

COMMISSION IMPLEMENTING REGULATION (EU) 2021/370**of 1 March 2021****making imports of stainless steel cold-rolled flat products originating in India and Indonesia 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 30 September 2020, the European Commission ('the Commission') announced, by a notice published in the *Official Journal of the European Union* ⁽²⁾ ('the notice of initiation'), the initiation of an anti-dumping proceeding with regard to imports into the Union of stainless steel cold-rolled flat products originating in India and Indonesia ('the anti-dumping proceeding'), following a complaint lodged on 17 August 2020 by the European Steel Association ('EUROFER') ('the complainant') on behalf of producers representing more than 25 % of the total Union production of stainless steel cold-rolled flat products.

1. PRODUCT SUBJECT TO REGISTRATION

- (2) The product subject to registration ('the product concerned') is flat-rolled products of stainless steel, not further worked than cold-rolled (cold-reduced), originating in India and Indonesia ('the countries concerned'). These products are currently classified under CN codes 7219 31 00, 7219 32 10, 7219 32 90, 7219 33 10, 7219 33 90, 7219 34 10, 7219 34 90, 7219 35 10, 7219 35 90, 7219 90 20, 7219 90 80, 7220 20 21, 7220 20 29, 7220 20 41, 7220 20 49, 7220 20 81, 7220 20 89, 7220 90 20 and 7220 90 80. The CN codes are given for information only.

2. REQUEST

- (3) On 21 December 2020, the complainant submitted a registration request pursuant to Article 14(5) of the basic Regulation, which further substantiated its request for registration in the complaint. The complainant requested that imports of the product concerned be made subject to registration so that measures may be applied against those imports retroactively from the date of such registration.
- (4) One exporting producer operating in both countries concerned, the Jindal Group, submitted comments in reaction to the request.

3. GROUNDS FOR REGISTRATION

- (5) 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 from the date of such registration, provided all conditions set out in the basic Regulation are met. Imports may be made subject to registration following a request from the Union industry, which contains sufficient evidence to justify such action.
- (6) The complainant alleged that, on the basis of the most recent available statistics, there had been a substantial rise in imports following the initiation of the investigation, which was likely to seriously undermine the remedial effect of the potential definitive duties. Moreover the complainant argued that in view of the history of dumping on the product concerned and the numerous measures imposed and investigations opened, the importers were, or should have been, aware of the dumping practices from the countries concerned.

⁽¹⁾ OJ L 176, 30.6.2016, p. 21.

⁽²⁾ OJ C 322, 30.9.2020, p. 17.

- (7) The Commission examined the request in the light of Article 10(4) of the basic Regulation. The Commission verified whether the importers were aware, 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 as well as volume and other circumstances, was likely to seriously undermine the remedial effect of a potential definitive anti-dumping duty to be applied.

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

- (8) At this stage, the Commission has at its disposal sufficient evidence that imports of the product concerned from India and Indonesia are being dumped. The complaint provided sufficient evidence of dumping, based on a comparison of the normal value thus established with the export price (at ex-works level) of the product concerned when sold for export to the Union. As a whole, and given the extent of the alleged dumping margins of 48,8 % for India and ranging from 15,6 % to 34,4 % for Indonesia, this evidence provided sufficient support that the exporting producers practice dumping.
- (9) The complaint also provided sufficient evidence of alleged injury to the Union industry, including a negative development of key performance indicators of the Union industry.
- (10) That information was contained both in the non-confidential version of the complaint and in the notice of initiation for this proceeding published on 30 September 2020. By its publication in the *Official Journal of the European Union*, the Notice of Initiation is a public document accessible to all importers. Furthermore, as interested parties in the investigation, importers have access to the non-confidential version of the complaint and the non-confidential file. Therefore, the Commission considered that, on this basis, importers, were aware, or should have been aware, of the dumping, the extent thereof and the alleged injury
- (11) The Commission thus concluded that the first criterion for registration was met.

3.2. Further substantial rise in imports

- (12) The Commission analysed this criterion based on the statistical data concerning imports of the product under investigation from the countries concerned available in the Surveillance 2 database. For assessing whether a further substantial increase had taken place since the initiation of the investigation, the Commission first defined the periods of time to be compared. On the one hand, it assessed the import data from India and Indonesia following the initiation of the anti-dumping investigation (i.e. the point in time as of when importers were aware, or should have been aware, of dumping practices) until the most recent period, i.e. the period October 2020 until January 2021. On the other hand, the Commission calculated Indian and Indonesian imports for the same period during the investigation period ('IP'), i.e. October 2019 until January 2020, as well as the monthly average import volumes in the full IP.
- (13) The comparison shows that the monthly average import volume from India and Indonesia developed as follows:

Table 1

Import volumes from the countries concerned (tonnes)

Import volumes (monthly average)	Investigation period (July 2019 – June 2020)	October 2019 – January 2020	Post-initiation (October 2020 – January 2021)	Delta	
				Post-initiation period vs Investigation period (%)	Post-initiation vs October 2019 – January 2020 (%)
India	8 984	10 918	6 321	-30	-42
Indonesia	7 622	7 432	13 048	71	76
Countries concerned	16 606	18 350	19 370	17	6

- (14) On the basis of these statistical data, the Commission found that the average monthly volume of imports of stainless steel cold-rolled flat products from the countries concerned in the period from October 2020 to January 2021, i.e. after initiation of the anti-dumping case, was 17 % higher than the average monthly imports during the IP and 6 % higher than the same period of the preceding year.
- (15) The Jindal Group argued that the analysis for registration had to be based on the period after the initiation of the anti-dumping investigation, while Eurofer provided data for the period after the IP. The Jindal Group claimed that a further substantial rise in imports after the initiation of the anti-dumping investigation was not evidenced in the complainant's submission and that Eurostat data showed a decline in imports from India in October 2020 compared to the IP (i.e. 8 650 tonnes in October 2020 compared to a monthly average of 9 058 tonnes during the IP). According to the Jindal Group, import volumes from Indonesia were concentrated in the first month of each quarter and showed a decline in October 2020 when compared to April and July 2020 (i.e. 21 532 tonnes in October 2020, while 22 299 tonnes in April 2020 and 26 787 tonnes in July 2020). Therefore, the Jindal Group concluded that there was no increase in imports and thus this criterion was not met.
- (16) The Commission notes at the outset that the complainant provided import statistics for the investigation period, for the the third quarter of 2020, and for the period after the initiation, i.e. until October 2020. The Jindal Group also provided data for the same time periods as the complainant, ending in the month of October 2020. The analysis of the Commission is based on the most recent data ending in January 2021, as specified in Table 1 above. As explained in recital (12), the relevant post-IP monthly average imports for the period October 2020 until January 2021 were compared to the monthly average imports for the period October 2019 until January 2020, as well as with the monthly average import volumes in the full IP. The period between the IP and the initiation of the investigation, that is the third quarter of 2020, was not considered in this assessment. The relevant data considered by the Commission, cumulated for the countries concerned, showed a further substantial rise in imports after initiation both when compared to the investigation period and to the corresponding period during the IP. The claim of the Jindal Group that no further substantial rise from both India and Indonesia after the initiation took place was found to be incorrect in light of the more recent data available to the Commission. The claim of the Jindal Group that imports from Indonesia were concentrated in the first month of each quarter did not change the conclusion that there was a further substantial increase of imports from the countries concerned on the basis of the relevant import data. This concentration of imports is likely to be linked to the mechanics of the free-of-safeguard-duty Tariff-Rate Quota ("TRQ") under the safeguard measures on certain steel products ('safeguard measures') ⁽³⁾, where the opening of new free-of-safeguard-duty TRQ batches at the beginning of each quarter generally leads to large import volumes concentrated in the early stages of the quarters. The claims by the Jindal Group were therefore dismissed.
- (17) The complainant claimed that an increase in imports from the countries concerned took place because of the liberalised tariff rate quotas on the product concerned after the review of the safeguard measures ⁽⁴⁾ and that a further increase in imports, causing additional injury, could be expected because of changes made to the tariff rate quotas following the departure of the United Kingdom from the European Union ⁽⁵⁾. The complainant argued that as a result the 'other country' quota would be adjusted upward by more than 13 000 tonnes, and that this increase would give the opportunity to Indonesia to further increase its exports to the EU. The Jindal Group dismissed this claim as unsubstantiated and speculative. At the same time, the Jindal Group claimed that the further liberalisation of the safeguard measures has only led to an increase in imports from other third countries than the countries concerned.

⁽³⁾ Commission Implementing Regulation (EU) 2019/159 of 31 January 2019 imposing definitive safeguard measures against imports of certain steel products (OJ L 31, 1.2.2019, p. 27).

⁽⁴⁾ Commission Implementing Regulation (EU) 2020/894 of 29 June 2020 amending Implementing Regulation (EU) 2019/159 imposing definitive safeguard measures against imports of certain steel products (OJ L 206, 30.6.2020, p. 27).

⁽⁵⁾ Notice concerning the adaptation of the level of Tariff Rate Quotas under the safeguard measures on certain steel products following the exit of the United Kingdom from the European Union as of 1 January 2021 (OJ C 366, 30.10.2020, p. 36).

- (18) The adaptation of the level of tariff rate quotas under the safeguard measures following the exit of the United Kingdom from the European Union has led to lower country-specific quotas, while increasing the quota for other countries. While India has a country-specific quota, Indonesia must import under the global quota shared with other countries. Indonesia has consistently been using a large part of the global quota since the entry into force of the safeguard measures and the imports in January 2021 (i.e. almost 30 000 tonnes out of the total 2021Q1 global quota of 46 536 tonnes) indicated a further increase in imports from Indonesia. Thus, the exit of the United Kingdom did not only lead to an increase in imports from other third countries than the countries concerned, as the Jindal Group claimed. Therefore, the available evidence supports the claim by the complainant that the imports from Indonesia are likely to increase further after the adaptation following the exit of the United Kingdom from the European Union.
- (19) In view of the above considerations, the Commission concluded that the second criterion for registration was also met.

3.3. Undermining of the remedial effect of the duty

- (20) The Commission has at its disposal sufficient evidence that additional injury would be caused by a continued rise in imports from India and Indonesia at further decreasing prices, thereby likely to seriously undermine the remedial effects of possible definitive anti-dumping duties.
- (21) As established in section 3.2, there is sufficient evidence of a substantial rise in imports taken as a whole of the product concerned in the period following the initiation of the investigation.
- (22) In addition, there is evidence of a decreasing trend in the import prices of the product concerned based on the Surveillance 2 database. The average price in euros of imports from the countries concerned has decreased on average by 12 % when comparing the period of October 2020 until January 2021 to the same period in the preceding year and by 10 % when compared to the monthly average in the investigation period, as reflected in Table 2 below.

Table 2

Import prices from the countries concerned (EUR/tonne)

Average import price	Investigation period (July 2019 – June 2020)	October 2019 – January 2020	Post-initiation (October 2020 – January 2021)	Price decrease (%) Post-initiation period vs Investigation period	Price decrease (%) Post-initiation vs October 2019 – January 2020
India	2 076	2 122	1 898	-9	-11
Indonesia	1 972	2 007	1 780	-10	-11
Countries concerned	2 028	2 075	1 818	-10	-12

- (23) The complainant claimed that the increased imports coincided with an increase in raw material costs, especially nickel and ferro-chromium, which are allegedly distorted in the countries concerned, putting a further price pressure on the Union industry. The Jindal Group contested such an increase in ferro-chromium price and argued that the increase in nickel prices cannot have caused injury, because of their cyclical trend.

- (24) After showing an increase of more than 10 % from the first quarter of 2020, the price of ferro-chromium remained stable for the last three quarters of 2020 and increased by 3 % in 2021. The price of nickel on the London Metal Exchange increased by around 40 % since the end of the investigation period. Although the historical price of nickel has shown to be volatile, the Jindal Group did not provide any evidence of a clear cyclical trend. The Commission did indeed observe an increase in raw materials prices since the initiation of the investigation resulting in further price suppression on the Union industry, as these price increases could not be reflected in the price of the product concerned due to the low-priced imports from the countries concerned. Such price suppression has also been evidenced by the complainant's data on the decrease in EBITDA of the Union industry.
- (25) Moreover, the complainant provided indications that importers stockpile the product concerned, which might cause additional injury to the Union industry, especially in view of the rising cost of raw materials, and are likely to seriously undermine the remedial effect of any anti-dumping duty to be applied.
- (26) Furthermore, the Jindal Group argued that the request for registration did not take into account the reduced demand caused by the Covid-19 pandemic.
- (27) The Commission notes that this argument is linked to causation and attribution considerations, which are not directly relevant in the analysis to register imports under Article 10(4) of the basic Regulation. In any event, the Commission considers that any decreased demand due to the pandemic meant that the increased import volumes at lower prices could only objectively worsen further the situation of the Union industry, and hence be likely to further undermine the remedial effect of the definitive duties. Therefore, this argument was rejected.
- (28) The further rise in imports following the initiation of the investigation is thus likely, in light of its timing, volume and other circumstances, such as the pricing behaviour of exporting producers, the increasing costs of raw materials, and the indication of stockpiling activities by the importers of the product concerned, to seriously undermine the remedial effect of any definitive duty, unless such duty would be applied retroactively.
- (29) The Commission therefore concluded that the third criterion for registration was also met.

4. PROCEDURE

- (30) The Commission has concluded that there is sufficient evidence to justify making imports of the product concerned subject to registration in accordance with Article 14(5) of the basic Regulation.
- (31) All interested parties are invited to make their views known in writing and to provide supporting evidence. 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

- (32) Under Article 14(5) of the basic Regulation imports of the product concerned should be made subject to registration for the purpose of ensuring that, should the investigations 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 imports in accordance with the applicable legal provisions.
- (33) Any future liability would emanate from the findings of the anti-dumping investigation.

- (34) The allegations in the complaint requesting the initiation of an anti-dumping investigation estimate dumping margins of 48,8 % for India and from 15,6 % to 34,4 % for Indonesia and an injury elimination level of 33,9 % for India and 44,1 % for Indonesia for the product concerned. The amount of possible future liability would normally be set at the lower of those levels according to Article 7(2) of the basic Regulation. However, should the Commission find that the conditions of Article 7(2a) and 7(2b) of the basic Regulation are met for India and/or Indonesia, namely that the dumping margin could be considered to reflect the injury suffered by the Union industry, the amount of possible future liability for imports from these countries could be set at the level of the dumping margin..

6. PROCESSING OF PERSONAL DATA

- (35) Any personal data collected in the context of this registration will be treated in accordance with Regulation (EU) 2018/1725 ⁽⁶⁾,

HAS ADOPTED THIS REGULATION:

Article 1

1. The customs authorities are hereby directed, under Article 14(5) of Regulation (EU) 2016/1036, to take the appropriate steps to register imports of flat-rolled products of stainless steel, not further worked than cold-rolled (cold-reduced). These products are currently falling under CN codes 7219 31 00, 7219 32 10, 7219 32 90, 7219 33 10, 7219 33 90, 7219 34 10, 7219 34 90, 7219 35 10, 7219 35 90, 7219 90 20, 7219 90 80, 7220 20 21, 7220 20 29, 7220 20 41, 7220 20 49, 7220 20 81, 7220 20 89, 7220 90 20 and 7220 90 80 and are originating in India and Indonesia.
2. Registration shall expire nine months following the date of entry into force of this Regulation.
3. All interested parties are invited to make their views known in writing, to provide supporting evidence or to request to be heard within 21 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, 1 March 2021.

For the Commission
The President
Ursula VON DER LEYEN

⁽⁶⁾ Regulation (EU) 2018/1725 of the European Parliament and of the Council of 23 October 2018 on the protection of natural persons with regard to the processing of personal data by the Union institutions, bodies, offices and agencies and on the free movement of such data, and repealing Regulation (EC) No 45/2001 and Decision No 1247/2002/EC (OJ L 295, 21.11.2018, p. 39).