



**Subject: TD0001 - Welded Tubes and Pipes originating in China, Belarus and Russia -  
Comments concerning the Statement of Essential Facts**

This submission is made on behalf of China Chamber of International Commerce (CCOIC) in response to the Trade Remedies Investigations Directorate's (TRID) findings outlined in Statement of Essential Facts Case TD0001 (SEF).

In summary, CCOIC appreciates the active efforts of the TRID in this investigation and will, as always, fully cooperate with the TRID to complete the investigation. However, CCOIC disagrees with the TRID's intended preliminary decision to recommend maintaining the anti-dumping amount of 90.6% for China. In particular, CCOIC submits the following:

- The investigating authority's obligation to investigate could not be discharged by merely asserting the unavailability of data or information;
- The recommendation to maintaining the anti-dumping amount for China cannot be based on an unreliable injury determination; and
- The TRID fails to fulfill the "general necessity requirement" and the investigation concerning China shall thus be terminated immediately.

**1. The investigating authority's obligation to investigate could not be discharged by merely asserting the unavailability of data or information.**

As provided by the Trade Bill, the TRA assumes the responsibility for conducting trade remedies investigations. This means that the TRA will determine whether the legal conditions for the application of trade remedies are met, calculate the amount of duty that may be imposed, and carry out an economic interest test to determine whether the implementation of a proposed trade remedies measure is in the wider economic interest of the UK.<sup>1</sup>

In addition, Article 11.2 of the ADA clearly stipulates the investigating authority's responsibility when it comes to the review of the investigation:

*The authorities shall review the need for the continued imposition of the duty, where warranted, on their own initiative or, provided that a reasonable period of time has elapsed since the imposition of the definitive anti-dumping duty ... Interested parties shall have the right to request the authorities to examine whether the continued imposition of the duty is necessary to offset dumping ...*  
(Emphasis added)

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<sup>1</sup> House of Commons International Trade Committee. (2021, March). *UK trade remedies policy, Third Report of Session 2019–21*, page 11.



In *Mexico — Anti-Dumping Measures on Rice*, the WTO Dispute Panel reemphasized the obligation of investigating authorities by stating that:

*Article 11.2 requires an agency to conduct a review, inter alia, at the request of an interested party, and to terminate the anti-dumping duty where the agency determines that the duty “is no longer warranted” ... Where the conditions in Article 11.2 have been met, the plain words of the provision make it clear that the agency has no discretion to refuse to complete a review, including consideration of whether the duty should be terminated in the light of the results of the review (Emphasis added).<sup>2</sup>*

Further, the Appellate Body said of Article 11 in *US — Corrosion-Resistant Steel Sunset Review* that:

*...an affirmative likelihood determination may be made only if the evidence demonstrates that dumping would be probable if the duty were terminated — and not simply if the evidence suggests that such a result might be possible or plausible.* (Emphasis added)<sup>3</sup>

CCOIC notes in the SEF, with regards to the analysis of China, the TRID repeatedly stated that since the data was not available, it is not able to reach a determination with certainty.

For instance, in paragraph 7.63, the TRID stated that “we are not able to determine with certainty whether these exports are the goods subject to review, as no Chinese producers have cooperated with this review.” Moreover, in paragraph 7.64, the TRID stated that “we do not know the exact composition of the goods that are being imported from China under the relevant 8-digit CN code. Taken together with the absence of cooperation by Chinese producers, we have been unable to definitively determine whether there have been any imports of the goods subject to review and any dumping.” Also in paragraph 7.65, the TRID stated that “in light of the negligible imports of the goods subject to review from China, and the lack of costs and sales data from exporters of the goods subject to review from China, we do not consider it appropriate to recalculate the anti-dumping amount under regulation 99A(2)(a)(i) of the Regulations.” In paragraph 7.74, the TRID stated that “we have assessed that there is evidence of market distortions. We do not know the precise effect this might have on WTP production in China due to a lack of cooperation from producers.” Finally in paragraph 7.85, the TRID stated that “we were unable to calculate a normal value for domestic sales in China. This is because we have not been able to gather detailed, or reliable data that relates directly to the costs of producing WTP in China. Neither have we been able to quantify what effects distortions in the Chinese economy has on these costs.” There is more regarding the unavailability of information that will not be enumerated here.

In light of the above, CCOIC submits that the investigating authority assumes the obligation to

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<sup>2</sup> WTO Appellate Body Report, *Mexico — Anti-Dumping Measures on Rice*, para. 314.

<sup>3</sup> WTO Appellate Body Report, *US — Sunset Review of Anti-Dumping Duties on Corrosion Resistant Carbon Steel Flat Products from Japan*, para. 111.



investigate. This could not be discharged by merely asserting the unavailability of data or information. If there are so many factual issues regarding which the TRID has no available data, how can it guarantee the reasonableness and dependability of the determination it renders?

**2. The recommendation to maintaining the anti-dumping amount for China cannot be based on unreliable injury determination;**

Under Regulation 99A(1)(b) the Trade Remedies (Dumping and Subsidisation) (EU Exit) Regulations 2019 (as amended) (the Regulations), in a transition review, the TRA must consider:

*whether injury to the UK industry in the relevant goods would occur if the anti-dumping amount or the countervailing amount were no longer applied to those goods.*

CCOIC notes that in paragraphs 2.16 and 2.17 of the SEF, the TRID made a summary regarding the injury likelihood assessment and concluded that injury would be likely to occur, if the measures were no longer applied.

However, in paragraph 8.74 of the SEF, the TRID, on the contrary, stated that “they are unable to draw a sufficiently reliable conclusion on whether potential undercutting/underselling would occur from Chinese producers if the measures were no longer apply (Emphasis added).” In the same paragraph, it instead concluded that the potential undercutting/underselling would occur from producers in Belarus and Russia as well as Severstal based on its analysis.

In such a case, firstly, CCOIC doubts how the TRID can indiscriminately conclude that injury would be likely to occur, if the measures were no longer applied without being able to draw sufficiently reliable conclusions regarding the potential undercutting/underselling caused by Chinese producers. Secondly, CCOIC reminds TRID to review carefully whether its consideration meets the conditions under Regulation 99A(1)(b) of the Regulations and Article 11.3 of the ADA. Such inconsistent and ambiguous findings are neither convincing nor acceptable. CCOIC further submits that if the TRID is unable to reach a reliable conclusion regarding whether potential undercutting/underselling would occur from Chinese producers, it could well have continued with its investigation rather than rushing to conclusions with insufficient evidence.

**3. The TRID fails to fulfill the “general necessity requirement” and the investigation concerning China shall thus be terminated immediately;**

CCOIC notes that Regulation 99A(1)(a) of the Regulations explicitly requires that the TRA:

*must consider whether the application of the anti-dumping amount is necessary or sufficient to offset the dumping of the relevant goods (Emphasis added).*

Further, this requirement echos Article 11.1 of the ADA, which permits a WTO Member to maintain an AD duty only as long as and to the extent necessary to counteract dumping which is causing



injury.

In *US — Anti-Dumping Measures on Oil Country Tubular Goods*, the WTO Dispute Panel found that the continued imposition of measures must be “necessary”. The Panel stated:

*... Article II.1 of the Agreement establishes an overarching principle for “duration” and “review” of anti-dumping duties in force. It provides that “[a]n anti-dumping duty shall remain in force only as long as and to the extent necessary to counteract dumping which is causing injury”. This principle applies during the entire life of an anti-dumping duty (Emphasis added).<sup>4</sup>*

Therefore, if the UK would like to carry over the existing EU AD measures, it must fulfill the “general necessity requirement”.

However, CCOIC notes in paragraph 7.64 of the SEF, the TRID stated that:

*As discussed, we do not know the exact composition of the goods that are being imported from China under the relevant 8-digit CN code. Taken together with the absence of cooperation by Chinese producers, we have been unable to definitively determine whether there have been any imports of the goods subject to review and any dumping. Therefore, for the purposes of this specific consideration under regulation 99A(2)(a)(i) of the Regulations, we are not able to substantively determine whether the measure is necessary to offset the dumping (Emphasis added).*

It seems that UK Steel held the same opinion as CCOIC. The former expressed its concerns over the TRID’s finding in the Statement of Essential Facts to TD0003 – PSC Wire and Strands case. Firstly, with regards to the statement that “*due to insufficient levels of imports of the goods subject to the review, analysis as to whether the measures were necessary to offset dumping was not possible,*” UK Steel commented that:

*... information such as export prices and volumes to third markets, prevalence of AD measures on the same product in other markets, spare capacity in the domestic market, and the attractiveness of the UK market can all be used to conduct this likelihood analysis and allow the investigating authority to come to a conclusion, based on the best information available, as to whether the measures are still necessary to offset dumping (Emphasis added).<sup>5</sup>*

Secondly, concerning the statement that “*8-digit commodity code data is unsuitable for use in analysis*”, UK Steel stated that:

*...it is often the case in trade remedy investigations that the product scope is at a more detailed level than 8-digit data and 8-digit data may be the only data that is*

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<sup>4</sup> WTO Appellate Body Report, *US — Anti-Dumping Measures on Oil Country Tubular Goods*, para. 115.

<sup>5</sup> UK Steel response to TD0003 - PSC Wire and Strands Statement of Essential Facts, para. 9. page 1.



*available. Indeed publicly available data from HMRC is invariably only available at the 8-digit level ... While a direct match to the granularity of the data and the scope of the investigation would be preferable, trends can still be identified, and useful analysis can still be made using a classification which to a considerable extent matches the product definition. In most cases TRID will not have the ideal data set available and will instead need to make best determinations based on the facts available (Emphasis added).*<sup>6</sup>

Based on the foregoing, since the TRID fails to substantively determine whether the measure is necessary to offset the alleged dumping, the measure is no longer warranted, and the investigation concerning China will need to be terminated immediately.

In conclusion, CCOIC understands that, as a new trade remedy investigative body and in the very first transition review, the TRID is facing an unprecedented situation and has to adapt itself gradually to the UK's parameters. Accordingly, CCOIC has been cooperating during the course of this investigation and will always do so. CCOIC welcomes any communication or dialogue with the TRID on the general issues of the investigation so as to facilitate the TRID in making a reasonable and legitimate determination.

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<sup>6</sup> UK Steel response to TD0003 - PSC Wire and Strands Statement of Essential Facts, paras 6 and 7, page 1.