

II

(Non-legislative acts)

REGULATIONS

COMMISSION IMPLEMENTING REGULATION (EU) 2017/5

of 5 January 2017

making imports of certain hot-rolled flat products of iron, non-alloy or other alloy steel originating in Russia and Brazil subject to registration

THE EUROPEAN COMMISSION,

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

Having regard to Regulation (EU) 2016/1036 of the European Parliament and of the Council of 8 June 2016 on protection against dumped imports from countries not members of the European Union ⁽¹⁾ ('the basic Regulation'), and in particular Article 14(5) thereof,

After informing the Member States,

Whereas:

- (1) On 7 July 2016, the European Commission ('the Commission') announced by a notice published in the *Official Journal of the European Union* ⁽²⁾, the initiation of an anti-dumping proceeding concerning imports of certain hot-rolled flat steel products originating in Brazil, Iran, Russia, Serbia and Ukraine following a complaint lodged on 23 May 2016 by EUROFER ('the complainant') on behalf of producers representing more than 25 % of the total Union production of certain hot-rolled flat steel products of iron, non-alloy or other alloy steel.

1. PRODUCT CONCERNED

- (2) The product subject to registration ('the product concerned') is certain flat-rolled products of iron, non-alloy steel or other alloy steel, whether or not in coils (including 'cut-to-length' and 'narrow strip' products), not further worked than hot-rolled, not clad, plated or coated, originating in Brazil, Iran, Russia, Serbia and Ukraine ('the countries concerned').
- (3) The product concerned does not include:
- products of stainless steel and grain-oriented silicon electrical steel,
 - products, not in coils, without patterns in relief, of a thickness exceeding 10 mm and of a width of 600 mm or more,
 - and products, not in coils, without patterns in relief, of a thickness of 4,75 mm or more but not exceeding 10 mm and of a width of 2 050 mm or more.
- (4) The product concerned is currently falling within CN codes 7208 10 00, 7208 25 00, 7208 26 00, 7208 27 00, 7208 36 00, 7208 37 00, 7208 38 00, 7208 39 00, 7208 40 00, 7208 52 10, 7208 52 99, 7208 53 10, 7208 53 90, 7208 54 00, 7211 13 00, 7211 14 00, 7211 19 00, ex 7225 19 10, 7225 30 10, 7225 30 30, 7225 30 90, ex 7225 40 12, ex 7225 40 15, ex 7225 40 60, 7225 40 90, ex 7226 19 10, ex 7226 20 00, 7226 91 20, 7226 91 91 and 7226 91 99. These CN codes are given for information only.

⁽¹⁾ OJ L 176, 30.6.2016, p. 21.

⁽²⁾ Notice of initiation of an anti-dumping proceeding concerning imports of certain hot-rolled flat products of iron, non-alloy or other alloy steel originating in Brazil, Iran, Russia, Serbia and Ukraine (OJ C 246, 7.7.2016, p. 7).

2. REQUEST

- (5) On 11 October 2016, the complainant submitted a request for registration of imports of the product concerned originating in the countries concerned. On 21 November 2016, the complainant updated the request by providing more recent financial data. The complainant requested that imports of the product concerned from the countries concerned are made subject to registration so that measures may subsequently be applied against those imports from the date of such registration.
- (6) Following this request, four interested parties came forward, alleging that the initial request for registration from the complainant did not contain sufficient evidence to justify the registration of imports of the product concerned from respectively Iran ⁽³⁾, Russia ⁽⁴⁾, Serbia ⁽⁵⁾ and Ukraine ⁽⁶⁾.

3. GROUNDS FOR THE REGISTRATION

- (7) According to Article 14(5) of the basic Regulation, the Commission may direct the customs authorities to take the appropriate steps to register imports, so that measures may subsequently be applied against those imports. Imports may be made subject to registration following a request from the Union industry, which contains sufficient evidence to justify such action.
- (8) The complainant claimed that importers were well aware of dumping practices which stretched over an extended period of time and were causing injury to the Union industry. Imports from the countries concerned were causing injury to the Union industry and there was a substantial increase in the level of these imports, even following the investigation period. This would seriously undermine the remedial effect of the anti-dumping duty, if such a duty is to be applied.
- (9) The Commission examined the request in the light of Article 10(4) of the basic Regulation. In particular, it verified whether the importers were aware of, or should have been aware of, the dumping as regards the extent of the dumping and the injury alleged or found. It also analysed whether there was a further substantial rise in imports which, in the light of its timing and volume and other circumstances, is likely to seriously undermine the remedial effect of the definitive anti-dumping duty to be applied.

3.1. Awareness of the importers of the dumping, the extent thereof and the alleged injury

- (10) The EUROFER complaint of 23 May 2016 contained sufficient *prima facie* evidence on alleged dumping from the five countries concerned. The non-confidential version of the complaint estimated dumping margins to exceed at least 20 % for the five countries concerned. For four (Brazil, Iran, Russia and Ukraine) out of the five countries concerned, the complainant provided in the complaint evidence on the normal value based on the pricing information of either Steel First or other market reports. For the one remaining country concerned (Serbia), the complainant provided evidence on a constructed normal value (estimated manufacturing costs, SG&A and profit). The evidence of dumping is based on a comparison of the normal values thus established with the export price (at ex-works level) of the product concerned when sold for export to the Union. The export prices for the countries concerned were determined on the basis of either information from Steel First or established using Eurostat data. The complaint also provided *prima facie* evidence of alleged injury.
- (11) These points were spelled out in the notice of initiation for this proceeding on 7 July 2016 ⁽⁷⁾. As this notice is a public document accessible to all importers the Commission considered that the importers were aware, or should have been aware of the alleged dumping practices, the extent thereof and the alleged injury at the latest at that moment. It thus concluded that the first criterion for registration was met.

⁽³⁾ Submission of 9 November 2016 by Mobarakeh Steel Company.

⁽⁴⁾ Submission of 10 November 2016 by MMK Group and Severstal Group.

⁽⁵⁾ Submission of 28 October 2016 by Zelezara Smederevo d.o.o.

⁽⁶⁾ Submission of 5 December 2016 by Metinvest Group.

⁽⁷⁾ Section 3 of the notice of initiation (see footnote 2).

3.2. Further substantial rise in imports

- (12) In its updated request for registration, the complainant compared the aggregate average monthly volume of imports of the product concerned from all countries concerned in the period 1 July 2015-30 June 2016 with the period from 1 July 2016-31 October 2016. This comparison showed an increase of 24 % in average monthly import volume from the five countries concerned.
- (13) The Commission considered that it was inappropriate to use data from the month of July 2016. As explained in recital 12, the importers should have been aware of alleged dumping and injury only as of 7 July. Taking data prior to that date cannot be conclusive for a registration exercise. Given that import statistics are done on a monthly basis, the Commission thus decided to compare the average volumes of imports from the countries concerned during the period 1 July 2015 to 30 June 2016 with the period of 1 August 2016 to 30 November 2016 (i.e. 4 months following the initiation on 7 July 2016).
- (14) For that period, the Commission observed a substantial increase of 14 % for the countries concerned when comparing the total average monthly volume of imports. However, at the same time, the Commission noted significant differences between the five country's individual export performances, highlighted in the different submissions referred to in recital 6.
- (15) In particular, the increase of 14 % of total monthly *average* volumes of imports for the five countries concerned for the period as mentioned under recital 13 was the combined effect of a substantial rise in Russian imports (+ 73 %) and in Brazilian imports (+ 26 %), a decrease in imports from two other countries concerned (Ukraine and Iran) and a status quo for Serbia in imports of the product concerned.
- (16) Hence, the increase in volume of the dumped imports from the five countries concerned is fully attributable to the substantial increase in volumes of the Russian and Brazilian imports only. Under these exceptional circumstances, the Commission saw no reason to register imports for the other three countries as well. Even if the Commission was to conduct a cumulative assessment of injury from all five countries under Article 3(4) of the basic Regulation in the main investigation, a retroactive imposition of duties for imports from countries where exports have stagnated or even decreased after the initiation of the case would seem to be disproportionate. Hence, the Commission concluded that registration for such imports was not necessary either.

3.3. Other circumstances

- (17) In its complaint of 23 May 2016, the complainant had included *prima facie* evidence on the decreasing trend of the import sales prices for the countries concerned. The average sales prices to the Union decreased between 2011 and 2015, undercutting as such the average sales prices of the Union steel producers by 30 % at least. As a whole, and given the extent of the dumping margins alleged in the complaint, the evidence provided sufficient support at this stage that the exporters from the countries concerned practise dumping. However, in its registration request of 11 October 2016, the complainant did not include any updated information on import prices following the initiation of the present investigation.
- (18) The Commission considered that the price evolution after the initiation of the case constitutes another relevant circumstance for a registration request. Therefore, it analysed import prices on the basis of figures in Eurostat. It established that the import prices of the countries concerned went up to a certain degree following the initiation of the present investigation.
- (19) Assessing this rising trend of import prices from Russia and Brazil, the Commission found that the absolute level of those prices remained still at a critically low level. In particular, it was lower than the costs of production of the Union industry at the end of 2015, as established by the Commission in the parallel HRF case on China ⁽⁸⁾. Under these circumstances, the Commission concluded that registration of imports from those two countries is warranted.

⁽⁸⁾ Commission Implementing Regulation (EU) 2016/1778 of 6 October 2016 imposing a provisional anti-dumping duty on imports of certain hot-rolled flat products of iron, non-alloy or other alloy steel originating in the People's Republic of China (OJ L 272, 7.10.2016, p. 33) (Table at recital 104).

3.4. Conclusion

- (20) In conclusion, the increase in volume of the dumped imports from the five countries concerned is fully attributable to the substantial increase in volumes of the Russian and Brazilian imports. In light of the timing, this substantial increase in the level of these Russian and Brazilian imports is likely to seriously undermine the remedial effect of any definitive duties, unless such duties would be applied retroactively.

4. PROCEDURE

- (21) In view of the above, the Commission concluded that there is sufficient *prima facie* evidence to justify making Russian and Brazilian imports of the product concerned subject to registration in accordance with Article 14(5) of the basic Regulation.
- (22) All interested parties are invited to make their views known in writing and to provide supporting evidence. Furthermore, the Commission may hear interested parties, provided that they make a request in writing and show that there are particular reasons why they should be heard.

5. REGISTRATION

- (23) Pursuant to Article 14(5) of the basic Regulation Russian and Brazilian imports of the product concerned should be made subject to registration for the purpose of ensuring that, should the investigation result in findings leading to the imposition of anti-dumping duties, those duties can, if the necessary conditions are fulfilled, be levied retroactively on the registered Russian and Brazilian imports in accordance with Article 10(4) of the basic Regulation.
- (24) The complainant estimated in the complaint an average dumping margin of 20-40 % for Russia and an average dumping margin of 40-70 % for Brazil. It also estimated an average underselling margin of 20-50 % for both Russia and Brazil for the product concerned. The estimated amount of possible future liability is set for Russia and Brazil at the level of the average dumping margin estimated on the basis of the complaint, i.e. 20-50 % ad valorem on the CIF import value of the product concerned.

6. PROCESSING OF PERSONAL DATA

- (25) Any personal data collected in the context of this registration will be treated in accordance with Regulation (EC) No 45/2001 of the European Parliament and of the Council ⁽⁹⁾,

HAS ADOPTED THIS REGULATION:

Article 1

1. The Customs authorities are hereby directed, pursuant to Article 14(5) of Regulation (EU) 2016/1036, to take the appropriate steps to register the imports into the Union of certain flat-rolled products of iron, non-alloy steel or other alloy steel, whether or not in coils (including 'cut-to-length' and 'narrow strip' products), not further worked than hot-rolled, not clad, plated or coated, originating in Brazil and Russia.

⁽⁹⁾ Regulation (EC) No 45/2001 of the European Parliament and of the Council of 18 December 2000 on the protection of individuals with regard to the processing of personal data by the Community institutions and bodies and on the free movement of such data (OJ L 8, 12.1.2001, p. 1).

The product concerned does not include:

- products of stainless steel and grain-oriented silicon electrical steel,
- products, not in coils, without patterns in relief, of a thickness exceeding 10 mm and of a width of 600 mm or more,
- and products, not in coils, without patterns in relief, of a thickness of 4,75 mm or more but not exceeding 10 mm and of a width of 2 050 mm or more.

2. The product concerned currently falls within CN codes 7208 10 00, 7208 25 00, 7208 26 00, 7208 27 00, 7208 36 00, 7208 37 00, 7208 38 00, 7208 39 00, 7208 40 00, 7208 52 10, 7208 52 99, 7208 53 10, 7208 53 90, 7208 54 00, 7211 13 00, 7211 14 00, 7211 19 00, ex 7225 19 10, 7225 30 10, 7225 30 30, 7225 30 90, ex 7225 40 12, ex 7225 40 15, ex 7225 40 60, 7225 40 90, ex 7226 19 10, ex 7226 20 00, 7226 91 20, 7226 91 91 and 7226 91 99 (TARIC codes: 7225 19 10 90, 7225 40 12 95, 7225 40 15 95, 7225 40 60 90, 7226 19 10 90, 7226 20 00 95).

3. Registration shall expire 9 months following the date of entry into force of this Regulation.

4. All interested parties are invited to make their views known in writing, to provide supporting evidence or to request to be heard within 20 days from the date of publication of this Regulation.

Article 2

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.

Done at Brussels, 5 January 2017.

For the Commission

The President

Jean-Claude JUNCKER
