 Does the European Union require the provision of information about customs classification of imported products at 10-digit level? If it is not the case, please explain what is the required level of TARIC codes detail under Article 2.6(c)(2) of the Regulation.

19.2 How the exporters can proceed with the application when the contract has been signed but the exact TARIC codes of the delivered products are not known yet?

19.3 Why the information on 6-digit level does not suffice for "collect[ing] advanced statistical information on the intention to "import"?

EU reply to 19.1 – 19.2 and 19.3: The TARIC code, at 10-digit level, is an essential element to be included in the surveillance document since it gives the most detailed information regarding the description of the product that will be imported. A 6-digit level would be inaccurate as it does not

give such detailed level of information. Since the application requires that type of information, it can only be made once the importer knows the TARIC code in question. If it is not known when the contract has been signed, the request for license would have to be done at a later stage, e.g. based on the pro forma invoice which can also serve as a commercial evidence of the intention to import, as foreseen by Regulation (EU) 2016/670.

5 DISCARD OF NORMAL COMMERCIAL PRACTICE: OPTIONS FOR "+/- 5%" ARE ONLY ALLOWED

20. We point out that Article 3.1 of the Regulation (EU) 2016/670 limits price options by 5% and allows the quantity to exceed the declared figures by 5%. We note in this respect that Article 1.8 of the Agreement on Import Licensing Procedures states that "[l]icensed imports shall not be refused for minor variations in value, quantity or weight… *consistent with normal commercial practice*" (emphasis added).

21. We would therefore ask the European Union to respond to the following questions:

21.1 Why the European Union allows only "+/- 5%" options, although shipments varying by "+/- 10%" from the contracted volumes constitute a normal commercial practice in steel trade?

21.2 Why the European Union allows the total quantity of import to exceed the quantity given in the surveillance document by less than 5%?

21.3 What happens when the price or quantity of products subject to release for free circulation in the European Union deviate for more than 5% from the figures given in the surveillance document?

EU reply to 21.1 – 21.2 – 21.3: the issue is not whether these deviations constitute a normal commercial practice in steel trade, but rather a simple application of the relevant rules by which, for the purpose of the surveillance system, a deviation of less than 5% is considered acceptable. If the deviation is more than 5%, a new surveillance document should be requested for the actually quantities.

21.4 If the release for free circulation in the European Union is not granted due to deviations in price or quantity, can the importer resubmit its application in order to obtain a rectified surveillance document? If the answer is positive, please clarify how long will it take to get a new license and what quantities should be declared in the application – the whole amount of shipped products subject to customs clearance or the difference between the actual amount shipped and the one given in the surveillance document issued previously?

EU reply: Any request for a surveillance document should correspond to the details of the relevant customs clearance, i.e. the whole amount of the products that need to be customs cleared. New licences are issued within a maximum period of 5 working days.

6 GRANTING IMPORT PERMISSIONS WITHIN 5 DAYS

22. Sometimes the delivery of steel from the Russian plants to the European consumers occupy not more than 2-3 days, especially when automobile transport is used. Given this, we have been informed that in some cases the approval of requests for licenses takes longer than the period necessary to delivery of products.

23. We note that Article 2.3 of the Regulation (EU) 2016/670 establishes a 5-day period for issuance of the surveillance document.

24. In this respect, we would be grateful if the European Union responded to the following questions:

24.1 How does the European Union ensure that prior surveillance system does not create adverse effects on short-term deliveries of steel?

24.2 What kind of circumstances (for example, difficulties of administrative or other nature) make impossible for the EU to shorten the 5-day period of application approval and to establish, for example, a 2 or 3-day period, especially given that the measure's stated objective is a mere "collect[ion] [of] advanced statistical information on the intention to import"?

EU reply to 24.1-24.2: Surveillance documents are issued within 5 working days of presentation of an application. This is in line with Art. 2.2.a.iii) of the Import Licensing Agreement, requiring that a document shall be issued within 10 working days.

While in general EU Member State's authorities are able to issue the document even faster, e.g. in 2-3 days, it would not be realistic to impose such shorter deadlines to the issuing authorities given the high number of requests that any EU Member State may have to handle at the same time in case of periods with significant importing activities.

In the EU's view, this requirement together with the exemptions as described under p. 12 above guarantees demonstrate that the measure is administrated in a manner to have not restricting effects on imports, in accordance with Art. 2.a) of the Import Licensing Agreement.

7 ADDITIONAL QUESTIONS

25. What is the anticipated role of the measure in the initiation and carrying out of trade defense investigations and, in particular, in imposition of preliminary safeguard measures?

EU reply: The primary goal of the prior surveillance is to collect early statistical information, already on the intention to import. And, as already mentioned above, the information gathered with surveillance could give an early warning to the EU and call for closer monitoring in certain sectors of the steel industry. However, any trade defence investigation initiated by the EU is always based on the official and actual import statistics of the EU (Eurostat) and not on the intention to import.

26. Does the European Union share the information collected through prior surveillance procedures with domestic metallurgical companies, for example, in order to help them prepare their applications for trade defense investigations or for whatever other reasons?

EU reply: Information on the prior surveillance procedure is publicly available on DG TRADE's Système Intégré de Gestion de Licenses ("SIGL") available at the following webpage:

http://trade.ec.europa.eu/doclib/cfm/doclib_section.cfm?sec=197

The information is updated on a monthly basis.