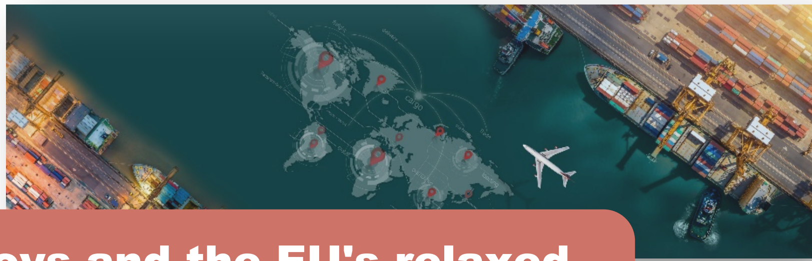

March 2026

White Paper: Ferro-Alloys and the EU's relaxed new standards for safeguard measures

Key insights

In late 2025, the EU imposed safeguard measures on ferro-alloying elements ("ferro-alloys"). This white paper considers the EU investigation and resulting implementing regulation in its broader context and offers the following key insights:

- The Commission's approach marks a departure from past practice. Whereas in previous safeguards investigations the Commission has approached its task with technical and procedural rigor, the ferro-alloys case involved a more cursory investigation of the critical economic factors that must be addressed in a safeguard investigation, weaker procedural rights for non-EU respondents during the investigation, and much more overt political influence over the results of the process.
- These and other factors leave the new EU safeguard measures open to a variety of claims under WTO safeguard disciplines, relating both to the existence of the prerequisites for safeguard measures, as well as the intensity of the measures actually applied.
- The systemic context makes this case important. At the political level, the ferro-alloys safeguards are presented as part of a broader industrial and economic-security agenda in which trade-defence instruments are being repurposed for the management of issues such as high energy prices, decarbonization costs and the green transition, supply-chain resilience and strategic autonomy, rather than to deal with the specific and defined economic phenomena that WTO rules allow Members to address through safeguard measures. If unchallenged, the weakly reasoned and procedurally unusual ferro-alloys regulation risks becoming a model for future EU investigations – and potentially for other import-sensitive economies as well.
- WTO Members need not leave this systemic shift unchallenged. Members can bring attention to problematic aspects of the ferro-alloys measures in the WTO Committee on Safeguards. They also have the option of binding WTO dispute settlement in respect of the EU's measures.

Table of contents

I. Introduction and background

The EU imposed safeguard measures on ferro-alloying elements ("ferro-alloys") on 18 November 2025.[1] Ferro-alloys are silicon- or manganese-based metallurgical materials used primarily in steelmaking and cast-iron/foundry operations. But despite their narrow and specific industrial purpose, the European Commission's approach in its safeguard investigation represents a departure from its hitherto rigorous and technical approach in the direction of greater protectionist use of safeguards as an instrument of industrial policy. The case, therefore, has broader systemic implications for WTO Members concerned about the EU's use of safeguards and other trade-defence instruments.

In this white paper, we seek to place the ferro-alloy safeguard investigation in its broader context. We first review certain legal and procedural problems with the EU measures (including potential WTO claims). We then highlight the systemic importance of the case as an example of a new, more-political and less-rigorous approach to trade defense measures. Finally, we identify options for concerned WTO members to address these systemic issues as well as concrete practical objectives.

II. An unusual approach with serious legal and procedural shortcomings

The Commission's trade-defence regulations are typically well substantiated, detailed and explicit as to the methodologies used. Thus, even though parties naturally and regularly allege shortcomings in individual cases, parties (and courts) are usually able to reconstruct the logic of key findings even where confidentiality limits disclosure of company-specific figures. The

[1] Commission implementing regulation (EU) 2025/2351 of 18 November 2025 imposing a definitive safeguard measure with regard to imports of certain ferro-alloying elements.

2019 EU regulation imposing safeguard measures on steel products[2] (which followed provisional findings) is exemplary of past practice: it notably set out import and injury assessments that were structured across product families, supplemented by segmentation where credible claims were made. Interested parties understood key aspects and were able to engage effectively in the proceedings.

This past practice illustrates that the Commission has long sought to meet its legal obligations as an investigating authority through confining itself to a technical role – examining the economic facts and whether the legal conditions for imposing measures are met – while leaving it to the Member States to weigh political considerations when deciding whether to endorse or reject the proposed regulation.

Against that background, the ferro-alloys safeguard case stands out:

- **Cursory investigation**: *First*, the reasoning in the regulation imposing definitive measures is noticeably lighter than usual. On some critical points, the text moves quickly from assertion to conclusion, with limited explanation of the calculation methodologies the Commission used, how evidence was weighed, how alternative causes of injury were treated, or why certain arguments from interested parties were rejected.

  For example, in examining the critical issues of "serious injury" and causation, the regulation relies on a comparison of average import and EU prices (recitals 58-61) yet failed to address a number of important factors that call into question the comparisons made. Absent an adequate explanation, the Commission simply fails to show that the requisite level of injury results from increased imports.

  Moreover, while the Commission acknowledges arguments that the investigated goods comprise distinct categories with different degrees of substitutability and competitive dynamics, the published injury picture remains aggregated, with no demonstration that import pressure, price effects and injury trends align – or diverge – across the relevant product types.

  A similarly cursory approach is visible in the Commission's treatment of the "increase in imports" requirement (recitals 66-71, notably recital 70) : the regulation merely states that "it is evident that" the post-pandemic increase in imports cannot be explained by a mere resumption of global supply chains, yet it does not identify the evidence or analytical benchmark on which that conclusion is "evident", nor does it explain how competing interpretations of the trend were tested and rejected.

  The same assertion-to-conclusion pattern appears in the treatment of non-attribution factors (i.e., alternative causes of injury (recitals 72-76)): the regulation identifies energy costs as an "other known factor", but addresses them in a short, predominantly qualitative manner before concluding that no other factor attenuates the causal link between increased imports and the economic state of the EU industry. In doing so, the Commission merely asserts that high energy prices could not be reflected in sales prices because of price pressure from imports, without any supporting explanation. It also noticeably fails to mention, *inter alia*, softening in demand (identified by interested parties as another known factor) and how such other factors could have contributed to price suppression and injury to the domestic industry.

[2] Commission implementing regulation (EU) 2018/1013 of 17 July 2018 imposing provisional safeguard measures with regard to imports of certain steel products.

This approach stands in stark contrast to the Commission's approach in past cases, such as the steel safeguard, where the determination is built around 26 product categories, backed by extensive annexed material and category-level evidence, and explicitly anchored in an iterative record that included a prior provisional regulation and a more granular, table-driven assessment.

- **Lack of procedural safeguards**: a *second* atypical feature of this investigation concerns the practical inability of interested parties to engage with, and respond to, the domestic industry's case in the public file. Individual Union producers submitted non-confidential versions of their questionnaire replies (in relation to injury indicators per product category) in the form of indexes. However, without the information needed to reconstruct industry-wide injury trends (in particular, relative weights/coverage and volumes by category), it was impossible for other parties to test the indicators on which the Commission relied. Euroalliages, the trade association that requested the initiation of the investigation – uniquely positioned to compile and present an industry-wide picture in a confidentiality-preserving manner – filed a non-confidential response that was effectively blank for injury indicators. Despite requests from interested parties, the Commission did not place on the public file any non-confidential summary of its own aggregation/weighting of domestic-industry indicators. In this investigation, the only domestic-industry injury picture that could be meaningfully commented upon was the one contained in the Notice of Initiation – figures drawn from Euroalliages' request for initiation, at a stage where they had not yet been verified by the Commission.

  This problem was compounded by the evolution of scope of the product under investigation: the injury indicators in the Notice of Initiation were compiled for a *broad product definition* that included silicon metal and calcium-silicon. By contrast, these products were subsequently *excluded* from the scope of the investigation and the definitive measure. No updated, non-confidential injury indicators corresponding to the final scope were placed on the public file before adoption.

  Taken together, these elements raise serious concerns as to whether interested parties were given the opportunity to present their views, including a meaningful opportunity to respond to the presentations of other parties, as envisaged by Article 3.1 of the WTO Agreement on Safeguards (SGA).

  The contrast with the Commission's approach in earlier cases, such as the steel safeguard – where provisional measures and an iterative comment cycle facilitated earlier and better engagement with the Commission's evolving assessment – highlights that these procedural gaps were avoidable.

- **Process overshadowed by political considerations**: *Third*, the Commission's handling of the file appears to have been particularly sensitive, leading the Commission to give weight to political considerations. The final phase of the procedure, notably as regards the "Union interest" dimension, unfolded in a noteworthy manner. It became clear as the case progressed that the result would hinge on the position of industrial users, particularly the European steel industry as the main downstream user. At the outset, those users were reportedly opposed to safeguards on ferro-alloys given existing high energy prices and concern about additional costs for a steel sector already in difficulty (and itself asking the Commission for further protection). Several Member States were also said to be reluctant to endorse the measure in those circumstances. The vote in the EU Safeguards Committee (composed of representatives of Member States) was reportedly postponed by the Commission more than once amid indications that the necessary majority was not yet in place. Very shortly before the final meeting, Eurofer (the European Steel Association) then issued a public statement indicating that it now supported the safeguard, on the basis that maintaining a European ferro-alloys production chain would secure supply for EU steel. The committee subsequently voted in favor and the regulation was adopted in extremis on 18 November 2025, the very last day on which the investigation could legally still be concluded.

The evident importance of political considerations is reinforced by the regulation's framing of the Union, emphasizing "strategic autonomy" and describing the measure as a "catalyst" to strengthen Union production capabilities (recitals 82, 86 and 88).

Taken together, these elements indicate an investigation and a decision in which the political objective of adopting safeguard measures played an unusually strong role. In addition to the weakness of the Commission's analysis, this may indicate a greater willingness on the part of the Commission to stretch or ignore legal and procedural disciplines.

Notably, one EU-based trader has filed an action for annulment before the General Court of the European Union challenging the legality of the ferro-alloy safeguard measures.

III. WTO-consistency concerns

Under Article XIX:1(a) of the GATT 1994 and the SGA, a safeguard may be applied only if the competent authority demonstrates – through reasoned and adequate explanations in its published report – that, as a result of unforeseen developments and of the effect of the obligations incurred, a product is being imported in such increased quantities (absolute or relative) and under such conditions as to cause or threaten to cause serious injury to the domestic industry; and that the measure is applied only to the extent necessary to remedy the injury and facilitate adjustment.

The Commission did not provide the level of reasoning required, raising issues of compliance with Articles 3.1 and 4.2(c) of the SGA (relating to the obligation to provide reasoned and adequate explanations) and with the substantive conditions for the imposition of safeguards, as discussed below.

- **Increase in imports (SGA Article 2.1)**: the Commission's data analysis for the ferro-alloys ultimately retained in scope shows a COVID-era dip in 2020, a rebound in 2021, and then fluctuations – followed by a decline in the most recent period (MRP). In particular, imports peak in 2023 and then fall in 2024 and again in the MRP (graph at recital 32). The Commission fails to explain how this pattern reveals an increase "recent, sudden, sharp and significant enough"[3] to meet the SGA standard, because it does not clearly identify what trend break is being relied upon, nor why the end-period decline does not undercut the claimed "increase". The Commission also failed to address relevant arguments of interested parties.

- **Unforeseen developments (GATT Article XIX:1(a))**: the Commission attributes the alleged surge in imports to global overcapacity, the EU's relative attractiveness as a market, and trade-restrictive measures abroad (notably in the United States). It fails to explain why the cited developments were unforeseen in the relevant sense, nor does it demonstrate – beyond general plausibility – how these factors resulted in the concrete import trend actually observed over the period (including the end-period, marked by a

[3] Appellate Body Report, *Argentina – Footwear*, para. 131.

decline in imports). This is especially problematic given the lack of temporal coincidence between the occurrence of these alleged unforeseen developments and the increase in imports.

- **Serious injury (SGA Article 4.2(a)):** while the regulation lists a wide set of injury indicators, the reasoning supporting the conclusion of "serious injury" is thin: it moves from tabulated figures to an assertion that the industry is suffering "serious injury". It offers little explanation why the situation amounts to a "significant overall impairment" as opposed to a cyclical deterioration. In particular, several core indicators improved in 2024 compared to 2023 (production, domestic sales, market share, capacity utilization, employment), before worsening again in the MRP; the regulation notes the rebound only briefly ("recovered slightly") and does not explain why that rebound is not material to the overall assessment, or why the deterioration in the MRP should be treated as determinative rather than an outlier.

- **Causation and non-attribution (SGA Article 4.2(b))**: the Commission's "conditions of competition" story relies heavily on a single aggregated assertion of "price difference", yet the regulation does not explain how this was calculated (e.g., volume-weighting, product-mix controls, comparability across types). That methodological gap is material because the Commission's own figures show the price gap narrowing markedly (down to 5% in the MRP) while imports also declined – facts that require explanation if "price compression" is central to the injury narrative. Moreover, as noted above, the Commission's non-attribution analysis is weak, dismissing without explanation the existence and effects of "other known factors" contributing to the economic state of the EU industry.

- **Calibration and necessity (SGA Article 5.1)**: the measures imposed by the regulation combine product-type TRQs set at 25% below average imports in 2022–2024 with a variable out-of-quota duty linked to product-specific "price thresholds" (a quota cut reinforced by a price-floor mechanism). Article 5.1 of the SGA requires safeguard measures to be limited to what is necessary to remedy the serious injury found and facilitate adjustment.

  Against that requirement, two calibration issues stand out. *First*, the justification for cutting quotas below the recent-period average is framed at a high level ("sustainable market share"/recovery) without a transparent demonstration tying the chosen restrictiveness to the injury actually attributed to imports. *Second*, the price thresholds are based on a "non-injurious price" that includes a "target profit", indicated to be 12.45% (on top of industry costs, which themselves include factors such as decarbonization and ETS costs. The regulation provides limited explanation for the choice of this remarkably high profit level. It fails to address why it is necessary to remove injury, or why a level of profitability/capacity consistent with longer-term industry performance would not suffice.

The legal conditions for imposing a safeguard do not appear to be fulfilled in this case. The apparent difficulty of credibly demonstrating that those conditions were met may help to explain why, in this case, the Commission provided only limited substantiation in its regulation and left less room than usual for the due process rights of interested parties.

IV. A case with an important systemic context

This safeguard case fits into a broader shift in the EU's approach to the use of trade defence.

Recent policy documents, including the Steel and Metals Action Plan (2025),[4] explicitly present steel and non-ferrous metals as strategic sectors, central to economic security and the green transition. They identify (in addition to global overcapacity) high energy and carbon costs, the resilience of supply chains and strategic autonomy and economic security as key challenges for the sector. In that context, they refer to trade defence as part of the toolbox to address these challenges. The Action Plan cites the then-forthcoming safeguard on ferro-alloys as illustrating use of one of the tools, alongside plans to reinforce steel safeguards to support the industry and to "revamp" trade-defence instruments for this sector.

In its press release on the EU regulation imposing the definitive ferro-alloys safeguard, the Commission presented the measures as an important step "to reinforce the resilience of wider European supply chains",[5] explaining them by reference to trade diversion caused by import restrictions in other markets and global overcapacity. In a public statement, the Commissioner for Trade described Member States' vote as a "strategic decision" and "a clear demonstration of EU solidarity" that is "essential for our strategic autonomy and economic security".

Taken together, these communications confirm that the measure is understood and presented, at the political level, as part of a broader industrial and economic-security agenda in metals and steel. It is not a one-off, self-contained application of safeguards to a narrow fact pattern.

The systemic concern is, therefore, that safeguards and other trade-defence instruments are being repurposed for the management of issues such as high energy prices, decarbonization costs and the green transition, supply-chain resilience and strategic autonomy – regardless of whether the specific legal conditions for trade-defence measures are met.

If unchallenged, the weakly reasoned and procedurally unusual ferro-alloys regulation risks becoming a model for future EU investigations. Case teams and decision-makers may draw the conclusion that, in metals and steel, a relatively flexible approach to injury, causation and due process, combined with a narrative around strategic concerns is enough. That will shape not only future safeguards, but also anti-dumping, anti-subsidy and new unilateral trade defence instruments as well.

Tolerance of WTO-inconsistent safeguard measures by the EU also risks influencing the practice of other users of such protections. Notably, Australia has recently opened a safeguard investigation into certain structural steel products and safeguards. EU precedents and WTO Members' reactions to them garner attention in places like Australia. If the relaxed legal and procedural standards reflected in the ferro-alloys regulation are accepted and normalized in WTO discussions in Geneva, that could significantly erode safeguards disciplines.

V. Concerned WTO Members have options

In these ways, this EU safeguard case on ferro-alloys is a canary in the systemic coalmine.

---

[4] « A European Steel & Metals Action Plan », COM(2025) 125, 19 March 2025: https://single-market-economy.ec.europa.eu/document/download/7807ca8b-10ce-4ee2-9c11-357afe163190_en?filename=Communication%20-%20Steel%20and%20Metals%20Action%20Plan.pdf.

[5] Press release, 18 November 2025: https://ec.europa.eu/commission/presscorner/detail/en/ip_25_2698.

Members that are not directly affected by this ferro-alloys investigation – or that are not major exporters of ferro-alloys – may still have a direct stake in the precedent it sets. Many Members export products that the EU may regard as strategic, or that sit in sectors where the same structural policy pressures described above prevail (decarbonization and ETS-related costs, energy-price exposure, economic resilience, strategic autonomy). If the Commission's approach in this case becomes a workable template and accepted practice, similar reasoning and procedural shortcuts could be applied to other products in future investigations, in the EU and beyond. That wider stake makes this a Geneva file, and not simply something for attention in Brussels.

Formal engagement in the WTO elevates the issue to a broader group of WTO Members, creates an on-the-record exchange in which the EU is expected to respond to questions, and tends to generate a different level of internal attention and coordination on the EU side than informal contacts alone.

Concerned Members have two main avenues:

- WTO Committee on Safeguards: Concerned Members may intervene, follow the discussions and share insights on this safeguard case with other Members. Committee engagement draws wider Member attention, places questions and answers on the record and creates a setting in which the EU is expected to respond substantively – on scope, quota design and administration. In addition, this may trigger broader internal attention and coordination on the EU side than ad hoc bilateral exchanges.
- WTO Dispute Settlement: Requesting dispute settlement consultations and, if necessary, the establishment of a panel is a way to force the EU to defend, in legal terms, the choices made in this investigation and to confront the tension between its rhetorical commitment to the multilateral system and its current trade defence practices. Through its membership of the Multiparty Interim Appeal Arbitration Arrangement (MPIA), the EU accepts binding dispute settlement in the WTO, making this a viable option to enforce WTO rules – particularly given the apparent WTO-inconsistencies discussed above.

  Dispute settlement action puts on record, in Geneva, that the new EU approach to safeguards is contested and should not quietly become accepted practice.

  At a more practical level, a dispute can generate leverage for affected exporters while the measure is in force: once proceedings are launched, the safeguard is no longer merely an internal EU file but a live Geneva matter that will inevitably feature in bilateral exchanges and in the context of any functioning review or other reassessment, strengthening the basis for targeted requests for adjustments (for example on scope, quota design, or administration). This impact can complement litigation in EU courts.

In addition, some Members have also requested Article 12.3 consultations (Brazil, India, Switzerland), a process that can confer additional legal rights to respond to a safeguard measure. Such actions are complementary to – and do not replace – continued engagement in the Committee on Safeguards and, if needed, recourse to dispute settlement.

The authors

This white paper was co-authored by two independent trade law experts who collaborate on this topic:

Iain Sandford is the principal of Iain Sandford Legal & Dispute Resolution. He works as an independent lawyer based in Geneva. Iain specializes in international economic law, including WTO law, and has represented a diverse range of WTO Members in trade disputes in addition to serving as a WTO panelist. Iain has a broader background in domestic trade law, including safeguards and other trade remedies.

@ is@isandford.com
+41 79 277 40 59

Stéphanie Noël is an EU-qualified trade lawyer based in Geneva and the founder of S.Noël Law Office. She specializes in WTO law, including dispute settlement, and advises governments and companies on trade policy and trade-related regulatory issues. Stéphanie also focuses on trade defence proceedings, having represented both exporters and domestic industries across multiple jurisdictions. She notably represented an exporting producer in the EU ferro-alloys safeguard investigation.

@ contact@stephanienoel.com
+41 79 101 96 57