NON-CONFIDENTIAL

SM0015: Tariff Rate Quota Review in the framework of the safeguard measures on certain steel products – Submission of Tata Steel UK Ltd. concerning imports of Organic Coated Steel

18 February 2022

Dear case team,

We refer to the Notice of Initiation of a Tariff Rate Quota (TRQ) review in the framework of the safeguard measures on certain steel products of 4 February 2022. Our company, Tata Steel UK Ltd. (TSUK), is an interested party in the present review, as well as in the on-going reconsideration of the safeguard measures. In addition, TSUK is the sole producer of product category D (Organic Coated Steel – OCS) in the UK, i.e. one of the three product categories subject to the present review.

In its Note to Public File of 4 February 2022, the TRA explained that the current TRQs for product categories C (Metallic Coated Steel), D and F (Railway Material) are based on incorrect import data from HMRC. With respect to OCS, the error concerned commodity code 7210 70 80 specifically. In view of this, the TRA proposes to increase the TRQs for product category D by more than 10k tonnes per annum with a total increase of more than 32k tonnes for the remaining duration of the measures. Importantly, the majority of that volume (i.e. approximately 8k tonnes per annum or 24k tonnes in total) would be allocated to South Korea's individual TRQ.

TSUK notes that the TRA had already increased the level of TRQs for product category D following the transition review of the safeguard measures concluded in July 2021. In particular, South Korea's individual TRQ for OCS went up to approximately 44k tonnes per annum from its initial level of 16k tonnes per annum (i.e. an increase of 28k tonnes or 175%). Similarly, EU's individual TRQ increased by 8k tonnes per annum. This increase took place because the TRA chose to adjust the TRQs based on the level of imports in the period of 2017-2019, while initially all TRQs were based on the historic trade flows in the period of 2015-2017.

Table 1. Increase TRQs for OCS based on the reference period of 2017-2019, '000 tonnes per annum

Exporter	2015-2017	2017-2019	Increase, %
EU	124	132	6
South Korea	16	44	175
Residual	4	9	125

Source: HMRC data, TRA's recommendation to the Secretary of State for International Trade

It must be noted that the TRA had no obligation to selectively adjust the level of TRQs, where such an adjustment based on the more recent period would lead to an increase in TRQs. While safeguard measures must be gradually liberalised pursuant to the WTO Agreement of Safeguards, the necessary liberalisation mechanism had already been in place since the original imposition of the measures by the EU (and this mechanism was also transitioned by the TRA). Despite this, TSUK did not actively oppose the increase in TRQs. The underlying reason for TSUK's position at the time was a legitimate expectation that the TRQs will not be further liberalized, apart from the annual 3% increase. However, the changes proposed by the TRA will result in a further increase in TRQs for product category D:

Table 2. Proposed changes to the TRQs for product category D, '000 tonnes per annum

Exporter	Current TRQ	Proposed TRQ	Increase, %
EU	132	136	3
South Korea	44	52	18
Residual	9	12	33

Source: TRA (SM0015 Public File Notice)

Importantly, if TSUK could have expected that the TRQs will be further increased, it would have had a significant impact on our initial position on the Statement of Indented Preliminary Decision and Recommendation to the Secretary of State. Moreover, such an increase may be possible and expected following a review of the safeguard measures if the TRA reaches a conclusion that the measures must be liberalised at a higher pace than the current rate of 3%. However, it was impossible for TSUK to predict the TRQs will be increased due to an error in the HMRC data. TSUK respectfully submits that the TRA should take this into account, as the concept of legitimate expectations has an important role in the context of international trade law. Importantly, apart from the fact that the domestic industry could not anticipate any further increase in TRQs stemming from a statistical error, the exporters of OCS were in the same position and could not legitimately expect that the TRQs will increase beyond the level of 2017-2019 and the liberalisation rate of 3%.

TSUK also notes that the proposed further increase in TRQs goes contrary to the fundamental objective of the safeguard measures, i.e. to create "*a mechanism for effective, temporary protection from imports to an industry that is experiencing serious injury or threat thereof from imports in the wake of trade liberalization*".[1] Indeed, in the present case, the TRQs for OCS have already been increased significantly (which is especially relevant in case of South Korea whose individual TRQ was increased by 175%) and the proposed changed would constitute the second increase in less than a year. While the initial liberalization of the TRQs has had a serious practical impact on TSUK's business in the domestic market, any further increase will create a trade environment which will have nothing in common with the historic trade flows, which the safeguard measures are called to secure. In practical terms, the proposed changes will have a major negative impact on the performance and sustainability of the domestic industry.

In light of the foregoing, TSUK respectfully requests the TRA not to liberalize the current TRQs for product category D beyond the existing liberalization rate of 3%.

[1] Panel Report, US – Lamb, para 7.76.

We remain at your disposal if you have any questions.

Yours faithfully,

[redacted]