

中华人民共和国商务部

MINISTRY OF COMMERCE OF THE PEOPLE'S REPUBLIC OF CHINA

2, DONG CHANG'AN STREET, BEIJING, CHINA 100731

Non-Confidential

Comments on the Statement of Essential Facts of the Investigation into Alleged Dumping of Aluminium Extrusions from China

The Government of the People's Republic of China

On June 21, 2021, the Trade Remedies Authority (TRA) initiated the investigation into alleged dumping aluminum extrusions (Goods Concerned) from China (AD0012). On May 20, 2021, TRA disclosed the Statement of Essential Facts (SEF). The government of China (GOC) has the honor to submit the following comments.

1. Some Goods Concerned should be excluded from the investigation from the scope of the Goods Concerned and the final measures.

As stated in SEF, the TRA had determined that the Goods Concerned, falling under commodity codes: 76041010; 76041090; 76042100; 76042910; 76042990; 76081000; 76082081; 76082089; 76109090 and have a maximum cross-sectional diameter of greater than 310mm, and a weight per metre of greater than 14kg/m, are not manufactured by the UK Industry and have not or are not causing injury to the UK Industry. So the GOC believes that these products should be excluded from the scope of the Goods Concerned and the final measures.

2. Investigations on PMS and determination of normal value shall comply with WTO rules.

2.1 Export tax cannot constitute a factor for determining the existence of PMS.

As stated in SEF, the logic that TRA determined the existence a PMS in China's

primary aluminum market is *the restrictions placed on the export of these unwrought aluminium products artificially increased the domestic supply of these products, which is likely to have lowered prices and means producers of the Goods Concerned benefited from artificially lowered prices of unwrought aluminium*. According to this logic, there are tariffs on the import of aluminum extrusions in China. The import tariff restrictions artificially reduce the domestic supply of these products in China, which is likely to have lowered prices. Therefore, the domestic sales price of aluminum extrusions in China has been artificially increased. Obviously, this logic of determination is not reasonable.

The GOC needs to point out that the main purpose of imposition of export tax on specific products is to regulate the excessive and disorderly export of some products, protect China's resources and environment and ensure China's supply. The imposition of export tax has not caused the price of primary aluminum to be artificially low in terms of purpose and result. The price of primary aluminum still reflects the role of the market and does not reflect any non-commercial factors.

Another basis for imposing export tax to cause a PMS is an OECD article, but the article was published in January, 2019, and the POI of this investigation is from June 1, 2020 to May 31, 2021. This outdated article should not be used as a basis for investigating the existence of PMS.

At the same time, TRA did not use facts and data to accurately assess the impact of the export tax on supply quantity and price reduction of the primary aluminum. Obviously, TRA's conclusions are based on the speculation. SEF said the restrictions "*is likely to have lowered prices*", which indicated that the conclusion is inferred rather than determined after analyzing and evaluating the facts and data.

Therefore, export tax does not constitute a factor to determine the existence of PMS.

2.2 There was no so-called PMS in China's primary aluminum and energy fields.

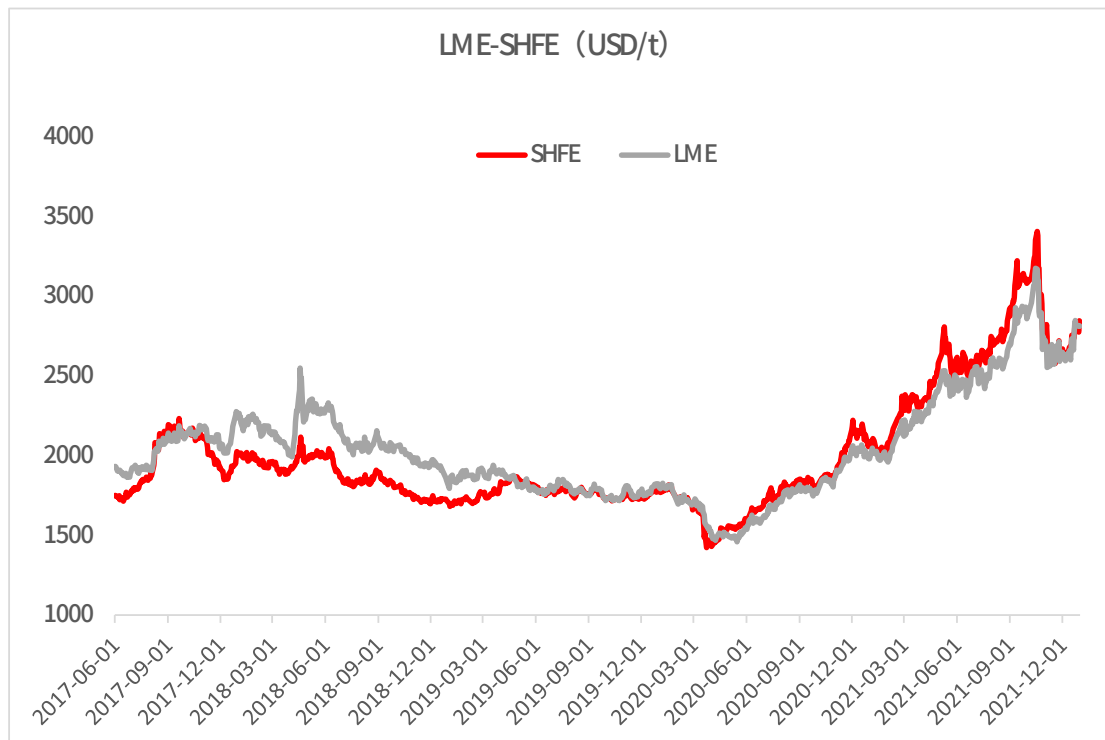
2.2.1 China's primary aluminum price was not artificially lowered.

The price of China's primary aluminum is determined by the market force. Through the comparison between the aluminum prices of Shanghai Futures Exchange (SHFE) and London Metal Exchange (LME), it can be clearly seen that China's aluminum price is in line with the aluminum price in the international market, which basically shows the characteristics of the same rise and fall, and even China's aluminum price is higher than the aluminum price in the international market.

SHFE is the second largest metal futures market in the world after LME. SHFE aluminium alloy prices are closely linked to LME exchange aluminium alloy prices, which shows the same rise and fall. In addition, SHFE prices are characterized by

openness, with foreign companies (e.g. Swiss trader Trafigura) actively participating in SHFE trading through Chinese subsidiaries and domestic brokers. As reported by the Financial Times: The price difference, or spread between the SHFE and LME, is closely watched, allowing traders and investors with access to various exchanges to take advantage of arbitrage opportunities. The introduction of night trading to the SHFE in late 2013 allows trading at the same time as exchanges in the US and Europe, giving Chinese funds and traders greater ability to influence the global price¹.

After comparing the aluminum prices of SHFE and LME, TRA found that the two prices are very close between 2017 and 2019, but the difference increases between 2020 and 2021 and the SHFE aluminum price is higher than the LME aluminum price. However, TRA believes that the reason is that the SHFE aluminum price includes VAT, while the LME aluminum price does not include VAT. The following figure shows the comparison results between SHFE-3m aluminum price after excluding 17%-13% VAT (China's VAT tax rate has been adjusted during the period) and LME-3m aluminum price.



The comparison results show that before 2019, LME aluminum price was higher than SHFE aluminum price for most of the time. Since 2020, SHFE aluminum price was basically higher than LME aluminum price. Especially during the POI, the rise and fall of SHFE aluminum price excluding VAT and LME aluminum price were basically synchronized and SHFE aluminum price was higher than LME aluminum price. The data showed that China's aluminum price was basically synchronized with the international aluminum price and was not artificially lowered, unless TRA

¹ <https://www.ft.com/content/7553f022-d6fd-11e4-93cb-00144feab7de>

<https://www.bloombergquint.com/markets/-mystery-chinese-trades-fuel-aluminum-s-biggest-gain-since-may>

believes that China's aluminum price should be significantly higher than the international aluminum price represented by LME aluminum price.

The import of China's primary aluminum during the POI in the table 1 can also prove that China's aluminum price was determined by market forces, and China's aluminum price was higher than the international aluminum price.

Table 1: The Import of China's Primary Aluminum in POI

	2020							2021					Total
	Jun	Jul	Aug	Sep	Oct	Nov	Dec	Jan	Feb	Mar	Apr	May	
Volumes (KT)	123.4	184.6	247.7	171.7	111.6	56.1	130.5	186.7	58.8	87.9	155.6	97.3	1 6 1 2

Source: Chinese Customs

During the POI, China imported a large amount of primary aluminum. The commercial activity of the importers showed that the price of primary aluminum imported from the international market was still lower than that of Chinese aluminum even after the imposition of tariffs and payment of more procurement costs. This also proved from another aspect that China's aluminum price was determined by the international market. China's aluminum price was basically synchronized with the international aluminum price and even higher than the international aluminum price during the dumping investigation. China's aluminum price was not artificially lowered.

2.2.2 There was no PMS in China's energy field.

TRA found that China's energy price setting existed at the national and local levels during the POI, and therefore concluded that this was likely causing prices to be artificially low and to reflect non-commercial factors. Similarly, the use of "*likely*" indicates that the finding is only a speculation, not a definite conclusion on the base of facts. At the same time, one of the main bases for TRA's determination of the existence of PMS in China's energy field was the relevant provisions in the Price Law of the people's Republic of China (Articles 1 and 18). The GOC reminds TRA that Article 3 of the price law also stipulates: "*The State shall introduce and gradually improve the mechanism of regulation of prices mainly through market force and under a kind of macroeconomic control. Under such a mechanism, pricing should be made to accord with the value law with most of the merchandises and services to adopt market regulated prices while only a few of them to be put under government-set or guided prices.*" The Government-guided prices or government-set prices is only a way of national macroeconomic regulation. Its purpose is to promote the healthy development of market economy, and its standard is in line with the law of value. The Government-guided prices or government-set prices will not artificially lower the price.

Therefore, the Government-guided prices or government-set prices does not necessarily cause the existence of a PMS. In fact, there is no PMS in China's energy field.

2.2.3 Reasonable price difference cannot be regarded as artificially lowered price.

Even if China's aluminum price was lower than the international aluminum price during the POI, as long as the difference was within a reasonable range, it can not simply be determined that China's aluminum price was artificially lowered based on the price difference and there was a PMS in China's primary aluminum market. Obviously, there are differences in the sales prices of the same products in different markets in the same period. For example, there are always differences in the prices of steel and aluminum in the UK, EU and US markets in the same period. Sometimes the difference is very large, but it cannot be determined that a PMS exists in the markets with lower prices. Energy prices are similar.

2.3 Even if a PMS existed in primary aluminum and energy fields, it would not affect the appropriate comparison of domestic sale prices and export prices.

Without prejudice to the above comments, the GOC believes that: assuming that China's primary aluminum and energy prices are artificially lowered and a PMS exists in these fields, but it did not hinder the comparability of domestic sale prices and export prices, TRA should not refuse to use domestic sale prices to determine the normal value.

First of all, even if there was a PMS, but it did not means that the PMS would hinder the appropriate comparison of domestic sale and export prices. Even though the prices of primary aluminum and energy in China were artificially lowered, the same Chinese producer used same primary aluminum and energy from the same source to produce the Goods Concerned for domestic sales and export, and did not use primary aluminum and energy from different sources to produce Goods Concerned due to different sales destinations. The so called "lower price" primary aluminum used in domestic and export production will have the same impact on domestic sale prices and export prices, Therefore, even if there was a PMS which would not hinder the appropriate comparison of domestic sale prices and export prices.

Secondly, even if there was a PMS, it did not necessarily lead to reject the domestic sale prices. In the Report of the Panel on Australia Anti-dumping Measures on A4 Copy Paper, the Panel said that even if PMS exists, if domestic prices are still allowed to be properly compared, domestic sale prices cannot be refused.

The GOC believes that TRA had not made an in-depth analysis and assessment on

whether and how the so called PMS in Chinese primary aluminum and energy fields affected the domestic sale price and export prices of Goods Concerned. Just simply based on the fact that the PMS in Chinese primary aluminum energy fields affects the costs and prices of Goods Concerned, TRA rejected the domestic sale prices to determine the normal value, which is inconsistent with Article 2.2 of the Anti-Dumping Agreement (ADA).

2.4 Constructing normal value should be based on the cost of the producer under investigation.

Without prejudice to the above comments, the GOC believes that: even if TRA decided to construct normal value after rejecting the domestic sale prices of Goods Concerned to determine the normal value, constructing normal value should also be based on the cost of the producer under investigation.

Article 2.2.1.1 of the ADA stipulates that in the case of constructing normal value, *"costs shall normally be calculated on the basis of records kept by the exporter or producer under investigation, provided that such records are in accordance with the generally accepted accounting principles of the exporting country and reasonably reflect the costs associated with the production and sale of the product under consideration."*

In SEF, TRA determined that *"these records conform to the generally accepted accounting principles of the exporting country, and reasonably reflect the costs associated with the production and sale of the Goods Concerned in the exporting country."*² However, TRA compared the primary aluminum and energy costs of some sampled exporters in China with the so-called "benchmark", and therefore determined that the prices of primary aluminum and energy in China were artificially lowered, and reflected non-commercial factors, so TRA adjusted the costs of primary aluminum and energy, that is, the competitive "benchmark" prices were used to replace the costs of primary aluminum and energy of some Chinese producers.

In the Report of the Panel on Australia Anti-dumping Measures on A4 Copy Paper, the Panel held that the investigating authority did not prove that the exporter's records are in accordance with the generally accepted accounting principles of the exporting country and reasonably reflected the costs associated with the production and sale of the product under consideration, the relevant section of the Final Report does not contain any finding regarding the accuracy of the exporters' records. The investigating authority rejected the relevant raw material costs of the exporter's records for other reasons. The investigating authority acted inconsistently with Australia's obligations under Article 2.2.1.1 of the ADA.³

² Paragraph 196, SEF.

³ Paragraphs 7.123, 7.124, Report of the Panel on Australia Anti-dumping Measures

In the investigation of AD0012, TRA still used the competitive "benchmark" to replace the cost of primary aluminum and energy of Chinese producers when it determined that the records of Chinese producers are in accordance with the generally accepted accounting principles in China and reasonably reflected the costs, which also acted inconsistently with Article 2.2.1.1 of the ADA.

2.5 Constructing the benchmark costs of primary aluminum and energy by data related to Brazil will artificially increase the dumping margin.

Without prejudice to the above comments, the GOC believes that there was a flaw when TRA constructed benchmark prices for primary aluminum and energy by using of data related to Brazil.

As for primary aluminum, LME primary aluminum has physical delivery warehouses in many countries or regions around the world, including Japanese warehouses close to China, and the purchase cost data delivered from major Japanese ports are also available in the LME market. Therefore, TRA could choose the regional premium data that is closest to the fact, such as the regional premium for delivery at major ports in Japan, rather than using the regional premium of Brazil which is as far away as South America, to construct the benchmark for primary aluminum in the international market purchased by Chinese manufacturers.

As for energy, Brazil's energy prices are not representative of China's energy prices. According to an article published by McKinsey & company, the energy cost of Brazil is higher than that of other countries in the world, and its power price is even higher than that of developed countries such as the United States and Canada.⁴ At the same time, the main source of electricity in Brazil is hydropower. In 2020, 58.6% of Brazil's electricity capacity came from hydropower.⁵ Hydropower generation is affected by the storage capacity, that is, affected by the season. In the dry season, the electricity price in Brazil will be unreasonably high. The main source of electricity in China is thermal power, which is hardly affected by seasons. Therefore, it was unreasonable that TRA determined the impact of a PMS on the energy prices and costs by comparing the energy price of Brazil as a "benchmark" with the energy cost of Chinese producers, and it was also unreasonable that TRA adjusted the energy cost of Chinese producers by using the energy price of Brazil.

on A4 Copy Paper.

⁴ "How Brazil can optimize its cost of energy":

<https://www.mckinsey.com/industries/electric-power-and-natural-gas/our-insights/how-brazil-can-optimize-its-cost-of-energy>

⁵ "Spotlight: Brazil's electric power generation rankings":

<https://www.bnamericas.com/en/features/spotlight-brazils-electric-power-generation-rankings>

TRA's practice not only made the determination of PMS flawed, but also artificially improved the constructed normal value, and finally artificially increased the dumping margin of Chinese producers.

3. Injury investigation is inconsistent with WTO rules.

3.1 The volumes of Goods Concerned imported from China decreased year by year during the injury investigation period.

Article 3.2 of ADA stipulates that “with regard to the volume of dumped imports, the investigating authority shall consider whether there has been a significant increase in dumped imports, either in absolute terms or relative to production or consumption in the importing Member.”

SEF showed that during the injury investigation period, the absolute and relative volume of the Goods Concerned imported from China decreased year by year.

Table 5: Absolute and relative change in total import volumes of the Goods Concerned into the UK from the PRC (June 2017 to May 2021)				
	June 2017 – May 2018	June 2018 - May 2019	June 2019 – May 2020	June 2020 – May 2021
	Year one	Year two	Year three	The POI
Import volumes from the PRC (tonnes)	54,554	47,306	41,564	35,508
Import volumes from the PRC Index (June 2017 – May 2018 = 100)	100	87	76	65
UK Industry production (tonnes)	98,150	87,632	66,106	75,083
UK Industry production Index (June 2017 – May 2018 = 100)	100	89	67	76
Imports from the PRC relative to UK production (%)	56	54	63	47
UK Industry consumption (tonnes)	201,217	193,890	177,252	191,822
UK Industry consumption Index (June 2017 – May 2018 = 100)	100	96	88	95
Imports from the PRC relative to UK consumption (%)	27	25	24	19

Source: Questionnaire responses submitted by UK producers to TRA; HMRC Overseas Trade in Goods Statistics, 2022.

The data in Table 5 of SEF showed that during the injury investigation period, the absolute quantity of the Goods Concerned imported from China decreased year by year from 54554 tons to 35508 tons, a decrease of 34.9%; The market share of the Goods Concerned imported from China relative to the UK consumption fell from 27% to 19%, down 8 percentage points. Obviously, the absolute volume of the Goods Concerned imported from China or the market share relative to the UK consumption

had not increased significantly, but had decreased significantly, which cannot have a substantive impact. TRA neglected or didn't conduct in-depth analysis of the decline in the volume of the Goods Concerned imported from China which had made the injury investigation conclusion lose the support of quantitative evidence and is inconsistent with Article 3.2 of ADA.

3.2 The difference of between Chinese imported product mix and the UK like product mix ignored by TRA had significant impact on the price comparability.

The figures from table 6 in SEF showed that during the injury investigation period, there was significant price difference between of the Goods Concerned imported from China and the UK like products.

Table 6: Average import prices from the PRC, UK average prices, and LME 3-month rate (June 2017 to May 2021)				
	June 2017 – May 2018	June 2018 - May 2019	June 2019 – May 2020	June 2020 – May 2021
Average import prices from the PRC (GBP/tonne)	1,811	2,069	2,119	2,286
Average import prices from the PRC Index (June 2017 – May 2018 = 100)	100	114	117	126
UK producer average prices (GBP/tonne)	3,152	3,543	3,444	3,345
UK producer average prices Index (June 2017 – May 2018 = 100)	100	112	109	106
Average LME 3-month rate (GBP/tonne)	1,572	1,519	1,359	1,470
Average LME 3-month rate Indexed (June 2017 – May 2018 = 100)	100	97	86	94

In Year One of the injury investigation period, the price of the Goods Concerned imported from China was only 57.5% of the price of the like products in the UK. In subsequent Years, the proportion was 58.4%, 61.5% and 68.3% respectively. It can be seen that there was significant price difference. As stated in SEF, TRA had recognized the limitations of the investigation conclusion based on the average price of all nine categories of products due to the significant diversity and quantity of product types within the Goods Concerned.⁶ Therefore, TRA had made a more detailed classification of the like products and the Goods Concerned from China. However, the subsequent price effect analysis disclosed by SEF showed that TRA did not deeply analyze the reasons for this significant difference, nor did it conduct price comparability analysis and price effect analysis between the like products and the Goods Concerned which had significant price difference and product mix difference

⁶ Paragraph 255, SEF.

on the base of more detailed grouping or classification. Instead, TRA conducted price effect analysis using the average price data across all nine commodity codes. The GOC believes that this significant price difference was likely to be caused by the significant product mix difference between the Goods Concerned and the like products. When conducting price effect analysis, TRA ignored these significant price difference and product mix difference, and simply used the average price data of all products for price effect analysis, obviously, which can not meet the requirements of price comparability under the ADA and is inconsistent with Article 3.2 and 3.6 of ADA. So the findings of price impact and causality cannot be established.

3.3 There was no correlation between the price change of the UK like products and the quantity and price change of the Goods Concerned.

The figures in table 6 of SEF showed that during the injury investigation period, the price of the Goods Concerned imported from China increased by 26%, while the price of like products in the UK increased by only 6%. TRA found that UK producers failed to achieve the expected price increase, while Chinese exporters achieved the price increase and undercut the price of the UK domestic industries. This finding was not reasonable. According to the figures in table 6 of SEF, during the injury investigation period, the price peak of similar products in the UK occurred in the Year Two, an increase of 12% compared with the Year One. In year Two of the injury investigation period, the quantity of the Goods Concerned imported from China was at a relatively high level, while the price was at a relatively low level. At the same time, from Year two to Year Four of the injury investigation period, the volume of the Goods Concerned imported from China decreased year by year, and the price increased year by year, while the price of the UK like products decreased. Therefore, there was no correlation between the price change of the UK like products and the quantity and price change of the Goods Concerned imported from China.

Meanwhile, as the figure 5 of SEF showed below, It can be found that the price change of the UK like products was basically consistent with its cost change trend. Therefore, the price of the UK like products changed with the change of cost, rather than being affected by the Goods Concerned imported from China.

Figure 5: Average prices compared to UK costs of production (£/tonne)



3.4 During the injury investigation period, the significantly increased absolute and relative import volume from RoW occupied all the market share lost by the UK domestic industry, which was the main factor to cause injury to the UK domestic industry.

Table 7 in SEF showed the market share of the Aluminium Extrusions imported from the rest of world (excluding China) to the UK and its changes.

Table 7: UK market share of Aluminium Extrusions by volume (June 2017 to May 2021)				
	June 2017 – May 2018	June 2018 - May 2019	June 2019 – May 2020	June 2020 – May 2021
The PRC market share (%)	27	25	24	19
UK market share (%)	49	45	37	39
RoW market share (%)	24	30	39	42

Source: Questionnaire responses submitted by UK producers to TRA; HMRC Overseas Trade in Goods Statistics, 2022.

During the injury investigation period, the market share of import from RoW relative to the UK consumption increased from 24% to 42% year by year. According to this data and the UK domestic consumption in Table 5, it can be calculated that during the injury investigation period, the absolute import volume from RoW increased from 48292 tons to 80565 tons year by year, an increase of 67%. In the same period, the absolute quantity of the Goods Concerned imported from China decreased year by year from 54554 tons to 35508 tons, a decrease of 34.9%; The market share of the

Goods Concerned imported from China fell from 27% to 19%, down 8 percentage points. That is to say, the decline in the sales volume and market share of the UK domestic industries is caused by the import from RoW. The decline in the sale volume and market share of the UK domestic industries and the import volume and market share of the Goods Concerned imported from China were all occupied by the imports from RoW, which resulted in the decline in the sale volume and market share of the UK domestic industries and negative impacts of the injury assessment indicators like the decline in sales revenue, profit and so on.

Therefore, during the injury investigation period the absolute and relative import volume of RoW had risen sharply, occupied all the market share lost by the UK domestic industry. The import from RoW was the main factor causing injury to the UK domestic industry. TRA ignored the actual impact of import from RoW on the decline in sale volume and market share of the UK domestic industry and the import volume and market share of the Goods Concerned imported from China. Instead, TRA wrongly attributed the injury to the UK domestic industry caused by import from RoW to the Goods Concerned imported from China, which is obviously inconsistent with Article 3.5 of ADA. So the findings of causal link and other causes of injury (non-attribution) analysis cannot be established.

4. Conclusion

Based on the above, some large Aluminium Extrusions that were not produced by the UK domestic industries should been excluded from the scope of the Goods Concerned and the final measures. Export tax cannot constitute a factor for determining the existence of PMS in China's primary aluminum market, and TRA should also draw an investigation conclusion based on facts rather than speculation. Facts show that a PMS did not exist in China's primary aluminum and energy fields. Even if the PMS existed in primary aluminum and energy, it would not affect the appropriate comparison of domestic sale prices and export prices. TRA should not reject domestic sale prices to determine normal value, but turn to construct normal value. Even if TRA intent to construct normal value it should be based on the cost records of the producer under investigation. Constructing the benchmark costs of primary aluminum and energy of the producers by data related to Brazil would artificially increase the dumping margin. The volumes of Goods Concerned imported from China decreased year by year during the injury investigation period. The difference of between Chinese imported product mix and the UK like product mix ignored by TRA had significant impact on the price comparability. There was no correlation between the price change of the UK like products and the quantity and price change of the Goods Concerned. During the injury investigation period, the significantly increased absolute and relative import volume of RoW occupied all the market share lost by the UK domestic industry, which was the main factor causing damage to the UK domestic industry. TRA should not wrongly attribute the injury to the UK domestic industry caused by import from RoW to the Goods Concerned imported from China.