



8 November 2016

(16-6150)

Page: 1/4

Committee on Import Licensing

Original: English

## EUROPEAN UNION – STEEL IMPORT LICENSING SYSTEM

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

The following notification, dated 3 November 2016, is being circulated at the request of the delegation of the Russian Federation.

1. The European Union notified the Committee on Import Licensing that on 28 April 2016 the European Commission introduced prior surveillance of imports of iron and steel products originating in all countries, except Norway, Iceland and Liechtenstein (see G/LIC/N/1/EU/8 and G/LIC/N/2/EU/8, 31 May 2016).<sup>1</sup> According to the notification, the procedure constitutes automatic import licensing aimed at collecting advanced statistical information on the intentions to import.

2. However, Russian exporters have informed us that they have faced some trade problems after these procedures came into force. Bilateral consultations with the European Union have not resolved our concerns over implementation of the measure.

3. In order to clarify the purposes and functioning of the measure we would request the European Union to respond to the following questions.

#### 1 PURPOSES OF THE STEEL IMPORT LICENSING SYSTEM

4. Before turning to specific concerns about the measure and questions in light of specific provisions of the Agreement on Import Licensing Procedures, we would like to elaborate on the measure's purposes. According to the notification by the European Union, the administrative purpose is to "collect advanced statistical information on the intention to import". It seems that this statement, if not being false, at least reflects the real purposes only partially.

5. First, recital (1) of the preamble of the Regulation specifies that the measure is introduced in accordance with Article 10 of Regulation (EU) 2015/478 of 11 March 2015 on common rules for imports, which establishes framework for application of safeguard measures in the European Union.<sup>2</sup> Moreover, we note that recital (26) of Regulation (EU) 2015/478 establishes the "sequential logic" of prior surveillance and provisional measures "in relation to the adoption of definitive safeguard measures" and states that "[w]here a delay in the imposition of measures would cause damage... it is necessary to allow the Commission to adopt *immediately* applicable provisional measures" (emphasis added).

6. Second, the overall preamble depicts current threats to steel industry in the European Union caused by crisis in global steel market and points to several root causes of existing problems stating in recital (12) that "[r]apid and anticipated trade data is necessary to deal with the vulnerability of the EU steel market to sudden changes on world steel markets".

<sup>1</sup> Commission Implementing Regulation (EU) 2016/670 of 28 April 2016 introducing prior Union surveillance of imports of certain iron and steel products originating in certain third countries.

<sup>2</sup> Regulation (EU) 2015/478 of 11 March 2015 on common rules for imports (codification).

7. Third, in recital (21) the European Commission explains that the exemption for products originating in Norway, Iceland and Liechtenstein are granted because “[European Economic Area] Members do, in principle, not apply *trade defence measures* in their mutual relations” (emphasis added).

8. Fourth, it should be reminded that back in 2002, on 17 January, the European Communities introduced a similar prior surveillance system.<sup>3</sup> Two months later, on 28 March 2002, the European Communities launched a safeguard investigation introducing provisional measures on the same day based on the data collected through surveillance.<sup>4</sup>

9. Given the aforementioned background, we note that for the sake of transparency the European Union’s notification might reflect the purposes of the measure more accurately by mentioning, for example, that the data collected through prior surveillance is designated for potential safeguard or other trade defense investigations or at least for indicating the necessity of launching such investigations.

10. This brings us to certain issues of concern for the Russian Federation related to specific provisions of the Agreement on Import Licensing Procedures.

## 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)?

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 2 500 kg?

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

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?

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?

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.

## 3 REQUIREMENTS TO SUBMIT ORIGINAL DOCUMENTS

16. We have been informed that the authorities of the European Union Member States (for example, in Italy<sup>5</sup>) frequently require submission of original versions of contracts and other commercial documents (with genuine signatures and stamps) as a prerequisite for granting

---

<sup>3</sup> Commission Regulation (EC) 76/2002 of 17 January 2002 introducing prior Community surveillance of imports of certain iron and steel products covered by the ECSC and EC Treaties originating in certain third countries.

<sup>4</sup> See G/SG/N/6/EEC/1, G/SG/N/7/EEC/1, G/SG/N/11/EEC/1 (27 March 2002) and G/SG/N/8/EEC/1, G/SG/N/10/EEC/1 (11 September 2002).

<sup>5</sup> Ministry of Economic Development of Italy, Protocol No. 12326 of 5 May 2016.

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

#### **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"?

#### **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?
- 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?

## **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"?

## **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?

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?

## **8 CONCLUSION**

27. We are looking forward to getting written responses to the questions provided in this document. We also invite the European Union to continue bilateral engagement on this issue.

---