

# 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 regarding the statement essential facts on  
the transition review of the anti-dumping measures on  
certain welded tubes and pipes of iron or non-alloy steel  
originating in China, Belarus and Russia (TD0001 )**

## **Submission of GOC**

The UK Trade Remedies Investigations Directorate (TRID, hereinafter TRA) initiated the transitional review of the anti-dumping measures on certain welded tubes and pipes of iron or non-alloy steel originating in China, Belarus and Russia (WTP measure) on 10 Feb 2020. On 14 May 2021 TRA released the statement essential facts (SEF) on TD0001. The Government of the People's Republic of China (GOC) would like to submit the following comments.

### **1. The maintenance or application of the EU measures by the UK lacks legal and factual basis.**

The maintenance or application of the EU measures by the UK lacks legal basis. The Brexit is that the UK withdrew from the EU, rather than the EU



was split into different entities or replaced by a succeeding entity. The very act of exit from the EU by the UK released the UK from all its rights and obligations as a former member state of the institution so the UK can not inherit the EU's rights and obligations in terms of treaties or the EU's trade remedy measures (EU measures). Similarly, the UK has no right to maintain the international agreements concluded by the EU as a contracting party. It is null and void for the UK to maintain or continue to apply the EU measures purely on the ground of its domestic legislation. The trade remedy measures are not considered as a matter suitable for inheritance or continued application in the international law, and can not be maintained or transited by the UK. The EU's Notice clearly states that *“all anti-dumping and anti-subsidy measures in force apply from 1 January 2021 only to imports into the twenty-seven Member States of the European Union”*. There is no international law or WTO rules authorizing the UK to maintain or apply trade remedy measures of other WTO members.

The maintenance or application of the EU measures by the UK lacks factual basis. An anti-dumping measures shall be applied only pursuant to investigations initiated and conducted in accordance with the provision of the Anti-Dumping Agreement (ADA), It is inconsistent with Article 1 and 5 of the ADA that the UK directly apply the EU measures without



WTO-compliant investigation. The EU existing measures are imposed based on the EU's trade remedy legislation as well as information and data from the 28 countries rather than that of the UK market only. It is inconsistent with the UK domestic law, ADA, WTO rules, spirit of procedural justice that the UK maintain the EU's measures which are based on the EU investigation data after January 1 2021.

The initiations of the transition review of the anti-dumping measures on certain welded tubes and pipes of iron or non-alloy steel(WTP), pre- and post-stressing wires and wire strands of non-alloy steel, continuous filament glass fibre products, high fatigue performance steel concrete reinforcement bars, Certain cold rolled flat steel products, the countervailing measure on continuous filament glass fibre products and safeguard measure on certain steel products are inconsistent with the ADA. These transition reviews should be conducted as *ab initio* WTO-compliant investigation. The failures to disclose the information received in the Call for Evidence and the application to initiate these transition reviews and demonstrate whether the application has been made by or on behalf of the domestic industry are inconsistent with related provisions of the ADA.



For details of the above comments, please refer to the comments submitted by GOC on April 2, 2021. GOC urges the UK to terminate the application of all the 27 EU's measures including the WTP measure in the UK and all the on-going transition review of the anti-dumping measures on certain WTP, pre- and post-stressing wires and wire strands of non-alloy steel, continuous filament glass fibre products, high fatigue performance steel concrete reinforcement bars, Certain cold rolled flat steel products, the countervailing measure on continuous filament glass fibre products and safeguard measure on certain steel products, and refund the paying firms all duties collected since 1 January 2021 when the Brexit transition period expired based on all 27 EU trade remedy measures involving products originating from China.

## **2. The comments regarding the SEF on TD0001.**

Without prejudice to the above position, GOC would like to submit the following comments on SEF.

### **2.1 TRA's determination that there are distortions in Chinese steel market lacks legal and factual basis.**

According to SEF, UK Steel stated that prices in China are affected by distortions within the labour, raw material and energy markets, mainly due to the prevalence of state-owned enterprises (SOEs) and government



control and submitted that distortions in relevant Chinese markets were found in several Australian Anti-Dumping Commission (AADC) investigations. UK Steel also referred to the European Commission working paper 'Commission Staff Working Document on Significant Distortions in the Economy of China the People's Republic of China for the Purposes of Trade Defence Investigations' (Commission Staff working Document). SEF states that TRA have assessed that there is evidence of market distortions that state control effects the prices of key inputs to WTP, such as labour, energy and hot rolled coil so TRA determined that WTP prices would probably be higher in the absence of market distortions. Regarding these statements GOC would like to submit the following comments.

### **2.1.1 Investigation on market distortions conducted by TRA has no legal basis.**

There is no legal standard of "market distortion" in the UK anti-dumping laws and other domestic laws, and also there is no relevant provisions to authorize TRA to investigate whether there is market distortion in the original country of the imported products under investigation. In TD0001, the statements submitted by the interested party regarding that the price of WTP is affected by the distortion of labor, raw materials and energy markets, and that there is distortion in China's market only refers to the



so-called conclusion of the third party, which has no legal basis, nor does it provide facts or evidence.

### **2.1.2 As a principle TRA shall fairly apply a standard.**

If the investigation authority uses a judgment standard for exporters under investigation or their home country, it shall run through the whole investigation process and apply to all interested parties, including but not limited to the evaluation of the UK and the related third country industries, and the evaluation of important determination or methods such as initiation, dumping determination, injury analysis, causal link, price comparison, and measures determination. Otherwise, it is suspected of violating the requirement of the fair procedure, the WTO principles such as national treatment, MFN treatment and relevant ADA provisions. GOC urges TRA to apply it fairly. Any discriminatory and selective application is unacceptable.

### **2.1.3 Firmly oppose discrimination based on country and ownership.**

Different countries have different economic systems and arrangements, and there is no unified or single market economy model. Each country in the world, including the UK, has enterprises with different ownership types or governance structures. It is unreasonable to determine that such enterprises will inevitably lead to serious market distortion in the relevant



industries based on the difference of national economy system, enterprise ownership types or governance structures. It is discriminatory and unacceptable to impose restrictive and punitive measures on this basis. Similarly, the existence of SOEs in China's iron and steel industry can not and should not be regarded as a direct presumption of serious distortion in China's iron and steel market and WTP market.

#### **2.1.4 China's SOEs are equal competitors in the market economy.**

China has established the market economy which market force plays a decisive role in resource allocation and which has been recognized by most countries in the world. After many years of reform, China's SOEs have become independent market entities, and they have allocated resources and carried out business in accordance with price signals. They have independently operated, self-supporting, self-supporting, self-sustaining, self-development, and participated in market competition with other ownership enterprises equally. Therefore, the SOEs in China's steel industry are the participants and competitors of market equality, and their existence have not led to and will not lead to serious distortion of the steel market and the WTP market. Chinese steel industry mainly meets domestic needs. It also imports relevant raw materials, iron and steel products from other countries, all of which operate in accordance with market-oriented principles and price signals.



### **2.1.5 The wrong conclusions of the third party are neither facts nor evidence.**

GOC and relevant enterprises do not accept the European Commission's Commission

Staff Working Document and the conclusions conducted by AADC. GOC and relevant enterprises had submitted their defense comments to the above-mentioned institutions. For example, regarding Commission Staff Working Document, GOC stated that Article 2(6a) of the Basic Regulation is not consistent with Article 2.2 and 2.2.1.1 of the ADA and decisions of the Appellate Body and panel of the WTO dispute settlement mechanism on relevant issues. Commission Staff Working Document issued against China does not represent the EU's official position. The content of Commission Staff Working Document and the ways it is used have serious factual and legal flaws, the investigation based on this should be invalid from the beginning.

### **2.1.6 GOC's 13th five-year plan is a guiding plan.**

SEF states state control is also evident in the Chinese Government's 13th five-year plan and during which the Chinese Government made efforts to increase the size of SOEs and encourage improvement in the steel industry through incentives and subsidies. The main purpose of GOC's



five-year plan is to provide a framework guidance for economic and social development during the plan period. The plans are not self-executing, but require each responsible agency to take action within its jurisdiction. Five-year Plans may be used by commercial enterprises to anticipate the direction of the economy and economic development and to make informed investments according to the anticipated direction. Just as the white paper "Industrial Strategy - Building a Britain fit for the future" released by the UK government in November 2017 is also an guiding plan, which will not cause market distortion. Therefore, TRA shall give equal treatment to China's 13th five-year plan and similar UK white paper, rather than implementing double standards.

## **2.2WTP imported from China will not cause injury to UK domestic industry.**

### **2.2.1 Market structure, trade status and information disclosure in the UK.**

SEF shows that there are only two major producers in the UK domestic industry with a market share of about 40%. The WTP imports mainly come from Turkey, the European Union, India and the United Arab Emirates. The imports from China, Russia and Belarus account for less than 3% of the UK WTP imports. TRA did not disclose detailed



information in the Call for Evidence in 2017, initiation and SEF of TD0001, nor did they explain whether there is any relationship between the manufacturers or exporters of WTP in Turkey, the European Union, India and the United Arab Emirates and the main producers, which rise doubts about the motives of the UK domestic industry's application of TD0001 and the consideration that the TRA has not disclosed the relevant data including the negligible imports from the export countries under TD0001 investigation for more than 3 years.

### **2.2.2 The imports from China are negligible during the POI.**

SEF states records negligible imports to the UK from China at the relevant 8-digit CN codes during the POI (approximately 1% of total volume of imports under those codes). Since the imports at this relevant 8-digit CN codes covers WTP, it is obvious that the imports of WTP from China shall be less, or even none. The negligible imports to the UK from China can not cause substantial injury to UK WTP domestic industry. SEF shows that the WTP imports to the UK from other countries including China, Russia and Belarus account for less than 3% of total UK's WTP imports in the same period. On the base of the information through the Call For Evidence in 2017, The decision is puzzling considering above WTP imports rate from other countries including China, Russia and Belarus when the UK decided to maintain the relevant



measures and initiate the transitional review, but did not disclose relevant information and data when initiating the review. The original EU's WTP measure achieves such a restrictive effect which makes people have huge doubts about whether the relevant measure meet the requirements of ADA on eliminating the effects of dumping or injury, that is, whether the original measure is aimed at eliminating dumping or eliminating import competition.

**2.2.3 The injury of the UK domestic industry is mainly caused by other factors such as the decline of domestic demand and exports to the third countries.**

SEF shows that during POI demand for steel in the UK fell by 5.5%, the domestic producer has declining export sales, EU Exit and COVID-19 have contributed to uncertainty in the market. TSUK also claimed that it was unable to sale WTP at higher sales prices in the UK market due to competition from other imports not subject to WTP measures. SEF also states the UK WTP industry is fragile and has suffered injury but injury has occurred in the absence of imports of the goods subject to review. TRA have assessed that other factors have caused this injury. Therefore, the injury of UK WTP industry is mainly caused by the above factors, and has nothing to do with the imports from China, Russia and Belarus.

**2.2.4 Chinese exporters have no motive to dump the WTP, if the**

**WTP measure are revoked, Chinese WTP imports will not cause injury to the UK domestic industry.**

SEF states that dumping of the goods subject to review from China will occur if the WTP measure are revoked, Chinese WTP imports likely cause injury to the UK domestic industry. The further development in infrastructure construction increase domestic demand for WTP in China. As SEF states the data shows that consumption of WTP in China has increased year on year during the POI. This increase in consumption, coupled with a decrease in exports. Chinese exporters have no profit motive to export the WTP products at dumping prices to the overseas markets including the UK. Moreover, due to the unique geographical location of the UK and the small demand scale of domestic WTP market, Chinese exporters need to ship the WTP products by very large carriers to a big port near the UK, and then transfer them to the UK by small freighter. The transportation cost is high so the export price has no advantage in the UK market, and exports to the UK don't have scale effects either. If the WTP measure is revoked, the WTP imports from China will not increase significantly, nor will it cause injury to the UK domestic industry.

### **3. Conclusion.**

The maintenance or application of the EU measures by the UK lacks legal



and factual basis. The initiation and on-going transition review are inconsistent with the ADA. TRA shall conduct the on-going and any other such review as *ab initio* WTO-compliant investigations. TRA fails to demonstrate there are serious distortions in Chinese steel market and shall Stop using or at least fairly apply the "market distortion" standard. The report from the third party or the wrong conclusions of other institutions are neither facts nor evidence for the investigation determination. During the POI the WTP imports are negligible from China, which can not cause substantial injury to UK WTP domestic industry. If the WTP measure is revoked, Chinese exporters will not export the WTP products at dumping prices to the UK markets, nor will it cause injury to the UK domestic industry.

The global economy is still recovering from the serious impact of COVID-19. In this critical period, it is particularly important to strengthen coordination and cooperation, adopt free, fair and inclusive economic and trade policies, and promote the cross-border flow of goods. The UK government attaches importance to and develops free trade, so the use of trade remedy measures should be more cautious, restrained and moderate, so as to better maintain the stability of the global supply chain and the steady recovery of the global economy.

GOC urges TRA to seriously consider the comments submitted by the Chinese government twice, terminate the application of all the 27 EU's measures including the WTP measure in the UK and all the on-going transition review of the anti-dumping measures on WTP, pre- and post-stressing wires and wire strands of non-alloy steel, continuous filament glass fibre products, high fatigue performance steel concrete reinforcement bars, Certain cold rolled flat steel products, the countervailing measure on continuous filament glass fibre products and safeguard measure on certain steel products, and refund the paying firms all duties collected since 1 January 2021 when the Brexit transition period expired based on all 27 EU trade remedy measures involving products originating from China.