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Safe009R4 - Review concerning the possible extension of the definitive safeguard measure applicable to imports of certain steel products

Dear Madam/Sir,

in the above mentioned matter, our clients Wirtschaftsverband Stahl- und Metallverarbeitung e.V. ("WSM"), Industrieverband Blechumformung e.V. ("IBU") and Fachvereinigung Kaltwalzwerke e.V. (FVK) noted with concern that the Commission in its WTO notification of 10 June 2021 has announced its intention to extend the safeguard measure on imports of certain steel products by 3 years.

In view of the current market situation, which is since many months characterized by massive supply shortages and extreme price increases, the announcement of the Commission to extend the safeguard measure for a period of 3 years is incomprehensible for our clients. In particular, the unchanged maintenance of the tariff quotas would cement

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the current procurement problems and thus also the excessive price level in the EU market to the detriment of the steel processing industry.

1. Submission of IBU and FVK of 12 March 2021

Against this background, already in its submission of 12 March 2021 IBU and FVK have demanded a termination of the safeguard measure on imports of steel products, by underlining that the WTO and EU requirements for an extension of the safeguard measure are not met, because

- there is neither an import surge nor a threat of an import surge;
- there is no injury to EU steel producers caused by imports;
- given the shortage of steel, prolonging the measures would not be in the EU's interest, as these measures have already led to serious negative consequences for economic recovery of the EU steel manufacturing industries and its employment;
- there is no evidence that European steel producers have used the past three years to make the adjustments as a result of an increase of imports and
- protective measures must remain an exception limited in time and to special circumstances and must not be misappropriated.

The latest developments in the steel market since then and newly published economic data fully confirm the above observations.

This is explained below:

2. WTO / EU requirements for an extension of safeguard measures are not fulfilled

Under WTO and EU law, an extension of safeguard measures is permissible only if in addition to the requirements for an extension of safeguard measures pursuant to Art. 7 of the WTO Agreement on Safeguards and Art. 19 of Regulation (EU) 2015/478 of 11 March 2015, the legal requirements for the imposition of these safeguard measures are still met. Accordingly, an extension is legally warranted only if at the time of extension, all the conditions concerning the imposition of safeguard measures, as provided for in Regulation 2015/478, including the conduct of an investigation, are fulfilled[1].

In this respect, as already mentioned in the submission of IBU and FVK of 12 March 2021, it is a general prerequisite for the imposition or extension of safeguard measures that products are imported into the Union in greatly increased quantities and remain at a very high level. This is confirmed in Art. 15 of Regulation (EU) No. 2015/478 and Art. 13 of Regulation (EU) No. 2015/755.

Further, according to Art. 19 of Regulation 2015/478, an extension of safeguards requires that "an extension is necessary to prevent or remedy serious injury and to facilitate adjustment on the part of Union producers."

However, in the present context, the abovementioned legal requirements for an extension of safeguard measures are obviously not fulfilled. This will be outlined in greater detail in the following.

<u>a) No absolute or relative increase in imports</u>

An essential condition for the imposition or extension of safeguard measures is an increase in imports from third countries. As the Commission itself noted in its notification to the WTO of 10 June 2021, however, EU steel imports decreased substantially by 27% between 2018 and 2020 (Table 5, page 3) In 2020, import volumes even reached their lowest level since 2014 (Table 6). If the Commission, nonetheless, labels the import level as "high", this purely subjective - and not further substantiated - assessment is not admissible for the extension of safeguard measures.

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[1] Krenzler/Herrmann/Niestedt, EU- Außenwirtschafts- und Zollrecht, Einfuhr-VO, Art. 19, sidenote 6

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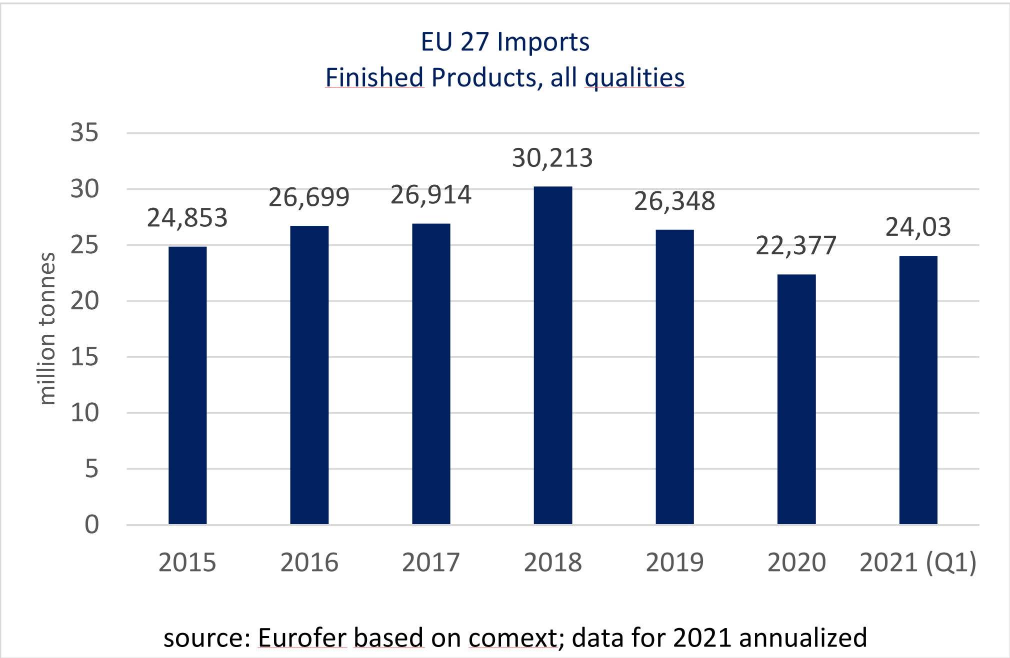
In addition to the general decrease of imports, also the market share of imports has fallen from 20.4% in 2018 to 17.9% in 2020 and the share of imports relative to domestic production even dropped from 17,1% in 2018 to 14,8% in 2020. Therefore, there has been no relative increase in imports either, since imports have decreased at a greater rate than deliveries by EU manufacturers to the EU market.

With regard to the Commission's reference to the decrease of production volume of EU producers in Table 6 of the WTO notification, this reference is only of limited significance with regard to the effect of imports, since the production volume depends heavily on the exports of EU producers and their competitiveness on the world market. Nevertheless, it can be seen that the production volume of EU producers fell only by 16% between 2018 and 2020, which is a significantly lower decrease than the decrease of import volume (27%) in the same period.

An analysis of the available figures for Q1 2021 shows that imports are still at a low level compared with imports in the years since 2015. Clearly, a sharp increase of imports has not taken place.



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It is correct, however, that during the period considered, the quarterly tariff quotas for particular products from certain countries were regularly exhausted and this in some cases at an early stage. This is especially true for the current phase of strong demand recovery in the EU, which can be observed since Q4 2020.

Nevertheless, and contrary to the Commission’s view, this fact cannot serve as evidence of an impending surge of imports. Rather, it proves that the Commission's approach of establishing a tight and short-termed import control system instead of a general limitation of import volumes has completely failed. Import decisions of EU consumers are based on their current needs, on availability in the EU and on the import market, as well as on quality requirements and price ratios. All of these factors are changing at a rapid pace, and the pace of change has increased again as a result of the Corona crisis. The quarterly allocation of quotas unacceptably restricts flexibility and planning security for importers and users, and has an import-inhibiting effect due to the high level of bureaucracy involved. Therefore, the Commission’s attempt to protect "historical" supply volumes by allocating quotas on a country-specific basis is not compatible with the needs of a dynamic market economy. Rather, this approach has led to the result that some tariff quotas are exhausted almost immediately after its opening, whereas other quotas are hardly used at all.

Accordingly, for example, in the second quarter of 2021 the tariff quota for imports from India in product category 1 was exhausted on the first day, whereas the tariff quota for imports from Serbia still is far from being exhausted. Likewise, in category 4B, a large volume of the tariff quota for India is still available, whereas the tariff quota for South Korea is nearly exhausted. The same is true for product category 2, where the tariff quota for Ukraine was critical in Q1 2021, while the quotas for the other countries were used only in a very limited way.

This list could be continued for a large number of products used by the steel processing industry. Indeed, the members of our clients have repeatedly reported that material available in certain supplier countries cannot be imported because of the exhaustion or near exhaustion of tariff quotas, while at the same time, the tariff quotas for other countries are largely open, but no offers for deliveries from suppliers in these countries can be obtained. Generally speaking, therefore, one has to note that on the world market, availabilities are limited and change quickly. For that reason, it is not possible to require the market to stick to the "historical" trade flows and import levels from 2015 to 2017 – as has been done by the current safeguard measure, nor is it possible to prescribe a continuation of the market situation from 2018 to 2020.

It follows from this that the very bureaucratic safeguard-system and, in particular, the allocation of tariff quotas on a quarterly and country-specific basis, prevents importers from responding quickly and flexibly to short-term availabilities on the world market. This has a negative effect on the supply of EU consumers and has contributed significantly to the current shortages in supply, from which many EU industries suffer.

In addition to the above, it must be noted that the argument of a possible import increase in the future has become more and more unlikely in recent months. In particular, the Chinese government has abolished existing export rebates for most steel products with effect from May 1, 2021.[2] This is in line with the objective to reduce China's exports repeatedly announced by China at the highest political level. Additionally, Chinese steel exports have already decreased by approx. 50 % between 2015 and 2020, proving that the intention to reduce exports is genuine and has demonstrably been practised by China for years.

An additional indicator that there will be no surge of steel imports in the future is the latest negotiations between the USA and the EU on the reduction of the mutually existing trade restrictions.[3] In that respect, we quote from a joint statement of 15 June 2021, in which the USA and the EU stated:

[2] https://www.mysteel.net/article/5022956-05/BREAKING-NEWS--China-cancels-steel-export-tax-rebates.html
[3] https://www.whitehouse.gov/briefing-room/statements-releases/2021/06/15/u-s-eu-summit-statement/, see point 21

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> *"In this regard, we are determined to work together to resolve tensions arising from the U.S. application of tariffs on imports from the EU under U.S. Section 232, and will work toward allowing trade to recover from its 2020 lows and ending the WTO disputes"*

Thus, there is a realistic possibility that U.S. import tariffs on steel imports from the EU – which were the trigger of the EU safeguard measure in 2018 - may be eliminated in the near future.

Finally, it should be noted that steel is currently in short supply worldwide and prices are at unprecedentedly high levels (see below for further details). Global stocks are exceptionally low, so the threat of a flood of imports into the EU can be virtually ruled out.

b) No injury caused by imports; economic situation of producers clearly improved

Since demonstrably, according to all figures available, imports of steel products have decreased significantly since 2018, both in absolute and relative terms, it is clear that the negative evolution of some injury indicators for the EU steel industry between 2018 and 2020 cannot be attributed to the development of imports.

Rather, the deterioration in some indicators identified by the Commission for 2019, such as sales prices, production volume and profitability is clearly due to lower consumption combined with the overcapacity of EU producers. Moreover, there is no question that in 2020, the collapse in demand and production resulted from the COVID-19 crisis, which was the key factor responsible for the deterioration of the situation of EU steel producers.

Finally, according to the figures presented by the Commission the market shares of EU producers have increased between 2018 and 2020, which makes is not understandable that nonetheless, the Commission blames the import development as cause for the deterioration of some economic indicators. In this context, we may strongly emphasize that the instrument of safeguard measures must not be used to protect EU producers from international competition or to guarantee market shares and certain levels of profitability of the EU producers.

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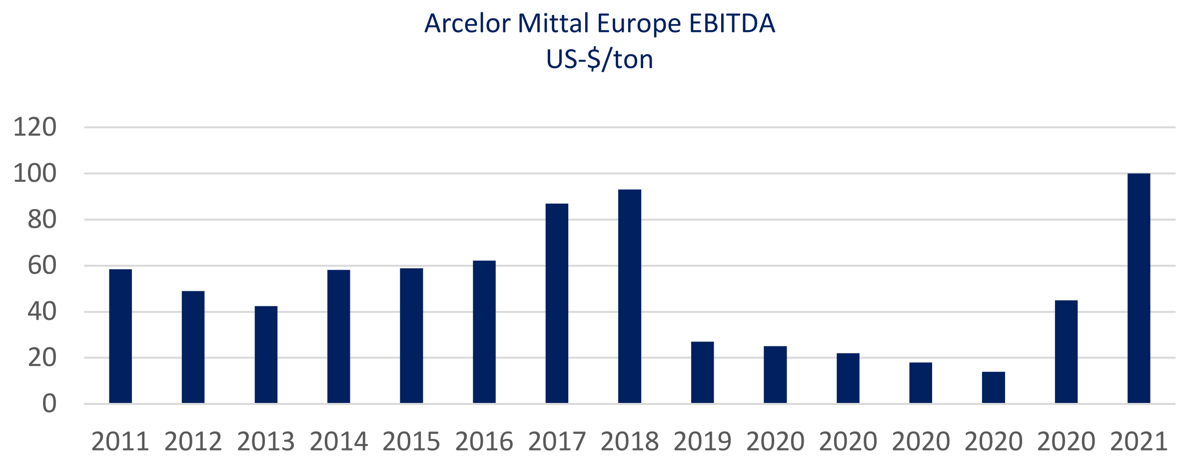
Just as importantly, we may underline that the economic situation of EU manufacturers has improved strongly since the 4th quarter of 2020 at the latest. As evidenced by corporate results published by numerous leading EU steel producers for Q1 2021, the economic situation is currently even better than it has been for a long time This is exemplified by the results of the EU's largest steel producer ArcelorMittal, which holds a market-leading position in both flat products and long products:



Source: ArcelorMittal financial reports; https://corporate.arcelormittal.com/investors

The figures show that the EBITDA margin per ton of steel in Q1 2021 reached its highest level in at least ten years. Quarterly and financial market releases by other manufacturers also show a significant increase in profitability and very positive outlooks for further business development.

We therefore urgently recommend to take into account not only the economic development up to 2020, but also the current situation of EU steel producers when deciding on a possible extension of the safeguard measures.

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c) No adjustment of EU steel industry to changed conditions

As mentioned already in the submission of IBU and FVK of 12 March 2021, the objective of safeguard measures is to give the industry a temporary breathing space to make necessary adjustments - safeguards always come with an obligation to restructure. Thus, according to WTO requirements, as a condition for the extension of safeguard measures, the Union industry has to prove that it has adapted to the changed situation and has made appropriate adjustments. However, this proof has not been provided so far, in particular it cannot be inferred from Eurofer's submissions in the present investigation.

It is therefore incomprehensible how the Commission comes to a contrary conclusion under point 11 of its WTO notification dated 10 June 2021. In particular, the most important step to adjust to structurally higher import volumes would be a reduction of the EU's production capacity. However, as the Commission itself notes in Table 1 of the WTO notification, the EU's production capacity fell by only about 0.2% between 2018 and 2020 to 251.864 million tons. This barely significant adjustment is surprisingly low against the backdrop of the import crisis repeatedly invoked by the Commission. If the EU producers have therefore not found it necessary to reduce their production capacity, this confirms that a) there was no surge of imports that would have necessitated a reduction in capacity and b) that, contrary to the Commission's finding, no adjustments were made by the EU producers.

d) Extension of safeguard measure is not in the interest of the Union

In addition to the conditions for an extension of safeguard measures outlined in Regulation (EU) No. 2015/478 and Regulation (EU) No. 2015/755, any extension of safeguard has to be in the Union interest. This is confirmed in Recital 11 of Regulation (EU) 2015/478.

A determination as to whether the Union interest calls for a prolongation shall be based on an appreciation of all the various interests taken as a whole, including the interests of the domestic industry and users and consumers. Measures may not be extended in time where the European authorities, on the basis of all the information submitted, can clearly conclude that it is not in the Union interest to extend such measures.

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With regard to the Union interest, it is important to note that with around 3,500,000 employees in over 382,000 companies, the EU's metalworking sector is ten times larger than the steelmaking sector. Compared with the steel industry, the metalworking sector's value added is around eight times higher. This sector, which is subject to global competition, is dependent on an adequate supply of steel at internationally competitive prices. However, an adequate supply at competitive price has not been taken place for many months already.

In this respect, IBU and FVK pointed out in their submission of 12 March 2021 that a threatening shortage in supply has arisen on the EU steel market. This is due to the fact that after the economic recovery from the Corona crisis, the EU steel production has not picked up as strongly as the demand from steel users. The situation has become even worse in the past three months.

Indeed, almost all of our clients' member companies report shortages and delays even in existing supply contracts. Suppliers' delivery shortfalls cannot be compensated for because hardly any material is available on the spot market. Requests for additional deliveries cannot be responded. In many cases, delivery times from EU mills extend into 2022, making it very difficult to obtain binding delivery commitments for the desired quantities. Again and again our clients hear that steel is no longer sold but allocated.

The current situation goes far beyond the usual fluctuations on the steel market. Rather, a dangerous supply crisis has emerged, threatening the economic recovery in the industry and causing existential problems for many steel processors. A recent survey by the steel and metal processing trade association concluded that the steel shortage threatens current production at 89 % of EU steel processors. Subject to this shortage, a percentage of 87% of these companies already had to deal with delays in deliveries to their own customers.

As a result, the steel shortage not only threatens the functioning of industrial supply chains and the supply of end users, but has also become a real threat to the economic recovery of the EU. As the following chart shows, using Germany as an example, steel

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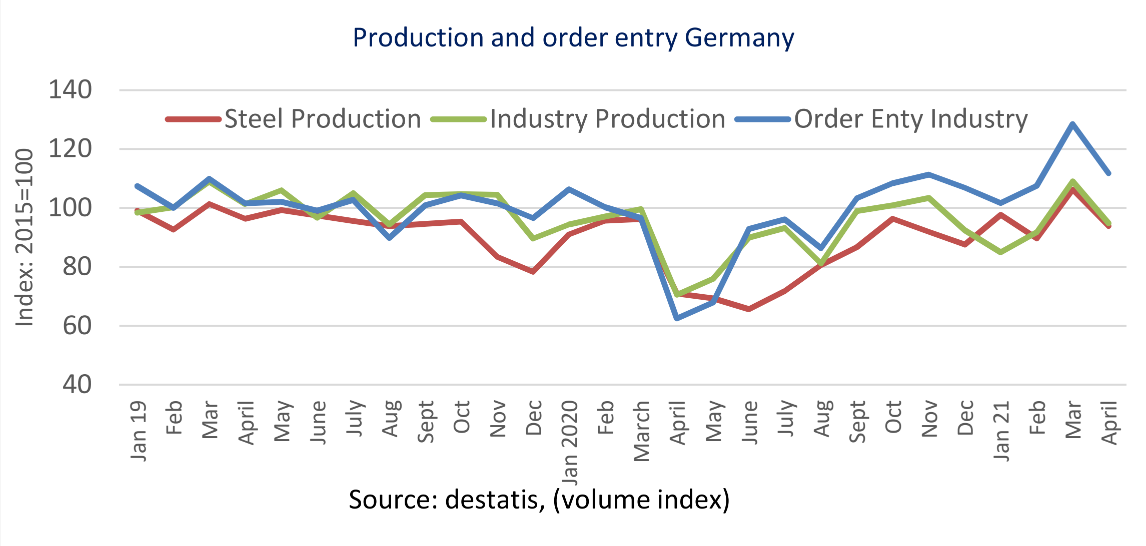
production has been lagging behind the orders of the manufacturing industry already since mid-2020. As a consequence of this, the gap between order intake and production in the industry has been widening.



It should be obvious that the abovementioned development jeopardizes the economic recovery and employment in the EU, which has been confirmed by numerous research institutes. This issue is also increasingly being discussed in public, with the steel shortage not being the only reason for the current impairments, but nevertheless being consistently named as one of the key materials affected.[4] For example, the renowned ifo Institute for economic research recently lowered its economic forecast mainly because of bottlenecks in the supply of intermediate products.[5]

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[4] E.g. https://www.handelsblatt.com/politik/konjunktur/nachrichten/konjunktur-holz-eisen-stahl-preisexplosion-und-materialmangel-bedrohen-den-aufschwung-in-deutschland/27228172.html?ticket=ST-16460428-bfIBAMTYiKwmqQaLfdnV-ap3
[5] Source: https://www.ifo.de/node/63710

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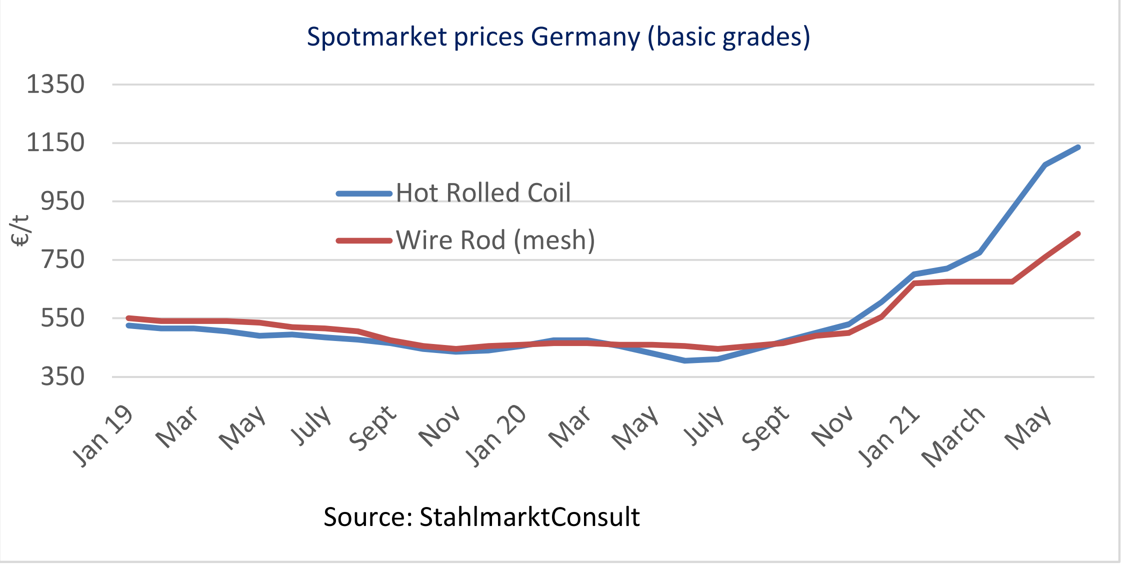
The unprecedented steel shortage has caused prices for both flat and long products to rise to equally unprecedented record levels in a very short time. Spot market prices for hot-rolled wide strip, for example, have almost tripled and those for wire rod almost doubled within a year.



With material costs typically accounting for around 60% of the production costs of steel processors, this price explosion causes considerable cost pressure for these mostly medium-sized manufacturers. Passing on these costs to customers is in most cases not possible due to existing supply contracts and a lack of market power vis-á-vis the often much larger customers. This results in massive economic problems for the steel processing industry, which currently even threatens the existence of some companies.

In this situation, it is certainly not in the EU's interest to further restrict access to imports from third countries by extending the safeguard measures by three years to 2024. As EU steel producers have been unable to supply steel in the quantities required by the market since many months, imports are the only way to alleviate the current shortage situation, which is extremely dangerous and detrimental for many EU industries.

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Already in recent months, the existing safeguard measures have restricted access to imports from third countries and contributed to shortages on the European steel market. The extent of this restriction cannot be attributed to the exhaustion of quotas alone. Rather, the design of the safeguard measures on imports of steel products is so complex that the high bureaucratic cost of checking the quotas alone prevents many importers and users from importing. Additionally, with delivery times of at least four months currently common for third-country imports, importers can hardly foresee when placing the order whether or not additional duties would be assessed at the time the goods are declared for importation. As the potential additional duties of 25% are prohibitive and exceed normal profit margins by far, this import risk discourages many importers from placing new orders.

Indeed, the feedback our clients received from their members confirmed that already the initiation of the review proceeding concerning a possible extension of the safeguard measure in February 2021 has led to a great deal of uncertainty among EU importers and users, as the legal framework for imports from July 2021 onwards became totally unclear. This uncertainty has in turn added to a decrease of import activities and thereby contributed to the current shortage in supply.

In addition, in the recent months, there have been several cases where imports could not be made because the tariff quotas have already been exhausted. This was the case for product categories 1, 2, 4A, 4B, 9, 12 and 16, all of which are of great importance for the steel manufacturing industry

Finally, our clients observed that EU producers are obviously taking advantage of the fact that in case of exhausted tariff quotas, imports are no longer possible. , For the products concerned by this, due to the lack of competition from imports, EU producers are drastically increasing the sales prices almost at their discretion.

3. Conclusion

It follows from the above that the legal requirements for an extension of the safeguard measure are not met and that an extension would clearly not be in the Union interest. We therefore urge the EU to let the safeguard measures expire by 30 June 2021. We may once again underline that safeguard measures are by design temporary measures for emergency situations. Therefore, it is not permissible that safeguard measures are used as a general instrument to support the European steel industry or to protect the EU steel industry for many years from unwelcome competition by imports from third countries.

In the event that the EU nevertheless deems an extension of the safeguard measure on imports of steel products necessary, this must be done in a way that takes into account the current market situation and the interests of the EU steel-consuming industry.

In that respect, our clients reiterate the suggestions made by IBU and FVK in their submission of 12 March 2021:

- Instead of blanket measures for the entire range of steel products, safeguard measures should only be taken for individual products in cases where the WTO conditions for these measures are undoubtedly and demonstrably met.
- In view of the current severe shortage on the European steel market, the tariff quotas for the products concerned must be increased by at least 15% in comparison to the current levels. In this context, it is pointed out that many import quotas were only slightly utilized in 2020 as a result of the sharp slump in demand in the EU. Due to the rapid recovery of the economy and very low inventory levels, however, a considerable backlog must be taken into account when assessing the quotas for 2021 and 2022. For this assessment, the import volumes of "normal" years cannot serve as a benchmark and even less the reduced import volumes in the crisis year 2020.
- In case of an extension of the safeguard measure, an unbureaucratic and flexible access to imports in accordance with the actual conditions on the world market must be warranted. The quarterly allocation of quotas is not in line with the needs of the market and must be ended. The same is true for the country-specific allocation of quotas.
- In all product categories where the EU has introduced new anti-dumping or anti-subsidy measures since 2018 or intends to open such investigations shortly, the

possible extension and design of the safeguard measures must be examined in particular detail.

- The safeguard measures must be designed in such a way that no adjustments can be made for at least 12 months, thereby ensuring legal certainty and predictability for importers and users. Every adjustment and every announcement of a review triggers new uncertainty, which must be avoided in view of the long delivery and lead times and the high cost involved in finding new suppliers.

With regard to the information presented in this submission, therefore, it is requested that the present safeguard measure on imports of certain steel products should either expire on 30 June 2021 as originally foreseen by Implementing Regulation (EU) 2019/159 of the European Commission or at least be modified in design and volume to comply with the current demand of the European market.

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