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(Announcements)

PROCEDURES RELATING TO THE IMPLEMENTATION OF THE COMMON
COMMERCIAL POLICY

EUROPEAN COMMISSION

**Interpretative Notice on the application of the prior Union surveillance of imports of on certain
iron and steel products and certain aluminium products originating in certain third countries**

(2018/C 201/05)

- (1) On 28 April 2016, the European Commission adopted Implementing Regulation (EU) 2016/670 introducing prior Union surveillance of imports of certain iron and steel products originating in certain third countries ⁽¹⁾ (hereafter the 'Steel Surveillance Regulation') to enable rapid and advanced collection of statistical information on imports of certain steel products. Such monitoring was necessary in view of the perceived vulnerability of the European Union steel market to sudden changes in the worldwide steel markets.
- (2) On 20 June 2017, the Steel Surveillance Regulation was amended by Commission Implementing Regulation (EU) 2017/1092 ⁽²⁾, mainly to streamline its provisions and to further encourage the use of electronic surveillance documents.
- (3) On 25 April 2018, the Commission adopted Implementing Regulation (EU) 2018/640 introducing prior Union surveillance of imports of certain aluminium products originating in certain third countries ⁽³⁾ (hereafter the 'Aluminium Surveillance Regulation') to enable rapid and advanced collection of statistical information on imports of certain aluminium products.
- (4) The Commission has received questions about the functioning of the surveillance system from the competent national authorities, as well as from other stakeholders.
- (5) In order to ensure a uniform application of the Steel and Aluminium Surveillance Regulations by the competent national authorities across all Member States and facilitate compliance by the stakeholders concerned, the Commission considers it necessary to provide an interpretation of the surveillance rules.
- (6) This notice does not create any new rules but merely provides clarification about the application of the existing Steel and Aluminium Surveillance Regulations.
- (7) This notice is without prejudice to other requirements established by European Union legislation, notably in the field of Union customs legislation. It is also without prejudice to any interpretation of the surveillance rules which may be given by the Court of Justice of the European Union.

1. General principles

- (8) The Commission must ensure respect of the European Union positions and commitments under international law obligations, notably the ones resulting from the European Union's membership of the World Trade Organisation ('WTO') in terms of maintaining open and smooth trade ⁽⁴⁾. Surveillance is not meant to hinder trade flows and should not be construed to do so.

⁽¹⁾ OJ L 115, 29.4.2016, p. 37.

⁽²⁾ OJ L 158, 21.6.2017, p. 8.

⁽³⁾ OJ L 106, 26.4.2018, p. 7.

⁽⁴⁾ The European Community concluded the Agreement establishing the World Trade Organisation ('WTO'). Annex 1A to that Agreement contains, inter alia, the General Agreement on Tariffs and Trade 1994 ('GATT 1994') and an Agreement on Import Licensing Procedures: https://www.wto.org/english/docs_e/legal_e/23-lic.pdf

- (9) The overriding purpose of the prior surveillance system is the collection of statistical data regarding the *intention* of economic operators to import the products concerned into the customs territory of the European Union. The system should thus be as *simple* as possible as it only serves *statistical purposes*. It is therefore important that *surveillance rules are not seen or used to impose either a disproportionate burden on importers or to disrupt normal trade in any way*. In this context, the provisions of the WTO Agreement on Import Licensing Procedures serve as additional interpretative guidance ⁽¹⁾.
- (10) Prior surveillance rules contained in the Steel and Aluminium Surveillance Regulations are *complementary* to the European Union's customs legislation and accordingly need to be coordinated therewith. In practice, surveillance documents accompany a request for free circulation in the customs territory of the European Union, whenever goods are presented to the competent authorities of the Member States.
- (11) Regulation (EU) No 952/2013 of the European Parliament and of the Council of 9 October 2013 laying down the Union Customs Code ⁽²⁾ promotes the use of information and communication technologies, as laid down in Decision No 70/2008/EC of the European Parliament and of the Council of 15 January 2008 on a paperless environment for customs and trade ⁽³⁾. This is a key element in ensuring trade facilitation and, at the same time, the effectiveness of customs control, thus reducing costs for business and risk for society. This is intended to be pursued through a system of harmonised exchange of information on the basis of internationally accepted data model and message formats.
- (12) Surveillance rules do not set out a system of harmonised rules ⁽⁴⁾, or a dedicated network for the issuance of surveillance documents. The application of surveillance rules should not jeopardise the general trade facilitation objective.

2. The importer's application

- (13) Article 2(6) of the Steel Surveillance Regulation and Article 2(5) of the Aluminium Surveillance Regulation detail the elements of the importer's application and clarify that the importer can request a surveillance document directly or through a representative.
- (14) Therefore, the term 'applicant' means 'importer'. The term 'declarant' ⁽⁵⁾ means the person who lodges the customs declaration for release into free circulation. The declarant can be either the importer or its representative.

3. Content of the application

- (15) Article 2(6)(f) of the Steel Surveillance Regulation and Article 2(5)(f) of the Aluminium Surveillance Regulation require the applicant to state: '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'.
- (16) In case the representative is not established in the European Union, Article 5 of Commission Delegated Regulation (EU) 2015/2446 of 28 July 2015 supplementing Regulation (EU) No 952/2013 of the European Parliament and of the Council as regards detailed rules concerning certain provisions of the Union Customs Code ⁽⁶⁾ which defines the obligations of economic operators not established in the customs territory of the Union with respect to their registration with the competent national authorities, applies.
- (17) In accordance with that article, any representative not established in the European Union and having a valid EORI number in accordance with Delegated Regulation (EU) 2015/2446, and mandated by an importer established in the Union, should be able to ask and receive a surveillance document under the rules set out in the Steel Surveillance Regulation on behalf of that importer.

⁽¹⁾ See in particular the WTO Import licensing Agreement, Article 1.7: 'No application shall be refused for minor documentation errors which do not alter basic data contained therein. No penalty greater than necessary to serve merely as a warning shall be imposed in respect of any omission or mistake in documentation or procedures which is obviously made without fraudulent intent or gross negligence'. See also Article 2(2)(a): 'automatic licensing procedures shall not be administered in such a manner as to have restricting effects on imports subject to automatic licensing [...]'.
⁽²⁾ OJ L 269, 10.10.2013, p. 1.
⁽³⁾ OJ L 23, 26.1.2008, p. 21.
⁽⁴⁾ Implementing Regulation (EU) 2017/1092, amending the Steel Surveillance Regulation, repealed the provisions in Article 2(9) of the latter: 'The surveillance document may be issued by electronic means as long as the customs offices involved have access to the document via a computer network.'
⁽⁵⁾ Article 2(6)(b) of the Steel Surveillance Regulation, based on Article 11(2)(b) of Regulation (EU) 2015/478 of the European Parliament and of the Council (OJ L 83, 27.3.2015, p. 16) and Article 8(2)(b) of Regulation (EU) 2015/755 of the European Parliament and of the Council (OJ L 123, 19.5.2015, p. 33).
⁽⁶⁾ OJ L 343, 29.12.2015, p. 1.

4. Imports covered by the surveillance document

- (18) For the purpose of the surveillance document, the term 'import' is interpreted in the same way as for the purpose of the corresponding customs declaration:
- One surveillance document has to be requested for each TARIC code covered. If different TARIC codes appear on the same order/invoice, a separate surveillance document has to be requested for each different TARIC code.
 - One surveillance document can cover several shipments (as long as the quantities on the surveillance document are not fully used by one shipment).
 - One surveillance document can be used for various purchase orders (concerning one shipment for the same TARIC code and the same applicant).
 - The request for the surveillance documents should feature the TARIC code under which the relevant product falls.

5. Application of exemptions thresholds

- (19) The exemption threshold laid down under Article 1(1) of the Steel Surveillance Regulation applies only to individual TARIC codes. Any import made under a specific TARIC code, and whose net weight does not exceed 2 500 kg (or 5 000 kg in case of imports falling under HS heading 7318, pursuant to Article 1(1) of Implementing Regulation (EU) 2017/1092) may enter the customs territory of the Union without a surveillance document.
- (20) Similarly, the exemption threshold laid down under Article 1(1) of the Aluminium Surveillance Regulation applies only to individual TARIC codes. Any import made under a specific TARIC code, and whose net weight does not exceed 2 500 kg may enter the customs territory of the Union without a surveillance document.
- (21) The volume and price deviations between the surveillance document and actual import transactions referred to in Article 3 of the Steel Surveillance Regulation and Article 3 of the Aluminium Surveillance Regulation should be calculated on the basis of individual TARIC codes. They may not be based on, for instance, the average price or quantities of different TARIC codes of one or more invoices or of one or more transactions.
- (22) That is to say, if, for each TARIC code, the unit price of the products presented to the competent national authorities deviates by less than 5 % in either direction (in other words, the price is 5 % higher or lower than the price indicated on the surveillance document) and/or the total quantity of the products presented under each individual TARIC code for importation exceeds the quantity indicated on the surveillance document by less than 5 %, then release for free circulation must nonetheless be granted.
- (23) Needless to say, where the total quantity of the products presented to the competent national authorities under each individual TARIC code falls below the quantity indicated in the surveillance document, the Steel and Aluminium Surveillance Regulations provide that release for free circulation must equally be granted.
- (24) A deviation in price or quantity of more than 5 % is not acceptable under the Steel and Aluminium Surveillance Regulations. Where a deviation of price or quantity exceeds the 5 % threshold set out in Article 3(1) of the Steel Surveillance Regulation and Article 3(1) of the Aluminium Surveillance Regulation, a new surveillance document is required.

6. Evidence of the intention to import

- (25) The evidence of the intention to import referred to under Article 2(6) last sentence of the Steel Surveillance Regulation and Article 2(5) last sentence of the Aluminium Surveillance Regulation consists of any supporting commercial evidence. This may, for example, be a copy of the contract of sale, a purchase order, or any other commercial evidence such as correspondence (including email exchanges) confirming the order of goods concerned.
- (26) The above list is not exhaustive and any other reasonable type of commercial evidence may also be deemed sufficient by the relevant national authorities.

7. Transmission of documents

- (27) The Commission strongly encourages the competent authorities to ensure that the transmission of documents between the importer or its representative (request for a surveillance document) and the licensing authorities (issuance of the surveillance document) be swift and simple and, whenever possible, by electronic means.

8. Paper and electronic documents ⁽¹⁾

- (28) According to the Steel and Aluminium Surveillance Regulations, the application for a surveillance document can be made electronically. The paper requirements apply only to the surveillance form itself (i.e. the form set out in Annex II of Regulation (EU) 2015/478 and Annex I of Regulation (EU) 2015/755 respectively).
- (29) Accordingly, national authorities may put in place electronic systems to process the application. They may also issue electronic surveillance documents in addition to paper documents that can be transmitted to the national electronic customs system, given that custom declarations can be issued electronically in the framework of custom operations. This is fully in line with the abovementioned policy objectives — both at national and European Union level — to promote the transition to electronic customs. The Commission, therefore, encourages the electronic issuance of surveillance documents and their electronic processing with a view to streamlining the surveillance procedures.
- (30) Under the current legal framework covering surveillance ⁽²⁾ however, paper documents still have to be issued, in particular upon request of the applicant or the national authorities of another Member State.
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⁽¹⁾ See Article 11(2), (3), (8), (9), (10) and Annex II of Regulation (EU) 2015/478; Article 8(2), (3), (8), (9), (10) and Annex I of Regulation (EU) 2015/755.

⁽²⁾ Article 11 of Regulation (EU) 2015/478.