

EUROFER request for a continuation of the EU steel safeguard regime after three years of application

Introduction

If the EU Steel Safeguard measures end in June 2021, the EU steel industry will again be fully exposed to high volumes of cheap deflected steel imports – particularly for as long as the United States Section 232 measures continue:

- The full impact of section 232 is every year becoming more severe, as US has added significant new capacity under the umbrella of the section 232 and the windfall prices and margins that the duty generated during the first periods after implementation. These capacities are now active and displacing imports.
The negative impact for EU steel industry is double: firstly, European exports to USA – often more added value products – are reduced (-25% in 2019 before the COVID outbreak compared with 2017 before the imposition of the U.S. Section 232 measures) and secondly, third country exports to USA are deviated to Europe, in a direct or at least indirect way.
- There is also direct and indirect deflection from other countries that have overcapacity and saturated demand (which exists in all major steel markets).
- Third-country markets are increasingly closed to steel imports by TDI measures, which cover many, if not most, major developed and developing country markets. A number of third countries have imposed safeguard measures that impose greater barriers to imports than the EU's Tariff Rate Quotas (which let historical imports continue to enter duty free).
- Country-specific quotas have been used disproportionately during the course of the first quarter of the third Safeguard year (crisis quarter). In 16 of 28 product groups (57%) several countries rapidly filled up to 90% their quotas set at very high, relaxed levels in times of demand collapse indicating the enormous export capacity and pressure towards the EU market.

In short, the US Section 232 measure is a trigger, but the broader problem is persistent global overcapacity and proliferation of steel trade actions worldwide and has worsened because of the Covid-19 crisis.

The EU steel market, with its zero import tariff, is by far the biggest import market in the world (40 million tonnes of imports in 2019 followed by the U.S. with 27 million tonnes).

The EU safeguard regime has been improved over two reviews and will regain its essential function of import stabilisation as EU steel demand is recovering gradually

Having gone through two reviews, the quota management has been improved.

The more EU demand recovers, the more effective the safeguard regime becomes in stabilizing import volumes: Gradually recovering EU steel demand after the economic collapse in the second quarter of this year caused by COVID-19 will increase export pressure to the EU up to the point that exporters - aware of the end of the safeguard in June next year – will prepare for a new surge again disrupting the EU market next year.

The UK is preparing for a continuation of its own steel safeguard regime after the expiry of the EU safeguard

The UK will adopt its own steel safeguard measure as from January 2021. Also, the UK has prepared legislation to allow for a continuation of its own steel safeguard after the expiry of the EU safeguard in July 2021¹. This would mean that the UK market, after having been under safeguard protection for already 3 years (as part of the EU market), would be longer protected than the EU27 steel industry. Such situation could further increase the risk of deviation of steel trade to the EU (27)

Normal trade defence instruments are not sufficient

Anti-dumping and anti-subsidy measures cannot timely and adequately protect the EU steel industry from a new surge in imports in the above-mentioned situation.

Dumping or subsidy complaints have to be brought against countries and products individually.

Trying to replace the broad EU Steel Safeguard with anti-dumping or anti-subsidy measures would be very difficult: if measures were imposed on one country, others would fill the gap (and there is plenty of capacity worldwide to inundate the EU).

In addition, dumping and subsidy measures solve the problem of unfair pricing and subsidisation, not a volume effect like the one that the Safeguard was addressing.

Compensation is not automatic

In response to safeguard measures applied for longer than 3 years, if affected, exporting countries may adopt rebalancing measures (suspension of substantially equivalent concessions)

¹ The UK's rules on safeguards are found in the Trade Remedies (Increase in Imports Causing Serious Injury to UK Producers) (EU Exit) Regulations 2019 – which are found in S.I. 2019/449, as amended by S.I. 2019/1076, S.I. 2019/1319, and S.I. 2020/99. On 5th August, amendments to these rules came into force. Via the Trade Remedies (Amendment) (EU Exit) (No. 2) Regulations 2020 (730-2020) (part 2), available at <https://www.legislation.gov.uk/uksi/2020/730/part/2/made>. This change enables the TRA to extend the period of a safeguard measure following a transitional review (see point 8 and 9 in that regulation)

normally in the form of tariffs on certain imports of EU goods. These countries must first engage in consultation on the appropriate level of compensation.

The notion of “substantially equivalent concessions” is not defined under WTO law. It is generally understood that “equivalence” must be determined in relation to the adverse economic impact caused by the safeguard measure. Thus, affected trading partners would obtain compensation through raising tariffs on exports from the safeguard-imposing Member, proportionate to the value of trade impacted by the safeguard measure. There are, however, no specific WTO rules or guidelines on the methodology for calculating the level of compensation².

In respect of safeguard measures adopted in the form of tariff-rate quotas, like the EU steel safeguard measure, there would only be a basis for compensation for any trade volumes exceeding the allocated quotas for which duties apply.

As a general matter, it is not straightforward that EU trading partners can prove a basis for compensation, or at least not huge levels of compensation, as the EU quotas have generally been generous and relaxed, allowing historic import volumes to enter the EU without application of the out-of-quota duty.

EUROFER understands that the question of compensation rights is sensitive for the Commission and Member States. However, EUROFER requests the decision-makers not to rule out from the start a safeguard continuation because of this sensitivity. Instead, an in-depth analysis should be made of the scope of compensation rights on a product-specific basis.

² There is an ongoing WTO dispute about calculating the level of retaliation: Thailand challenged the methodology used by Turkey in determining its level of retaliation against a Thai steel safeguard measure (DS573 Turkey – Additional duties on imports on air conditioning machines from Thailand)