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EUROPEAN UNION – SAFEGUARD MEASURES ON CERTAIN STEEL PRODUCTS

STATUS REPORT REGARDING IMPLEMENTATION OF THE DSB RECOMMENDATIONS AND RULINGS BY THE EUROPEAN UNION

The following communication, dated 16 January 2023, from the delegation of the European Union to the Chairperson of the Dispute Settlement Body, is circulated pursuant to Article 21.6 of the DSU.

The European Union submits this report under Article 21.6 of the Understanding on Rules and Procedures Governing the Settlement of Disputes ("DSU"), to notify the Dispute Settlement Body ("DSB") of the achievement of implementation, and to provide the DSB with a status report in writing of its progress in the implementation of the recommendations or rulings.

On 31 May 2022, the DSB adopted its recommendations and rulings in the dispute *European Union – Safeguard Measures on Certain Steel Products* (DS595). At the DSB meeting of 30 June 2022, the European Union informed the DSB that, pursuant to Article 21.3 of the DSU, it intended to implement the recommendations and rulings of the DSB in this dispute in a manner that respects its WTO obligations, but that it needed a reasonable period of time to do so.

On 5 August 2022, Türkiye and the European Union informed the DSB that they had agreed, pursuant to Article 21.3(b) of the DSU, that the reasonable period of time for the European Union to comply with the DSB's recommendations and rulings would be 7 months and 16 days and would expire on 16 January 2023.

The European Union hereby informs the Dispute Settlement Body that it has, on 13 January 2023 with entry into force on 14 January 2023, adopted the measure necessary to comply with the recommendations and rulings before the expiry of the reasonable period of time agreed with Türkiye. On 13 January 2023, the European Union adopted Commission Implementing Regulation (EU) 2023/104 amending Commission Implementing Regulation (EU) 2019/159 imposing a definitive safeguard measure on imports of certain steel products following a report adopted by the World Trade Organization's Dispute Settlement Body, published in the Official Journal of the European Union on 13 January 2023 (OJ L 12, 13.01.2023 p. 7-27),¹ entering into force on 14 January 2023.

The adoption and entry into force of this Regulation achieves the European Union's full implementation of the DSB recommendations and rulings in this dispute. A copy of this Regulation is attached to this status report. The European Union proposes that this issue of implementation of recommendations or rulings be placed on the agenda of the next DSB meeting.

¹ https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=uriserv%3AOJ.L_.2023.012.01.0007.01.ENG

COMMISSION IMPLEMENTING REGULATION (EU) 2023/104**of 12 January 2023****amending Implementing Regulation (EU) 2019/159 imposing a definitive safeguard measure on imports of certain steel products following a report adopted by the World Trade Organization's Dispute Settlement Body**

THE EUROPEAN COMMISSION,

Having regard to Regulation (EU) 2015/478 of the European Parliament and of the Council of 11 March 2015 on common rules for imports ⁽¹⁾ and in particular Articles 16 and 20 thereof,

Having regard to Regulation (EU) 2015/755 of the European Parliament and of the Council of 29 April 2015 on common rules for imports from certain third countries ⁽²⁾, and in particular Articles 13 and 16 thereof,

Whereas:

Background

- (1) By Commission Implementing Regulation (EU) 2018/1013 ⁽³⁾ (the Provisional Regulation), the Commission imposed a provisional safeguard measure on certain steel products. By Commission Implementing Regulation (EU) 2019/159 ⁽⁴⁾ (the Definitive Regulation), the European Commission imposed a definitive safeguard measure on certain steel products (the safeguard measure).
- (2) On 13 March 2020, Türkiye requested consultations with the European Union pursuant to Articles 1 and 4 of the Understanding on Rules and Procedures Governing the Settlement of Disputes (DSU), Article XXIII:1 of the General Agreement on Tariffs and Trade 1994 (GATT 1994), and Article 14 of the Agreement on Safeguards (AoS).
- (3) Consultations between the European Union and Türkiye were held on 29 April 2020 but did not resolve the dispute.
- (4) On 16 July 2020, Türkiye requested the establishment of a panel. A panel was established on 28 August 2020. The Panel Report was circulated on 29 April 2022. Since none of the parties appealed the panel report, it was adopted by the Dispute Settlement Body (DSB) on 31 May 2022 ⁽⁵⁾.
- (5) By communication to the WTO of 5 August 2022 ⁽⁶⁾, Türkiye and the European Union informed that, pursuant to Article 21.3(b) of the Understanding on Rules and Procedures Governing the Settlement of Disputes, they had agreed that the reasonable period of time for the European Union to implement the recommendations and rulings of the DSB in the dispute *European Union – Safeguard Measures on Certain Steel Products* (DS595) will expire on 16 January 2023, which is seven months and sixteen days from the day of adoption of the DSB recommendations and rulings on 31 May 2022.
- (6) As a result of these events, the Commission published on 24 August 2022 a Notice of Initiation ⁽⁷⁾ informing of its intention to implement the Panel Report by bringing the original measure into conformity with WTO rules in those instances where the Panel had found inconsistencies, and inviting interested parties to submit comments.
- (7) Several parties submitted comments within the stipulated deadline, which were duly taken into account.

⁽¹⁾ OJ L 83, 27.3.2015, p. 16.

⁽²⁾ OJ L 123, 19.5.2015, p. 33.

⁽³⁾ Commission Implementing Regulation (EU) 2018/1013 imposing a provisional safeguard measure against imports of certain steel products (OJ L 181, 18.7.2018, p. 39).

⁽⁴⁾ Commission Implementing Regulation (EU) 2019/159 of 31 January 2019 imposing a definitive safeguard measure against imports of certain steel products (OJ L 31, 1.2.2019, p. 27).

⁽⁵⁾ WT/DS595/R, European Union – *Safeguard Measures on Certain Steel Products*, 29 April 2022.

⁽⁶⁾ WT/DS595/13, 9 August 2022.

⁽⁷⁾ OJ C 320, 24.8.2022, p. 47.

Submissions from interested parties

- (8) Several interested parties submitted comments following the publication of the Notice of Initiation. As a preliminary observation, the Commission noted that some of the comments made by interested parties were mere repetitions of the Panel's findings.
- (9) The Commission first analysed the specific comments from the Government of Türkiye (GOT), as it was the party challenging the safeguard measure before the WTO DSB, and then it analysed the comments submitted by the other interested parties.
- (10) Regarding unforeseen developments GOT claimed that there is no evidence in the record that would allow the Commission to link the unforeseen developments with the increase in imports. It noted that there was a lack of coincidence in time between overcapacity and the increase in imports, that the Commission did not do the necessary examination of the TDI measures in third countries and their link to increase in imports, and that the US Section 232 were introduced after the increase in imports into the Union took place. GOT further claimed that if the Commission were to use new information should also consider the changes in the conditions that occurred during the period of time that the measure was in force, such as exclusion of several countries including the EU itself from Section 232 measures.
- (11) The Commission disagreed with GOT's views that this aspect of the measure could not be repaired. As shown in detail in Section 1.1 of the Annex, there was sufficient information available prior to the imposition of the Definitive Safeguard that showed clearly that imports into the Union had increased as a result of unforeseen developments. The Commission did not use any data that was not available at the time of imposing the definitive measure for the purpose of the Annex to this Regulation.
- (12) Regarding the findings pertaining to the threat of serious injury, GOT considered that the anti-dumping and countervailing measures could not be the reason of the recovery of the domestic industry. As regards the other factors that the Commission had relied on to explain the partial improvement of the performance of the Union industry in 2017, GOT noted that the Panel had concluded that those factors affected the domestic industry and imports in similar ways and therefore, they could not be used as an explanation of such improvement and that there was no indication to show that changes in these factors would benefit the imports more than domestic industry.
- (13) In this respect, the Commission referred to its findings in sections 1.2.1 and 1.2.2 of the Annex that contradict GOT's claims.
- (14) Lastly, GOT noted that the Panel had concluded that even if imports were set to increase in 2018, this does not automatically lead to the conclusion that there is a significant overall impairment in the position of the domestic industry, which is clearly imminent.
- (15) In this regard, the Commission explained in the Annex to this Regulation all the elements it took into account to determine that: i) imports were likely going to continue increasing; ii) such increase would have negative effects on the economic situation of the Union industry in light of the recent and expected future developments of key factors in the steel market in the Union and worldwide. Therefore, the substantive analysis carried out by the Commission did not assume that an increase in imports would, in itself and without considering other pertinent elements, cause serious injury to the Union industry in the absence of a safeguard measure. Rather, the Commission conducted a detailed analysis of the relevant elements that led it to reach the conclusion that if no measure was adopted, the Union industry would suffer serious injury. Therefore, GOT's claims were rejected.
- (16) Concerning the comments received from other interested parties, some of them argued that the Commission should terminate the measure altogether because the Panel's findings were of such nature that it made it impossible to implement the measure in a different way.

- (17) With respect to this general claim, the Commission noted that under WTO rules it has the right to implement the measure and bring it into conformity with the rules in those few aspects that the Panel found to be inconsistent with them. As shown in the Annex to this Regulation, the findings of the Panel were of a kind of nature that allowed the Commission to bring the measure into conformity with the relevant WTO provisions, and therefore, the termination of the measure was not warranted as a result of the Panel Report.

Increase in imports as a result of unforeseen developments and effects of obligations

- (18) An interested party noted that several changes had occurred to the US Section 232 measure and that the risk of trade diversion did no longer exist or would be much smaller, and as a result, the safeguard measure should be terminated.
- (19) The Commission noted that developments that took place after the imposition of the definitive measure fall outside the scope of data that can be relied upon for the implementation of the DSB report. The purpose of this investigation, as mentioned in the Notice of Initiation is to supplement the original findings with data already available at the time the original investigation was conducted. No ex-post facts were taken into account.
- (20) An interested party claimed that the increase in imports into the Union did not occur as a result of any of the obligations undertaken by the Union under GATT 1994 and that the Commission did not mention any of these obligations in its original determination.
- (21) The Commission referred to its explanations in section 1.3 of the Annex, which rebut this argument.
- (22) An interested party considered that there had not been unforeseen developments resulting in an increase in imports and because of this, the Commission could not implement this aspect of the Panel Report.
- (23) The Commission noted that this statement was factually incorrect as the Panel had confirmed (*) the unforeseen developments described by the Commission in the definitive safeguard. Therefore, this claim was rejected as unfounded.
- (24) An interested party noted that the risk of trade diversion and increased imports as a result of US Section 232 were not pertinent to its country for a number of reasons.
- (25) The Commission noted that the analysis of increased imports and risk of trade diversion was not done individually for each exporting country, but rather, as a whole, because the safeguard measure is to be applied erga omnes. In any event, the Commission wanted to point out that this interested party was focused not only on the specific situation of one exporting country but also on the specific situation of one steel-using industry, thus ignoring the performance from this exporting country in all the other steel-using segments. The Commission thus rejected this claim.

Threat of serious injury

- (26) Some interested parties considered that the findings of the Panel regarding this aspect of the measure were of such nature that did not allow the Commission to implement the measure without terminating it.
- (27) The Commission disagreed with this type of claim for the reasons set out in the Annex to this Regulation, where it proved that the original findings were valid and their justification was strengthened by the additional data and explanations supplied in the Annex to this Regulation.
- (28) Some interested parties recalled the Panel's finding that the Commission's explanation of the role of the anti-dumping and countervailing measures in the partial recovery of the Union industry was flawed.

(*) See Panel Report, para. 7.117.

- (29) In this regard, the Commission acknowledged that the Panel took issue with the explanations provided in the definitive regulation. However, the purpose of the implementation exercise is precisely to allow the investigating authority to improve those aspects of the measure that the Panel considered flawed to some extent, such as the one referred to by these interested parties. Thus, the Commission provided the necessary additional information and explanations in Section 1.2.2 of the Annex as far as this finding of the Panel was concerned.
- (30) An interested party argued that if the Commission did not explicitly refer to some factors as having an impact on the state of the Union industry, it could not use them in their reasoning when implementing the measure.
- (31) The Commission noted that the Panel had taken issue with the level of details provided in some instances of the original measure. In the Annex to this Regulation, the Commission put forward those elements that it had considered when making the original decision but which were not spelled out in the definitive regulation. In the Commission's view, accepting the interested party claim would amount to saying that whenever an investigating authority is condemned for not providing sufficient level of detail in its explanations or reasoning, it could no longer have the opportunity to remedy it by means of implementation. The Commission disagreed with this view, as it considered that precisely the purpose of an implementation is to allow an investigating authority to bring its measure into conformity by e.g. providing a better and more complete reasoning than in the definitive regulation, as those were the findings by the Panel. Accordingly, it rejected the claim.
- (32) Some interested parties claimed that the mere prospect of a further increase in imports would not necessarily lead to a situation of serious injury for Union producers.
- (33) The Commission performed a detailed analysis of how a further increase in imports would take place and the reasons whereby such increase would lead to a situation of serious injury to the Union industry. Therefore, this claim was rejected.
- (34) Lastly, some interested parties brought up arguments such as performance of the Union industry in years after the imposition of the safeguard measure or developments that took place after such event, such as the situation of Union producers and other third countries under the US Section 232 measure, the evolution of imports or the 'energy crisis'.
- (35) The Commission rejected all these claims as they fell outside the substantive and timely scope of the implementation exercise, because they concerned events unrelated to the imposition of the definitive measure in early 2019.
- (36) For the reasons contained in the Annex of this Regulation, the Commission considered that it fully implemented the WTO ruling. Implementing Regulation (EU) 2019/159 should be amended by adding the reasoning included the Annex of this Regulation, which supplements the findings made in the original investigation.
- (37) The measures provided for in this Regulation are in accordance with the opinion of the Committee on Safeguards established under Article 3(3) of Regulation (EU) 2015/478 and Article 22(3) of Regulation (EU) 2015/755 respectively,

HAS ADOPTED THIS REGULATION:

Article 1

The text set out in the Annex to this Regulation is added as Annex V to Regulation (EU) 2019/159.

Article 2

This Regulation shall enter into force on the day following that of its publication in the *Official Journal of the European Union*.

13.1.2023

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Official Journal of the European Union

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It shall apply as of 2 February 2019.

This Regulation shall be binding in its entirety and directly applicable in all Member States.

Done at Brussels, 12 January 2023.

For the Commission
The President
Ursula VON DER LEYEN

ANNEX

ANNEX V

Attractiveness of Union market

- (1) In its original determination, the Commission explained that the Union steel market was attractive for imports in terms of size and prices ⁽¹⁾. In this respect, according to OECD data ⁽²⁾, in the years prior to the initiation of the investigation that led to the imposition of a safeguard measure, the Union market was the largest importing territory in terms of volumes, accounting from 13,8 % to 18,4 % of the global share of imports throughout this period.
- (2) In addition to the volumes, the Union market was also very attractive in terms of prices. In fact, an analysis of the relevant data ⁽³⁾ showed that the main steel exporting countries to the Union achieved, for a large proportion of their exports (from 46 % to 78 % of the CN codes concerned), a higher price in the Union market as compared to the export prices achieved in other third markets for the same CN codes. For these countries, the Union market also represented an important share of their exports, being the main or among their main export destinations, in some cases reaching more than 25 % share and even reaching 32 % in a given year ⁽⁴⁾.
- (3) The attractiveness of the Union market was also confirmed by the fact that while the main steel exporting countries ⁽⁵⁾ were reducing exports to third countries, they were increasing their exports to the Union at a fast pace. In particular, exports to other third countries from these origins decreased by more than 11 million tonnes (-8 %) in 2018 ⁽⁶⁾ when compared to 2017 ⁽⁷⁾. On the other hand, in the same period, imports into the Union from these origins increased by more than 3 million tonnes (+14 %) ⁽⁸⁾. These opposite trends showed that while imports to other third countries decreased generally, in a context of increasing overcapacity and increased restriction to access markets worldwide (see Sections 1.1.1 and 1.1.2 below), and in the absence of any major positive developments in their domestic consumption, exporting producers seized the opportunity to dispose of ever larger volumes into the Union market.
- (4) Therefore, the above set of data shows that, unequivocally, the Union market was attractive for exporting producers in terms of both volumes and prices.

1. ANALYSIS

1.1. Increased imports as a result of unforeseen developments

- (5) The subsections below thus provide with additional information and a more detailed explanation linking each of the unforeseen developments identified with the increase in imports that took place, thereby supplementing the original findings.

1.1.1. Increase of imports to the Union due to global overcapacity in the steel sector

- (6) In the original determination, the Commission established that overcapacity existed in the steel sector and that despite efforts aiming to reduce it, it had nevertheless increased over the period of investigation ⁽⁹⁾.

⁽¹⁾ See recital (35) of the Provisional Regulation, and Section 4 of the Definitive Regulation.

⁽²⁾ See OECD, 'Recent Developments in Steel Trade and Trade Policy Measures', DSTI/SC(2018)3, p. 9, table 3.

⁽³⁾ Source: DG TRADE calculations on Global Trade Atlas data (<https://ihtsmarket.com/index.html>) – raw data available upon subscription – period analysed: 2014-2017. For details see Note to the file dated 30 November 2022, table 1.

⁽⁴⁾ Ibid.

⁽⁵⁾ These countries were: China, India, Russia, South Korea, Taiwan, Türkiye and Ukraine, and represented around 75 % of total imports into the Union in 2018.

⁽⁶⁾ Data for full year 2018 extrapolated based on the data available for the period January-November 2018.

⁽⁷⁾ Source: Global Trade Atlas (<https://ihtsmarket.com/index.html>) – available upon subscription.

⁽⁸⁾ See recital (32) of the Provisional Regulation.

⁽⁹⁾ See recitals (31) and (32) of the Provisional Regulation, and recitals (51) to (54) of the Definitive Regulation.

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- (7) Several sources have consistently confirmed the direct link between excess capacity in the steel sector and its effects on exports. For instance, the OECD noted, "Excessive levels of steelmaking capacity have important implications for the steel industry, often associated with over-supply, low prices, and weak profitability" ⁽¹⁴⁾. It also noted that "At the global level, the effects of excess capacity are transmitted through trade; excess capacity can lead to export surges, leading to price declines and market share losses for import-competing domestic producers" ⁽¹⁵⁾.
- (8) Similarly, other studies point into the same direction. A 2014 "Economic Policy Institute" paper ⁽¹⁶⁾, which noted, "Excess capacity means that steel production facilities have the capacity to produce much more steel than the market demands. High fixed costs, capital intensity, and the large scale of steelmaking encourages to export the surplus at below-market rates. [...] "Excess capacity leads to overproduction and surges of exports" and that "[t]he high capital intensity of the industry leads producers to maximize production to cover fixed costs, and this in turn leads them to dump excess production on foreign markets—particularly the attractive U.S. market—when domestic demand lags. This has led to repeated surges in unfairly traded steel over the years."
- (9) In the same vein the European Commission, in a 2016 Communication, also stated, "The excess production of steel has recently led to a dramatic increase of exports, the destabilisation of global steel markets and depression of steel prices world-wide." ⁽¹⁷⁾.
- (10) Therefore, there is a generally accepted economic rationale explaining the action of exporting producers of offloading their excess capacity into third country markets (usually at lower prices) to at least contribute to covering part of their costs.
- (11) The Commission then assessed in further detail the direct link between the confirmed existing (and increasing) overcapacity in the steel sector, and the increase of imports into the Union.
- (12) In a situation of overcapacity, and having an incentive to offload their excess capacity, exporting producers would target those markets which allow them to sell, in principle, higher volumes at, ideally, better prices (as compared to other third markets). In this respect, the Commission explained in recitals (1) to (4) that the Union was an attractive market for exporting producers both in terms of size and price levels. The import data available also showed that imports into the Union had increased rapidly and in great volumes in the period where overcapacity was also increasing ⁽¹⁸⁾ and that they did it at much faster pace than Union consumption ⁽¹⁹⁾, and it also showed that imports to the Union continued to increase while the trend of exports to other third countries was the opposite. In addition, data in the Provisional Regulation showed that exporting producers were consistently undercutting Union producers (in some cases significantly), showing their determination to remain benefiting from the attractive conditions of the Union market ⁽²⁰⁾. The magnitude and pace of imports into the Union at consistently lower prices than those of the Union industry, in a context of a much slower consumption growth, could have hardly been reasonably explained in the first place if it were not for a context of increasing overcapacity, which was at the core of exporting producers' behaviour.
- (13) Accordingly, the Commission concluded that imports into the Union increased as a result of overcapacity in the steel sector in the original period of investigation.

⁽¹⁴⁾ See OECD "Excess Capacity in the Global Steel Industry: The Current Situation and Ways Forward", 2015, p. 3.

⁽¹⁵⁾ See OECD "Evaluating the Financial Health of the Steel Industry", DSTI/SU/SC(2015)12/FINAL, 9 June 2017, p. 25.

⁽¹⁶⁾ Available at: <https://www.epi.org/publication/surging-steel-imports>

⁽¹⁷⁾ Communication from the Commission to the European Parliament, the European Council, the Council, the European Economic and Social Committee, the Committee of the Regions and the European Investment Bank – "Steel: Preserving sustainable jobs and growth in Europe"; COM (2016) 155 final, 16.3.2016.

⁽¹⁸⁾ See OECD "Excess Capacity in the Global Steel Industry: The Current Situation and Ways Forward", 2015, table at p. 2.

⁽¹⁹⁾ Throughout the investigation period imports increased by 71 % while consumption increased by 14 %.

⁽²⁰⁾ Specifically, undercutting was established for 17 product categories, with ranges between 1,2 % and 23 %.

1.1.2. Increase of trade defence measures and trade restrictive measures in third countries

- (14) In recitals (33) and (34) of the Provisional Regulation, the Commission explained that there had been a significant increase in the use of trade defence instruments in the steel sector in particular in the years prior to the initiation of the EU safeguard investigation. The Provisional Regulation stated that "whereas during 2011-2013 on average around 77 steel-related investigations had been initiated per year, during 2015-2016 this average increased to 117". Furthermore, third countries continued throughout 2017 to impose trade restrictive measures ⁽¹⁷⁾.
- (15) In overall terms, the Commission observed from the data ⁽¹⁸⁾ it analysed that more than 300 trade defence measures on steel products ⁽¹⁹⁾ had been imposed in the period 2013-2017.
- (16) A breakdown of these figures revealed that these measures had been imposed by a large number of countries (at least 24 jurisdictions), and among them, all the main steel importing countries ⁽²⁰⁾. These countries had imposed 157 measures in the period 2013-2017, i.e. more than 52 % of the total.
- (17) At the same time, the top exporting countries to the Union were, in this period, subject to a large amount of measures in numerous jurisdictions. Taking as an example the top seven exporters to the Union ⁽²¹⁾, the Commission observed that they were subject to around 200 measures, this is, around 66 % of the total measures in place in at least 24 different third countries.
- (18) Therefore, the Commission confirmed that the magnitude of the TDI measures, in terms of number of individual measures and countries affected (both imposing and subject to the measures) was very significant. The Commission further noted that data on the original file suggested that these figures could be even rather conservative ⁽²²⁾. In addition, the duties imposed pursuant to those measures appeared to be sufficiently high to impact the level of imports entering those markets as compared to the period before these measures were in place. This was reflected in an overall decrease in exports from countries subject to TDI measures into third markets (see recital (19)), despite the fact that the overall market conditions had not changed significantly ⁽²³⁾ and thus would not, in principle, justify a reduction of volumes exported of such magnitude if it was not for the effects of the level of the measures.
- (19) In this respect, the Commission confirmed based on the data analysed that a common effect of the imposition of trade defence measures was the reduction (in many cases significant) of imports into the countries subject to measures in the period subsequent to their imposition. In this regard, the Commission observed that, based on an analysis of its own TDI investigations on steel products ⁽²⁴⁾, imports decreased on average by up to 82 % when compared to the level of imports in the investigation period that led to the imposition of measures. In those cases,

⁽¹⁷⁾ See recital (33) of the Provisional Regulation.

⁽¹⁸⁾ Source: WTO, Integrated Trade Intelligence Portal (I-TIP) - Extraction made on 28/11/2018, 10:58.

⁽¹⁹⁾ Covering those steel products under the safeguard measure and excluding the measures imposed by the European Union, and those imposed against imports from EU exporting producers. For an overview of the TDI measures imposed by the European Union on product categories subject also to the safeguard measure see Annex 1.B. of Commission Implementing Regulation (EU) 2019/1382 of 2 September 2019, amending certain Regulations imposing anti-dumping or anti-subsidy measures on certain steel products subject to safeguard measures (OJ L 227, 3.9.2019, p. 1).

⁽²⁰⁾ For reference of the main steel importing countries in the period of investigation, see OECD, "Recent developments in steel trade and trade policy measures - A closer look at non-tariff trade measures", DSTI/SC(2018)3, of 26 January 2018, page 9, table 3. Available at the following link: ([https://one.oecd.org/document/DSTI/SC\(2018\)3/en/pdf](https://one.oecd.org/document/DSTI/SC(2018)3/en/pdf))

⁽²¹⁾ These countries were (listed alphabetically): China (10 %), India (9 %), Korea (10 %), Russia (14 %), Taiwan (5 %), Türkiye (22 %) and Ukraine (7 %). They represented, on average, around 75 % of imports of the product concerned into the Union in the period 2013-2017.

⁽²²⁾ See recital (76) of EUROFER's submission of 16 April 2018 in the original investigation, linked to more granular information on each of the measures considered, provided in Annex A07 D.1. Source of the data: SBB Platts.

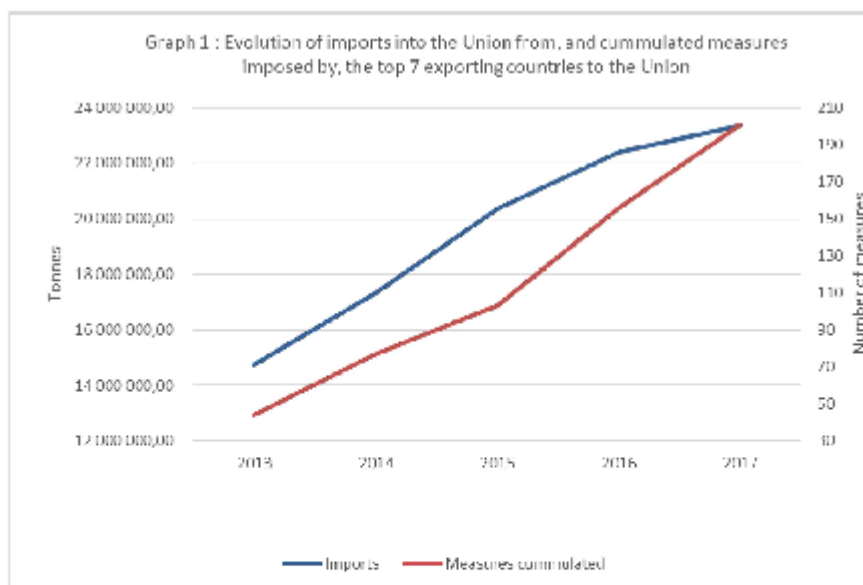
⁽²³⁾ See CRU data: consumption for years 2017 and 2018 was rather stable (only around 2 % increase).

⁽²⁴⁾ A similar trend was observed when assessing the impact of TDI measures on products other than steel.

the volumes of imports affected were significant ⁽¹⁹⁾. The Commission also confirmed that TDI measures on steel had a similar effect when imposed by third countries. In a sample of 26 cases assessed ⁽²⁰⁾, the Commission confirmed that the reduction of imports was on average 73 %, and that the volumes affected were also relevant ⁽²¹⁾. Therefore, the imposition of TDI measures by third countries reduced the volume of exports to those countries, which were, at least partially, directed to the Union market.

- (20) Furthermore, another set of data showing the clear connection between the increasing number of trade defence measures in third countries and the increase in imports into the Union market is the opposing trends of exports of the main steel exporting countries to the Union explained in recital (3) ⁽²²⁾. In view of the large amount of trade defence measures imposed by third countries and the effects they have on the volumes of imports into the countries imposing a measure (as detailed in recitals (18) and (19)), this trend confirms that their ability to export to third countries was significantly curtailed. Therefore, they sought to dispose of these additional volumes (also affected by overcapacity) into the attractive Union market, which as a result experienced a consistent increase in imports over the same period, at a pace substantially higher than the evolution of consumption.

- (21) The graph below ⁽²³⁾ illustrates these trends.



⁽¹⁹⁾ Around 15 million tonnes of combined imports affected by these measures, out of which, only slightly more than 2 million tonnes continued entering the market after the measures. For details, see Note to the File, table 2.

⁽²⁰⁾ See Note to the File dated 30 November 2022, Table 3.

⁽²¹⁾ To impose a TDI measure, the volumes concerned by each investigation need to be above *de minimis*. In addition, steel is usually traded in rather large volumes as seen in the examples from EU TDI practice and from the sampled cases of TDI measures in other third countries.

⁽²²⁾ These countries accounted consistently for around 75 % of total imports into the Union in the period of investigation.

⁽²³⁾ Source: For imports into the Union: Eurostat; for TDI measures: WTO, Integrated Trade Intelligence Portal (I-TIP).

- (22) The Commission also observed that the overall steel consumption did not see any major reduction in that period that would explain such a decrease in exports to third countries. Hence, the reduction of exports to other third countries could only be reasonably explained by the limiting effect of the wide array of TDI measures or other trade restrictive measures imposed by a large number of jurisdictions.
- (23) Accordingly, the Commission concluded that the increase in TDI and other trade restrictive measures across third countries had resulted in increased imports into the Union during the period considered.

1.1.3. US Section 232 measure

- (24) In recitals (58) to (61) of the Definitive Regulation the Commission explained the link between the US Section 232 measures and the increase of imports into the Union. In addition, in recitals (101) to (110) of the Definitive Regulation, the Commission also assessed the evolution of imports into both the Union and US markets ⁽¹⁹⁾.
- (25) Because the data assessed to determine an increase in imports stopped at the end of June 2018 (end of Most Recent Period or 'MRP'), it covered import trends into the Union and into the US for a relatively short period after the US Section 232 came into effect. Nevertheless, as explained in recital (58) of the Definitive Regulation, the investigation leading to the US measure had already been initiated in April 2017 and the report setting the basis for the later adoption of the measure was published in January 2018, and hence the first signs of trade diversion were already identified.
- (26) The data showed that while during the first half of 2018 imports into the US decreased by almost 1 million tonnes (-7 %) when compared to the same period in 2017, imports into the Union followed an almost identical opposite trend, with an increase in imports of 1,2 million tonnes (+7 %).
- (27) This trend is explained because the main steel exporting countries to the Union also exported relevant volumes to the US market. While export volumes to the US were decreasing (as a result of the effects of the 25 % duty under the US Section 232), the volume of exports of some of these countries to the Union increased in parallel. Furthermore, and as explained in recital (3) above, exports from these countries into other third markets generally decreased.
- (28) Therefore, the impossibility to export in the same amounts to the US after the US Section 232 measure entered into force put exporting countries in a situation where they were forced to seek other outlets for their steel. In this case, because the Union market was very attractive in terms of size and prices compared to other third markets, it was a natural target for exporting countries and this resulted in increased imports, notably from origins who lost export volumes to the US. These trends are shown in the graphs below ⁽¹⁴⁾.

⁽¹⁹⁾ For the purpose of explaining the link of the US Section 232 and the increased imports, the Commission refers, within those recitals, only to the data until June 2018 included. The reason is that the increase in imports assessed in the Definitive Regulation covers up to that month.

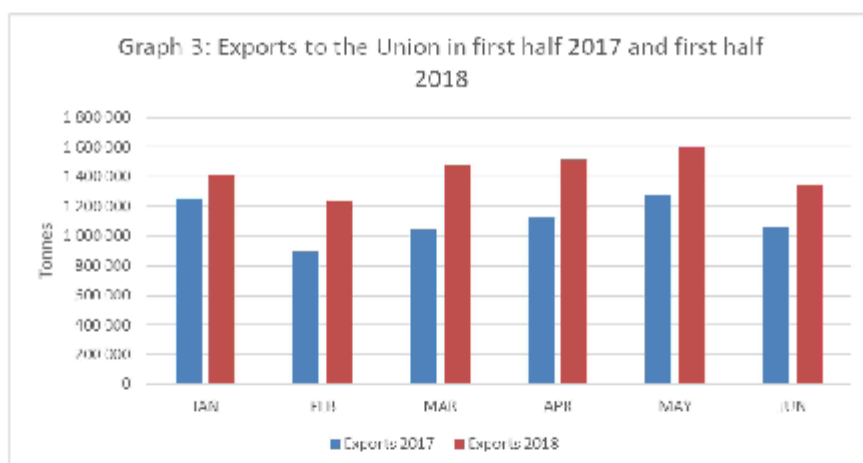
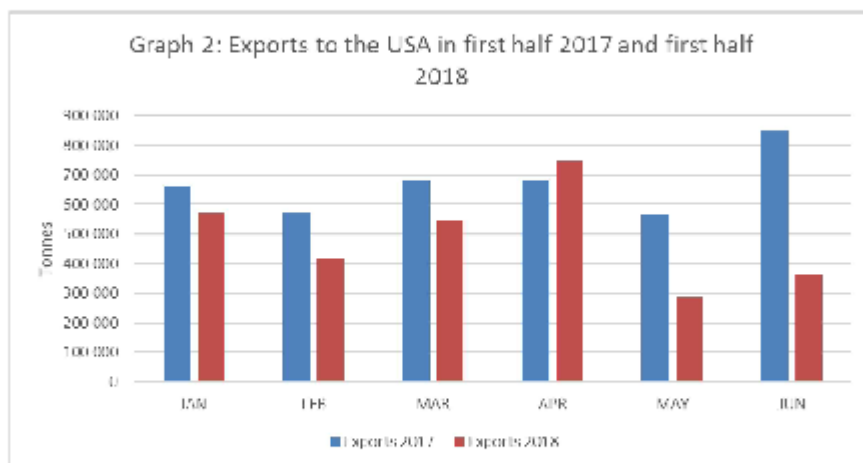
⁽¹⁴⁾ Source: GTA, cumulated exports from Türkiye, Korea, Russia and Taiwan to the United States (graph 2); and cumulated exports from the same countries to the USA and the Union (graph 3).

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- (29) In view of these facts, the Commission confirmed that the increase in imports into the Union that took place in the period of investigation was the result (together with the other unforeseen developments established) of the US Section 232 measure.

Cumulative assessment

- (30) The Commission also concluded that the increase in imports occurred as a result of the combination of all the identified unforeseen developments (global overcapacity, increase of trade defence measures and trade restrictive measures in third countries and the US Section 232 measure). The existence of several unforeseen developments at the same time reinforces the finding of a logical connection between the increase in imports into the Union, which was an attractive and major market for steel exports, and the identified unforeseen developments.

1.2. Threat of serious injury

- (31) The original determination established that if the Union did not impose a safeguard measure, there was a threat of serious injury for the domestic producers as imports were expected to continue increasing, notably due (but not limited) to trade diversion originating in the US Section 232 measure, and thus to add import pressure in terms of price and volumes ⁽¹⁵⁾. This section of the Regulation will develop in further detail why a threat of serious injury existed and was well founded in light of the evidence available at the time of the imposition of the definitive measure. To do so, this section of the Regulation will provide additional explanations and clarifications on the following aspects leading to the finding of a threat of serious injury: i) situation of the Union industry and reasons explaining its partial recovery in 2017; ii) role of EU TDI measures in the situation of the Union industry; iii) impact of US Section 232 measure – including recent import evolution into the Union; iv) most recent evolution of steel and raw material prices; v) state of play of TDI measures in third countries and overcapacity; vi) market outlooks and forecasts.

Continuous attractiveness of the Union market

- (32) In recitals (1) to (4) above, the Commission explained how the Union market was attractive in terms of size and prices and how these features contributed to an increasing amount of imports into the Union market in the period of investigation.
- (33) The Commission's considered that these features remained the same at the end of the investigation that led to the imposition of the definitive safeguard, confirming that in 2018, the Union market continued to be an attractive market in terms of size ⁽¹⁶⁾ and prices. The main steel exporting countries to the Union achieved a higher price in the Union market as compared to the export prices achieved in other third markets for 48 % to 81 % of the CN codes concerned ⁽¹⁷⁾. Thus confirming the continuous attractiveness in terms of prices. Regarding size, the Union continued to be a relevant export market, representing for some exporting countries almost 40 % and for some of them around 25 % of their total exports, depending on the exporting country ⁽¹⁸⁾.
- (34) Furthermore, the Commission concluded that there were no elements among the data assessed, including submissions from interested parties, indicating that the Union market would become any less attractive in the near future. In fact, as shown in this Annex (see as an example subsections 1.2.3 and 1.2.5 below) there was an increasing lack of alternative outlets where exporting producers could reach the same or similar volumes of exports as they did in the past, and as a result the import pressure on the attractive Union market would increase even further.

1.2.1. Situation of the Union industry and factors explaining its partial recovery in 2017

- (35) Section VI.1 of the Provisional Regulation and Sections 5.1 to 5.3 of the Definitive Regulation explained the situation of the Union industry at the end of the period analysed, and the evolution of the injury indicators since 2013, concluding that Union industry was in a fragile and vulnerable position.
- (36) The finding of vulnerability despite a partial improvement in 2017, was explained by a number of factors that allowed the Union industry to reach, only in 2017, overall healthier levels of profitability than in previous years despite continuous increasing imports ⁽¹⁹⁾.
- (37) First, the profitability of the Union industry throughout the period analysed showed a generally poor performance, incurring losses (2013) or achieving very low level of profits (2014-2016). While in 2017 the industry achieved for the first time in a period of five years a healthier level of profitability, this did not reach a magnitude that would make up for the previous performance over a four-year period. Even on that year, for a large number of product

⁽¹⁵⁾ See recitals (90) and (110) of the Definitive Regulation.

⁽¹⁶⁾ See OECD Steel Committee – Recent developments in steel trade and trade policy measures, 17-18 September, 2018, p. 8, Table 2 (showing that in 2018 Union was consolidating further its position as main steel importing country worldwide).

⁽¹⁷⁾ Source: DG TRADE calculations on Global Trade Atlas data (<https://itismarkit.com/index.html>) – raw data available upon subscription. For details, see Note to the file dated 30 November 2022, Table 1.

⁽¹⁸⁾ Ibid.

⁽¹⁹⁾ Imposition of TDI measures on some product categories also contributed to this improvement, but their specific role is analysed in Section 1.2.2.

categories, profitability remained low. Three product categories remained loss making and 13 product categories close to break-even. Only seven product categories could recover to a level of profit above 6 % in 2017 ⁽³⁷⁾. In this respect, a key different factor in 2017 related to the evolution and level of its unit sales prices and the difference with the cost of production compared with that of previous years. Regarding the price, in 2017 it increased by around 18 % with respect to the previous year (106 EUR/tonne increase). At the same time, even if the cost of production also increased in that year (by 82 EUR/tonne compared with the previous year) ⁽³⁸⁾, the Union industry was able to achieve the biggest (positive) margin between the two in the period analysed (36 EUR/tonne), which resulted in higher profitability ⁽³⁹⁾. However, this exceptional ⁽⁴⁰⁾ situation was, according to the most recent developments analysed in the investigation not expected to be of a long-lasting nature and there were clear trends showing that it was already reversing (see Section 1.2.4).

- (38) Second, while the Union industry was able to increase its volume of sales in overall terms by 7 % in 2017 when compared to 2013 ⁽⁴¹⁾, contributing to improving partially its performance in that year, it was clearly unable to fully benefit from a much higher increase in consumption in the same period (+14 %) ⁽⁴²⁾ in the Union market although it continued to have sufficient capacity available in 2017 (76 % in 2017 of capacity utilisation compared to 75 % in 2016) ⁽⁴³⁾ to increase its domestic sales further. It is noteworthy that the Union industry barely improved its capacity utilisation in 2017 compared with the previous year. Such suppressed performance could be explained by the significant increasing import pressure (in terms of volumes and prices) that the Union industry suffered in the period assessed. In fact, imports benefitted to a much larger extent than Union producers from the increase in consumption. While Union producers lost market share consistently year-on-year (from 87,2 % to 81,9 %) ⁽⁴⁴⁾ imports experienced a drastic increase (+71 %) ⁽⁴⁵⁾, representing an increase in their market share from 12,7 % in 2013 to 18,8 % in 2017 ⁽⁴⁶⁾. The market share of imports in the MRP was 18,8 %, which was even higher than in 2017 (18,1 %). These trends could be explained by the consistent undercutting of imports ⁽⁴⁷⁾, which thus prevented the Union industry from realising either the full (or at least a greater) potential of market developments.
- (39) Third, while market conditions overall improved (with increased consumption, domestic sales and price levels), the Union industry was still unable to translate this into more employment, which had suffered the loss of nearly 10 000 workers in the Union in the period 2013-2017 ⁽⁴⁸⁾. In 2017 employment level even decreased very slightly compared to 2016. Lastly, stocks grew by 19 % over the investigation period and remained high in 2017 ⁽⁴⁹⁾.
- (40) Therefore, the Union industry improved partially its performance in 2017 as a result of a combination of factors, notably the increase in consumption and of domestic sales and the higher difference between steel and raw material price ⁽⁵⁰⁾ but this improvement was nevertheless limited by the degree of import pressure suffered in that year, which did not allow the Union industry to benefit to a greater extent from such existing factors. The continuous loss of market share and the persistent undercutting across product categories, or the jobs that it was not able to recuperate, were clear signs that its situation was not that of an industry that had fully recovered from the effects of previous negative performances in previous years, and that import pressure was playing a key role in impeding such recovery.

⁽³⁷⁾ Recital (53) of the Provisional Regulation.

⁽³⁸⁾ See Table 15 of the Definitive Regulation.

⁽³⁹⁾ These trends were assessed for the product concerned, and not for individual product categories.

⁽⁴⁰⁾ Based on a comparison of all the years in the period analysed.

⁽⁴¹⁾ See Table 4 of the Definitive Regulation.

⁽⁴²⁾ Ibid.

⁽⁴³⁾ See Table 5 of the Definitive Regulation.

⁽⁴⁴⁾ See Table 4 of the Definitive Regulation.

⁽⁴⁵⁾ See Table 2 of the Definitive Regulation.

⁽⁴⁶⁾ Ibid.

⁽⁴⁷⁾ See Annex III of the Provisional Regulation.

⁽⁴⁸⁾ See Table 7 of Definitive Regulation.

⁽⁴⁹⁾ See Table 5 of the Definitive Regulation.

⁽⁵⁰⁾ See Section 1.2.2. for the explanation of the role of recent TDI measures in the Union industry's performance in 2017.

- (41) Since some of these factors that developed positively in 2017 were reversing in 2018 (see below latest developments and expected performance for steel and raw material prices, as well as expected trends in consumption) in a situation where import pressure was expected to increase in terms of volumes and prices, the impact on the financial situation of the Union industry would be negative.
- (42) In other words, while the Union industry was able partially recover due to the cumulated positive developments of a series of key factors in the market and to slower increase of imports in 2017 compared with previous years ⁽⁶³⁾, the negative turn that most of these factors were showing at the end of 2018 would necessarily result in a worsening of the Union industry's situation against the ongoing further increase of import pressure, which this time, due to its magnitude and the expected prevailing market context, the Union industry would not be able to sustain. As a result, the situation of the Union industry at the end of the investigation period was that of vulnerability to a further surge in imports.

1.2.2. Role of Union TDI measures in the situation of the Union industry in 2017

- (43) In this Section the Commission provides the necessary additional explanations and supporting data regarding the role played by TDI measures on the partial recovery of the Union industry in 2017.
- (44) In the first place, to carry out this exercise, the Commission selected those measures imposed in the years 2015 and 2016 because the Commission considered that those would be the measures whose effects on the Union industry's performance in 2017 could be partially attributed to ⁽⁶⁴⁾. Therefore, under these parameters, prior to 2017 the Commission had imposed six TDI measures on imports from product categories which were subsequently subject to the safeguard measure ⁽⁶⁵⁾.
- (45) These measures were the following ⁽⁶⁶⁾: Commission Implementing Regulation (EU) 2015/501 ⁽⁶⁷⁾, Commission Implementing Regulation (EU) 2016/181 ⁽⁶⁸⁾, Commission Implementing Regulation (EU) 2016/1778 ⁽⁶⁹⁾, Commission Implementing Regulation (EU) 2016/113 ⁽⁷⁰⁾, Commission Implementing Regulation (EU) 2016/1777 ⁽⁷¹⁾ and Commission Implementing Regulation (EU) 2017/969 ⁽⁷²⁾.

⁽⁶³⁾ Total imports increased by around 1 million tons and their market share went up from 17,9 to 18,1 % from 2016 to 2017, which is less than previous year-on-year increases both in absolute and relative terms.

⁽⁶⁴⁾ In this regard the Commission considered that, for instance, a TDI measure imposed in 2013 would be too far in time to be connected to the Union's improved performance in 2017, and therefore, the selected measures offer a more accurate and appropriate basis for the analysis.

⁽⁶⁵⁾ In some cases the scope of a TDI measure on a certain product, in terms of CN codes covered, may not match entirely the product definition of the corresponding product category under the safeguard measure, thus this assessment is an approximation.

⁽⁶⁶⁾ These references to these regulations pertain to the regulations imposing a provisional measure, because for practical purposes, as long as a duty (provisional or definitive) was in place, it was assumed to have a similar impact on the volumes traded. In all these cases, the investigation resulted in the imposition of a definitive measure.

⁽⁶⁷⁾ Commission Implementing Regulation (EU) 2015/501 of 24 March 2015 imposing a provisional anti-dumping duty on imports of stainless steel cold-rolled flat products originating in the People's Republic of China and Taiwan (OJ L 79, 25.3.2015, p. 23).

⁽⁶⁸⁾ Commission Implementing Regulation (EU) 2016/181 of 10 February 2016 imposing a provisional anti-dumping duty on imports of certain cold-rolled flat steel products originating in the People's Republic of China and the Russian Federation (OJ L 37, 12.2.2016, p. 1).

⁽⁶⁹⁾ 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).

⁽⁷⁰⁾ Commission Implementing Regulation (EU) 2016/113 of 28 January 2016 imposing a provisional anti-dumping duty on imports of high fatigue performance steel concrete reinforcement bars originating in the People's Republic of China (OJ L 23, 29.1.2016, p. 16).

⁽⁷¹⁾ Commission Implementing Regulation (EU) 2016/1777 of 6 October 2016 imposing a provisional anti-dumping duty on imports of certain heavy plate of non-alloy or other alloy steel originating in the People's Republic of China (OJ L 272, 7.10.2016, p. 5).

⁽⁷²⁾ Commission Implementing Regulation (EU) 2017/969 of 8 June 2017 imposing definitive countervailing duties on imports of certain hot-rolled flat products of iron, non-alloy or other alloy steel originating in the People's Republic of China and amending Commission Implementing Regulation (EU) 2017/649 imposing a definitive 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 146, 9.6.2017, p. 17).

- (46) The Commission observed that the profitability of Union producers in these product categories systematically improved in the year following the imposition of measures. In particular, the Commission found that, in 2017, profitability generally improved ⁽⁴¹⁾, although for a large number of category products profitability remained low, in particular for the product categories subject to recent TDI measures, and that import prices of third countries (other than those subject to the TDI measures in question) generally increased temporarily in 2017 following the imposition of the TDI measures ⁽⁴²⁾.
- (47) Furthermore, the volumes affected by the recent trade defence measures represented around 40 % of total imports within the product categories subject to recent TDI measures in the period considered ⁽⁴³⁾ and in the years following the imposition of those TDI measures their volumes in the Union market went down by more than 90 % ⁽⁴⁴⁾. Therefore, the substantial reduction of unfair traded imports that ensued the imposition of measures generally allowed Union producers and other exporting countries to increase their sales prices in 2017.
- (48) Moreover all product categories subject to recent trade defence measures experienced a significant improvement in profitability ⁽⁴⁵⁾, several of which exceeded 6 % in 2017 ⁽⁴⁶⁾. For the rest of categories, the picture was more diverse, with few categories exceeding or reaching close to 6 % profitability ⁽⁴⁷⁾, other categories improving but still showing weak or low profitability levels ⁽⁴⁸⁾, and others loss-making or around 1 % profitability ⁽⁴⁹⁾, irrespective of the recent trends. Thus showing that the picture in terms of evolution of profitability was not homogeneous among categories and that in overall terms, most categories ⁽⁵⁰⁾ were, in 2017, either loss making or with unhealthy levels of profitability, even if their situation had improved in some cases as compared to the previous year. Thus confirming the fragility of the overall situation of the Union industry despite the situation being better than the preceding year.
- (49) However, as explained below, the trend of increasing pricing in 2017 was temporary and started reversing in 2018 when the Union was faced with a surge in imports mainly from third countries not subject to trade defence measures and the trade diversion caused by the US Section 232 measure. This is shown by the volume of imports in the MRP that reached a record figure of 31 314 tonnes despite the imposition of recent trade defence measures in some product categories. This showed that while recent TDI measures contributed to the partial and temporary improvement of the Union industry, they also benefitted those exporting countries not subject to measures, which had also started to increase significantly their presence in the Union market ⁽⁵¹⁾.
- (50) Hence, the Commission confirmed that the imposition of TDI measures contributed to the overall performance of Union producers, insofar as these categories were concerned ⁽⁵²⁾.

⁽⁴¹⁾ Source: DG TRADE analysis of the injury indicators published in the relevant measures and analysis of the questionnaire replies provided by the Union industry per product category in the framework of the original safeguard investigation. For details, see Note to the File dated 30 November 2022, Table 4.

⁽⁴²⁾ Source: Eurostat

⁽⁴³⁾ The sum of imports subject to TDI measures by these investigations (although they concern different periods of investigation and different years, e.g. 2013 to 2015) was slightly above 5 million tonnes.

⁽⁴⁴⁾ Source: DG TRADE analysis of its own TDI cases for the volume of imports in the relevant investigation period, and Eurostat for import figures following the investigation period of each of these investigations for this implementation.

⁽⁴⁵⁾ Categories 1, 2, 7, 9, 12 and 13.

⁽⁴⁶⁾ Categories 1, 2 and 9.

⁽⁴⁷⁾ See categories 4, 8 and 14.

⁽⁴⁸⁾ See categories 5, 6, 15, 16 and 26.

⁽⁴⁹⁾ See categories 3, 17, 18, 20, 21, 22, 23, 25 and 28.

⁽⁵⁰⁾ At least fifteen categories out of a total of twenty three subject to a provisional measure (for which a breakdown was provided in Annex III of the Provisional Regulation).

⁽⁵¹⁾ For instance, Türkiye increased its presence in the Union market in category 1, where China was made subject to TDI measures in October 2016, from 1 062 247 tonnes in 2016 to 2 million tonnes in 2017 (and nearly 3 million tonnes in 2018). In the same vein, India increased from 443 551 tonnes to 1 121 334 tonnes in 2017, or Egypt, from 47 400 tonnes in 2016 to 409 432 tonnes in 2017.

⁽⁵²⁾ Section 1.2.1. explained the reasons behind the overall improvement of the Union industry regarding the product concerned.

- (51) In addition, the reasoning in sections 1.2.1 and 1.2.2 clearly showed that some factors explaining the partial recovery of the Union (e.g. consumption) did not affect or benefit Union producers and exporting countries equally or similarly, as the latter were able to increase greatly (+71 % in volumes) their presence in the Union market at the expense of Union producers which lost market share, and only saw a relatively modest increase in overall sales volumes (+7 %) when compared to the continuous growth of imports.

1.2.3. Impact of US Section 232 measure

- (52) In the Definitive Regulation ⁽⁷⁾ the Commission reached the conclusion that the US Section 232 would be liable of significant trade diversion into the Union market.
- (53) In this respect, the Commission has conducted a more detailed analysis of the import patterns into the Union and the USA, both in overall terms and then further analysing the behaviour of certain exporting countries. This analysis showed that when comparing the imports into the US and into the Union in the first half of 2018 with the first half of 2017, imports into the US decreased by almost 1 million tonnes (-7 %) when compared to the same period in 2017, imports into the Union followed an almost identical opposite trend, with an increase in imports of 1,2 million tonnes (+7 %) (See recital (26) above). When assessing the developments in the second half of 2018 and the same period in 2017, these opposing trends become more acute. In fact, imports into the US decreased by 2,4 million tonnes (-19 %) while imports into the Union increased by more than 2 million tonnes (+15 %) ⁽⁸⁾.
- (54) This resulted in an overall yearly reduction of imports into the US of 3,3 million tonnes (-13 %) and an increase of imports into the Union of 3,2 million tonnes (+11 %), out of which 72 % of the total volumes reduced into the US and 63 % of the imports increase in the Union took place in the second half of 2018 ⁽⁹⁾.
- (55) Therefore, the pace and magnitude at which these trends of imports accelerated in the second half of 2018 showed that the impact of the US Section 232 measure was taking progressively more effect as it had been in place already for a few months, and that exporting countries were rapidly adjusting to the new market situation ⁽¹⁰⁾.
- (56) Zooming in into the behaviour of exporting countries to both the US and EU market, the Commission confirmed this trend. For instance, countries like Türkiye, Russia, South Korea and Taiwan ⁽¹¹⁾, which accounted for significant volumes of exports to the US and to the Union, saw the following trends in 2018 when compared to 2017: Türkiye decreased its exports to the US by around 850 000 tonnes (-45 %) and it increased its exports to the Union by 2,6 million tonnes (+56 %). Similarly, Russia's exports to the US went down by more than 250 000 tonnes (-36 %) and

⁽⁷⁾ See recitals (57) to (62), and Table 12 of the Definitive Regulation.

⁽⁸⁾ To put this volume into context, a basic calculation taking the average steel price in the Union in 2017 shows that the EU industry could lose out on around 1,4 billion EUR worth of domestic sales as a result of these additional imports. Thus showing that the potential impact of these additional sales was relevant.

⁽⁹⁾ Whereas the increase in imports into the Union from 2016 to 2017 was much smaller, around 1 million tonnes.

⁽¹⁰⁾ See also OECD Steel Committee – Recent developments in steel trade and trade policy measures, 17-18 September, 2018, p. 8, Table 2.

⁽¹¹⁾ At the time of the adoption of the definitive safeguard measure, only the following four TDI measures affecting imports into the Union were in place (three against Russia and one against Taiwan): Commission Implementing Regulation (EU) 2017/1795 of 5 October 2017 imposing a definitive anti-dumping duty on imports of certain hot-rolled flat products of iron, non-alloy or other alloy steel originating in Brazil, Iran, Russia and Ukraine and terminating the investigation on imports of certain hot-rolled flat products of iron, non-alloy or other alloy steel originating in Serbia (OJ L 258, 6.10.2017, p. 24). Commission Implementing Regulation (EU) 2016/1328 of 29 July 2016 imposing a definitive anti-dumping duty and collecting definitively the provisional duty imposed on imports of certain cold rolled flat steel products originating in the People's Republic of China and the Russian Federation (OJ L 210, 4.8.2016, p. 1). Commission Implementing Regulation (EU) 2018/1469 of 1 October 2018 imposing a definitive anti-dumping duty on imports of certain seamless pipes and tubes, of iron or steel, originating in Russia and Ukraine, following an expiry review pursuant to Article 11(2) of Regulation (EU) 2016/1036 of the European Parliament and of the Council (OJ L 246, 2.10.2018, p. 20). Commission Implementing Regulation (EU) 2015/1429 of 26 August 2015 imposing a definitive anti-dumping duty on imports of stainless steel cold-rolled flat products originating in the People's Republic of China and Taiwan (OJ L 224, 27.8.2015, p. 10).

increased by 870 000 tonnes (+23 %) in the Union, South Korea's exports to the US decreased by more than 880 000 tonnes (-27 %) while increasing in the Union by around 250 000 tonnes (+8 %), and lastly Taiwan's exports to the US went down by around 160 000 tonnes (-14 %) while increased by more than 500 000 tonnes (+40 %) in the Union ⁽⁷⁹⁾.

- (57) Therefore, these figures showed that exporting producers were generally able to ship, at least part of the volumes lost in the US, to the Union market, and in some cases to increase their presence in the Union market well above the volumes lost in the US. Given the size of the US market ⁽⁷⁹⁾, the fact that the US Section 232 measure was still in its first months of application and hence had not yet reached its full intended effects ⁽⁸⁰⁾, it was reasonable to expect that the exports to the US would continue to decrease in significant volumes and that exporting producers would be able to adapt to these circumstances and increase their presence in the Union market even further.
- (58) Therefore, the Commission confirmed that the US Section 232 measure was liable to cause an even greater trade diversion of exports into the Union market in the near future.

1.2.4. Most recent evolution of steel and raw material prices

- (59) In the Definitive Regulation the Commission noted that "steel prices in the Union started to follow a declining trend since the third quarter of 2018" ⁽⁸¹⁾.
- (60) In this respect the Commission observed in section 1.2.1 above, that one of the factors that explained a partial improvement in the Union industry's performance in 2017 was that the difference between steel price and raw material cost was higher than in any of the previous years of the period analysed. However, a further detailed analysis of the most recent developments prior to the imposition of a definitive measure showed that the trend was reversing and that the positive difference between the two was squeezing progressively, and therefore that would have a negative impact on the economic performance of the Union industry.
- (61) As shown in the graph 4 below ⁽⁸²⁾, steel prices in the Union saw a steady decline in the second half of 2018. This trend could be expected to continue in light of the uncertain market prospects (see Section 1.2.6) and as a result of the continuous and increasing import pressure in terms of volumes and prices, which against a worsening or uncertain market conditions, would likely have a downwards effect on prices, thus not allowing Union industry to adapt its prices to the increased costs. In the graph 5 ⁽⁸³⁾ it is observed how the price of some of the main steelmaking raw materials were increasing constantly over the same period.

⁽⁷⁹⁾ Source: for US imports (GTA); for EU imports (Eurostat).

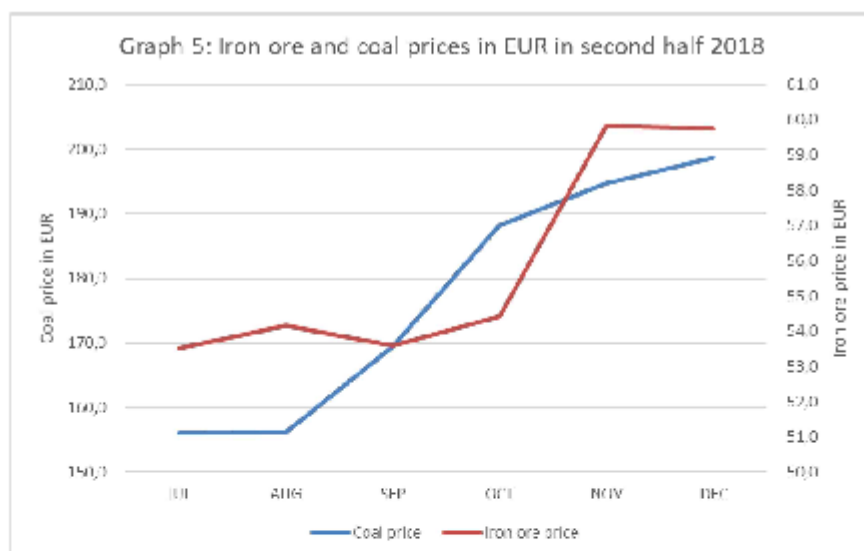
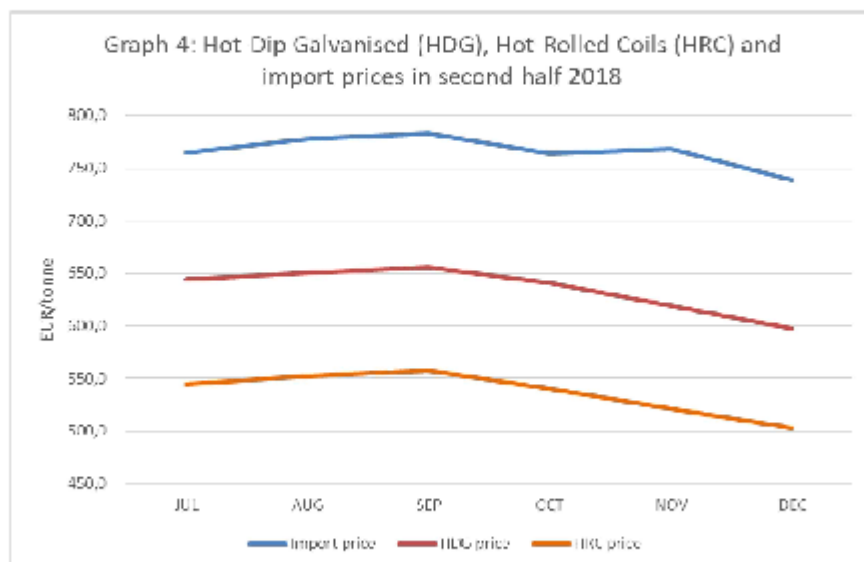
⁽⁸⁰⁾ The US steel market was among the top import destinations by size - See OECD, 'Recent Developments in Steel Trade and Trade Policy Measures', DSTI/SC(2018)3, p. 9, table 3.

⁽⁸¹⁾ See recital (35) of the Provisional Regulation: "The U.S. have calculated that the imposition of a single across product tariff under the Section 232 measures with almost no country exclusion should decrease imports by approximately 13 million tonnes - corresponding to 7 % of Union consumption."

⁽⁸²⁾ See recital (89) of the Definitive Regulation.

⁽⁸³⁾ Source: Eurostat for import prices, and S&P Global Commodity Insights for prices of HDG and HRC.

⁽⁸⁴⁾ Source: S&P Global Commodity Insights.



- (62) Therefore, such combined trends, for which there were no signs of reversal in the near future, would put the Union industry in an even more strained financial situation.
- (63) In addition, the Commission considered that in a likely scenario of further import pressure and in a market that was not to experience any significant growth, the trends of undercutting domestic prices identified in the original investigation would exacerbate further. Thus creating additional difficulties to Union producers who would face the decision either to compete for market share, at the expense of more sustainable prices, or to preserve a higher level of prices at the expense of continuing to lose market share. In both scenarios, its financial performance would be negatively impacted.
- (64) Furthermore, the Commission noted that this evolution in prices coincided with the period when a provisional safeguard measure was already in place (since mid-July 2018). Therefore showing that exporting countries were having an even more aggressive import behaviour under the measure, and showing their continued interest to enter the Union market in large volumes despite a provisional safeguard measure being in place.

1.2.5. State of play of TDI measures in third countries and overcapacity

- (65) In Sections 1.1.1 and 1.1.2 the Commission explained the evolution and more recent situation of overcapacity and TDI measures in third countries. In view of that information, the Commission considered that it was highly unlikely that there would be a reversal of the existing situation in the near future. For instance, TDI measures are usually imposed for a period of five years, and they can be prolonged further. In particular, because many of the measures had been imposed within the few years prior to the adoption of the EU steel safeguard measure⁽⁶⁴⁾, they were set to continue in place at least for the immediate future. Regarding overcapacity, the reports referred to by the Commission did not indicate that there were signs that overcapacity was going to go down to any significant extent, if anything, they suggested that the situation of global overcapacity in the sector could even deteriorate further⁽⁶⁵⁾. In fact, the Global Forum of Steel Excess Capacity was also very clear in concluding that overcapacity continued to be an ongoing problem in late 2018. It noted, "Excess steelmaking capacity – a global challenge that continues to plague the sector – creates significant difficulties for steel producers in advanced, emerging and developing economies alike"⁽⁶⁶⁾.
- (66) The proven effects that these factors had caused in the Union market in the form of substantial increase in imports were detailed in Section 1.1 above, as well as in the Definitive Regulation. As they were set to continue in place in the near future, their effects were thus expected to be of the same nature and therefore, together with the U.S Section 232 measure would generate a further increase of imports into the Union, with ensuing negative effects on the Union industry, if no safeguard measure was imposed.
- (67) Therefore, the Commission concluded that these elements would continue to play an important role in the Union steel market in the near future and were thus pertinent for the analysis of a threat of serious injury.

1.2.6. Market outlooks and forecasts

- (68) Throughout the period analysed, consumption of steel in the Union market increased year-on-year⁽⁶⁷⁾. This trend allowed the Union industry to, generally, also increase its volume of sales, which in turn allowed it to alleviate to some extent the effects of the import pressure it was subject to and showed by the persistent undercutting and steady loss of market share. As explained in Section 1.2.1, in 2017 this increase in sales in a context of a recovery

⁽⁶⁴⁾ Around 140 of the investigations that led to the adoption of measures were initiated in the year 2015 or later, hence their duration was set to be in place, in principle, until at least 2021 (this is, at least 2 years after the conclusion of the EU safeguard investigation). Source: WTO, Integrated Trade Intelligence Portal (ITIP).

⁽⁶⁵⁾ See OECD, 'Recent Developments in Steelmaking Capacity', DSTI/SC(2018)2/FINAL: "the updated information on announced investment projects suggests that nearly 52 million tonnes of gross capacity additions are currently underway and could come on stream during the three-year period of 2018-20. An additional 39 million tonnes of capacity additions are currently in the planning stages for possible start-up during the same time period".

⁽⁶⁶⁾ Global Forum on Steel Excess Capacity, Ministerial Report, 20 September 2018, paragraph 2.

⁽⁶⁷⁾ Definitive Regulation, table 4.

in prices (both in overall terms and when compared to evolution of costs) allowed to the Union industry to partially recover from a consistent negative financial performance in previous years. In Section 1.2.4, the Commission observed a downward trend in steel prices in the Union parallel to an increase in raw material prices.

- (69) The Commission then assessed the economic outlooks and forecasts for the period that would follow the conclusion of the investigation in order to assess the existence of a threat of serious injury, analysing a variety of specialized market sources.
- (70) In this regard, sources consistently pointed to a scenario of uncertainty and cooling down of worldwide steel demand in the near future. Worldsteel Association noted, "deceleration in steel demand will continue into 2019 (...). No deal Brexit and trade war pose risks" ⁽⁶⁹⁾. It also recalled, "While the strength of steel demand recovery seen in 2017 was carried over to 2018, risks have increased. Rising trade tensions and volatile currency movements are increasing uncertainty" ⁽⁷⁰⁾.
- (71) The OECD noted, "recovery (of steel market conditions) looks fragile because of persistent structural imbalances" ⁽⁷¹⁾. Other market sources like S&P Global Platts echoed this uncertainty sentiment in its Global Market Outlook of December 2018.
- (72) Moreover, the Global Forum on Steel Excess Capacity concluded in September 2018 "While steel market conditions have shown some cyclical recovery in 2017, the underlying trend in global steel demand remains weak and excess capacity remains significant" ⁽⁷²⁾.
- (73) In the same vein, Eurofer (an EU Steel Association), noted "(...) ongoing trade frictions with the US, and cooling global demand, suggest that external risks could continue to climb, which in turn would increase uncertainty and lead to weakening prospects for EU steel users" ⁽⁷³⁾.
- (74) Therefore, the data analysed from a variety of sources consistently showed that the expectation was that at best, a modest increase in steel consumption would take place although this was not even certain as prospects were deteriorating amid growing uncertainty. As a result, the stagnating global steel demand would make it even more likely that steel exporters would sell into the attractive Union market.

Conclusion on threat of serious injury

- (75) The data analysed in this Section confirmed that imports were very likely going to increase in relevant volumes and that import pressure was thus going to continue, both on volumes and prices, as a result of the persistent overcapacity and the increasing number of TDI measures in third countries, whose effects on exports would continue. In addition, the effects of the US Section 232 would very likely be felt more strongly as months passed by, thus adding further pressure to the Union market through an increased risk of trade diversion, the first signs of which had already materialised.
- (76) Against this background, the Commission also confirmed the opposing trends of steel and raw material prices in the second half of 2018, and the uncertain market outlook for the near future.
- (77) Therefore, in view of the elements analysed in this Annex, together with the findings in the original determination the Commission confirmed that there was a threat of serious injury and that such serious injury would have materialised if the Commission had not imposed a definitive safeguard measure.

⁽⁶⁹⁾ See Worldsteel Association – Global Steel Market Outlook – OECD Steel Committee Meeting, 17 September 2018.

⁽⁷⁰⁾ See Worldsteel Association – Worldsteel Short Range Outlook October 2018, Press Release.

⁽⁷¹⁾ See OECD Steel Market Developments, 85th Session of the Steel Committee, September 2018. See also pages 7 and 8 of OECD Global Economic Outlook, 17 September 2018, showing a downwards revision of growth expectations (also in the Union), and that "global trade had slowed amid growing trade policy uncertainties".

⁽⁷²⁾ Global Forum on Steel Excess Capacity, Ministerial Report, 20 September 2018, paragraph 2.

⁽⁷³⁾ See EUROFER – Economic and Steel Market Outlook 2018-2019, 25 October 2018.

1.3. Obligations whose effect resulted in the increase in imports

- (78) Article XIX:1(a) of the GATT 1994 stipulates, in relevant part: “[i]f, as a result ... of the effect of the obligations incurred by a [Member] under this Agreement, including tariff concessions, any product is being imported into the territory of that [Member] in such increased quantities ...”.
- (79) The product in question comprises several tariff lines ⁽⁷⁸⁾.
- (80) On all of these tariff lines, the European Union has, as a result of tariff concessions made in past rounds of multilateral trade negotiations, the tariff commitments of ⁽⁷⁹⁾:
- 0 % ad valorem
- (81) These concessions were inscribed, at the time of the safeguard determination, in Part I, Section II of the European Union's Schedule of Concessions and Commitments, certified as Schedule EU CLXXIII – European Union on 1 December 2016 ⁽⁸⁰⁾, as amended. The column for “other duties and charges” in that Schedule and regarding the above tariff lines was empty.
- (82) As a result of these concessions inscribed in the European Union's Schedule of Concessions and Commitments, annexed to the GATT and incorporated pursuant to Article II:7 of the GATT 1994, the European Union had, at the time of the safeguard determination, obligations incurred under the GATT 1994 notably as follows: Article XI:1, prohibiting non-tariff restrictions on the importation of the above-listed products, and, importantly, Article II:1(a) and Article II:1(b), first and second sentences, of the GATT 1994. Under Article II:1(b), first sentence, the EU is not allowed, absent an applicable exception, to impose ordinary customs duties on the product in question in excess of those set forth and provided in the relevant part of the EU's Schedule of Concessions and Commitments, i.e. the zero rate pointed out above for each of the tariff lines covered. At the time of the original safeguard determination as well as of the imposition of the definitive safeguard measure, the EU's applied import tariffs on the product covered by the safeguard was 0 %. In other words, for ordinary customs duties, these applied tariffs were already the maximum permitted under Article II:1(a) and Article II:1(b), first sentence, of the GATT 1994. As for other duties or charges, no flexibility existed under Article II:1(b), second sentence, for introducing additional other duties or charges than ordinary customs duties.
- (83) The product subject to the safeguard was being imported in increased quantities (as established in the definitive safeguard) as a result of the above obligations undertaken under the GATT 1994 (Article XI:1, Article II:1(a) and II:1(b), first and second sentences, of the GATT 1994), because those obligations, combined with the tariff concessions which the European Union made in the successive rounds of multilateral trade negotiations, enhanced and secured the conditions of market access for imports of the product subject to the safeguard on the market of the European Union. The above-mentioned tariff commitments of the European Union thus resulted in the increase in imports and gave no leeway for the EU to increase ordinary customs duties in lieu of introducing a safeguard measure. This simultaneously explains how the obligations in question resulted in the increase in imports that threatened to cause serious injury.
- (84) The GATT obligations specified simultaneously prevented the EU from increasing the applied import duties on the product at issue. These were thus, the European Union's “obligations of the GATT 1994 [which] constrain[ed] its ability to prevent or remedy injury from an increase in imports”. Concomitantly, the European Union “suspend[ed] those obligations as a result” of its safeguard measure.’

⁽⁷⁸⁾ See Annex I to the Definitive Regulation.

⁽⁷⁹⁾ For further details see Note to the file dated 30 November 2022, Table 5.

⁽⁸⁰⁾ WTO doc. WT/Let/1220