

27 MAY 2020

TD0001 – COMMENTS ON THE INITIATION AND THE CONDUCTING OF THE TRANSITION REVIEW

On behalf of China Chamber of International Commerce (“CCOIC”), we hereby submit our comments against the Transition Review No.TD0001 of the anti-dumping measures applicable to imports of certain welded tubes and pipes of iron or non-alloy steel (“WPT” or “the subject goods”) originating in the Republic of Belarus, the People’s Republic of China (“China”), and the Russian Federation (“the Transition Review”) pursuant to the Trade Remedies (Dumping and Subsidisation) (EU Exit) Regulations 2019 (“the Regulations”).

The comments are submitted on the following issues:

- Consistency of the Transition Review with WTO rules and UK Trade Remedies Regulations;
- the determination of dumping;
- the injury assessment and the casual link analysis.

1. CONSISTENCY OF THE TRANSITION REVIEW WITH WTO RULES AND UK TRADE REMEDIES REGULATIONS

We understand the need of the Trade Remedies Investigations Directorate (“TRID”) to review the existing EU anti-dumping measures in the context of Brexit to prepare the departure of the UK from the EU in the ongoing transition period. In conducting the review, we respectfully request the TRID to take into consideration the fact that, following the Brexit, the UK industry has no longer been part of the EU industry in whose interest the measures subject to the Transition Review were imposed. Accordingly, a de novo determination of dumping, injury, and causality vis-à-vis the UK industry is required. In this regard, before submitting comments on the determination of dumping and injury analysis, we start with some general remarks on the initiation and the conducting of the current Transition Review.

1.1 The initiation of the Transition Review

Pursuant to Article 9(1) of Schedule 4 of the Taxation (Cross-border Trade) Act 2018, an anti-dumping investigation may only be initiated by the Secretary of State for Trade on her own initiative if both of the following conditions are met: (i) there is sufficient evidence that the goods have been or are being dumped in the United Kingdom and the dumping has caused or is causing injury to a UK industry in those goods; and (ii) the volume of dumped goods (whether actual or potential), and the injury, is more than negligible, and the margin of dumping in relation to those goods is more than minimal.

First, it's submitted that the Transition Review, by its nature, is indeed an ADA Article 5 investigation concerning the imports to the UK. On one hand, following the Brexit, the UK is no longer part of the EU Customs union, but an independent Customs territory. On the other hand, the Transition Review, notwithstanding its terminology, does not constitute a review investigation within the meaning of the ADA as a review investigation is concerning the maintain, change or repeal of the effect of an existing measure. However, no matter what the outcome of the current Transition Review is, the measure subject to the proceeding remains effective in the EU. In this regard, TRID shall demonstrate that the two conditions set in Article 9(1) of Schedule 4 of the Taxation (Cross-border Trade) Act 2018 are met to justify the initiation of the current Transition Review.

Second, even if the TRID considers the Transition Review is a proceeding within the meaning of Article 11 of ADA, it falls short of the requirement relating to the initiation of a review under Article 67(1) of the Regulations. In this connection, we recall that, in accordance with Article 67(1) of the Regulations, the Trade Remedies Authority (TRA) may initiate a review on the condition that it is satisfied that there is sufficient information substantiating the need.

In view of the foregoing, CCOIC respectfully requests the TRID to clarify the legal basis for its initiation of the Transition Review.

1.2 The conducting of the Transition Review

In accordance with Article 4.2 of the ADA, when the domestic industry has been interpreted as referring to the producers in a certain area, the anti-dumping duties shall be levied only on the products in question consigned for final consumption to that area. Moreover, the Panel in *US — Softwood Lumber*,¹ underscored the investigating authority's obligation to focus its analysis on the set of transactions in

¹ Panel report, *US — Softwood Lumber V*, para.5.44.

the segment region and found it necessary to impose the anti-dumping duties only on imports of the subject merchandise into the defined geographical market.

In addition, Article 4.1 of the ADA provides that, in exceptional circumstances, the territory of a member may be divided into two or more competing markets, and producers in each market may be considered as a separate industry. As affirmed by the Panel in *EC — Salmon (Norway)*,² where the injury caused by the dumped product is region-specific, the injury to the domestic industry shall be assessed separately in the light of market conditions in the different regions.

Based on the above, CCOIC submits that, following the Brexit, the UK forms by its own a separate domestic industry for the purposes of anti-dumping investigation and a separate Customs territory for the purposes of imposition of anti-dumping duties. Therefore, the Transition Review shall confine its scope to the UK industry and the UK market, rather than the EU industry and the EU market. In addition, as we understand that it's clear that Northern Ireland is and will remain part of the customs territory of the UK, CCOIC respectfully request the TRID to carefully examine the ultimate destination of the subject goods in the UK to specify the geographical area where the anti-dumping measure shall be extended.

2 THE DETERMINATION OF DUMPING

First, CCOIC is concerned how the TRID will identify the subject goods. As far as CCOIC is acknowledged, there are only two Chinese exporting producers that made them known to the TRID and neither of them exported to the UK during the period of review investigation ("POR"). Therefore, it's questionable whether the HS codes indicated in the Notice of Initiation are binding for the identification of the subject goods. And if it's not the case, it's followed by how to distinguish between the subject goods and non-subject goods.

In addition, CCOIC notes that there is discrepancy between the subject goods as identified by the HS codes and those as defined by the product description in the Notice of Initiation. As demonstrated below, the subject goods as identified by the HS codes do not exclude oil and gas pipes while line pipe of a kind used for oil or gas pipelines are excluded in accordance with the product description in the notice of initiation. CCOIC thus wonders how the TRID will obtain the information of

² Panel report, *EC — Salmon (Norway)*, footnote 302.

Chinese imports of the subject goods during the POR from its Customs statistics data in the absence of cooperation from the Chinese exporting-producers.

Commodity information for 7306304920

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All sections

Section XV: Base metals and articles of base metal

73 Articles of iron or steel

06 Other tubes, pipes and hollow profiles (for example, open seam or welded, riveted or similarly closed), of iron or steel

Other, welded, of circular cross-section, of iron or non-alloy steel

Other

Threaded or threadable tubes (gas pipe)

Other

Tubes and pipes of an external diameter not exceeding 168.3 mm

Commodity information for 7306304120

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All sections

Section XV: Base metals and articles of base metal

73 Articles of iron or steel

06 Other tubes, pipes and hollow profiles (for example, open seam or welded, riveted or similarly closed), of iron or steel

Other, welded, of circular cross-section, of iron or non-alloy steel

Other

Threaded or threadable tubes (gas pipe)

Plated or coated with zinc

Tubes and pipes of an external diameter not exceeding 168.3 mm

Commodity information for 7306307280

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All sections

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Other, welded, of circular cross-section, of iron or non-alloy steel

Other

Other, of an external diameter

Not exceeding 168.3 mm

Plated or coated with zinc

Tubes and pipes

Commodity information for 7306307780

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Other

Other, of an external diameter

Not exceeding 168.3 mm

Other

Tubes and pipes

Second, CCOIC will pay close attention to the TRID's methodology in the determination of the normal value of Chinese exports for the purposes of calculating the dumping margin.

Third, CCOIC notes that import data from the UK Customs contained in the submission by TMK are based on the 6-digit commodity code (i.e. 730630) rather than the 8-digit code whereas the subject goods are defined on the basis of the 8-digit commodity code. In this respect, CCOIC submits that there is significant discrepancy between the data obtained on 6-digit level, as submitted by TMK and that obtained on the 8-digit level, as in the case of the subject goods described in the Notice of Initiation. For example, in 2019, the quantity of imports from China under HS code 730630 was 7114 tonnes, while the quantity of imports from China under HS codes 73063041, 73063049, 73063072 and 73063077, which refer to the subject goods, were only 647 tonnes, representing merely 1% of the total UK imports in that year. The majority of imports from China were goods categorized under HS code 73063011, amounting for 6206 tonnes, which, however, do not fall within the scope of the subject goods. In light of these, CCOIC contests the accuracy of the data submitted by TMK, which artificially inflates the actual imports volume of Chinese products.



Import statistics under UK tariff code 73063011:

Value (£)		Net mass (kg)		Flow Type(Filtered)		Year(Filtered)		Month(Filtered)		
Import										
2019										
2018										
2017										
2016										
EU Indicator	Continent	Country	Value (£)	Net mass (kg)	Value (£)	Net mass (kg)	Value (£)	Net mass (kg)	Value (£)	Net mass (kg)
EU	European Community		..	..	..	..	..	..	..	..
NON EU	Asia and Oceania	China	6352727	6206303	6066856	6000448	4648878	4892354	3913179	4783471
		Hong Kong	..	..	..	..	34718	24324	24794	13823
		India	709598	753479	204518	291306	2408426	4007640	1989450	3676907
		Japan	2271	164	2557	184	..	..	6216	1452
		South Korea	9462	810	..	..	..	..	16873	17402
		Taiwan	87344	46242	152141	83007	745742	365249	1007397	558885
		Total	7161402	7006998	6426072	6374945	7837764	9289567	6957909	9051940
	Latin America and Caribbean		..	..	..	..	9258	60	..	..
	Middle East and N Africa		..	..	..	..	42612	74920	22985	33608
	North America		58814	7231	65029	7925	55249	14926	393612	321965
	Western Europe exc EC	Norway	..	..	..	..	1727	180	..	..
		Switzerland	922194	412245	2995507	1094162	135802	50730	517739	561337
		Turkey	5614164	7632892	9055112	14295617	1637163	2783540	1804419	4051584
		Total	6536358	8045137	12050619	15389779	1774692	2834450	2322158	4612921
Total			13756574	15059366	18541720	21772649	9719575	12213923	9696664	14020434
Grand Total			13756574	15059366	18541720	21772649	9719575	12213923	9696664	14020434

Import statistics under UK tariff code 730630:

Value (£)		Net mass (kg)		Flow Type(Filtered)		Year(Filtered)		Month(Filtered)		
Import										
2019										
2018										
2017										
2016										
EU Indicator	Continent	Country	Value (£)	Net mass (kg)	Value (£)	Net mass (kg)	Value (£)	Net mass (kg)	Value (£)	Net mass (kg)
EU	European Community		..	..	..	..	..	..	..	..
NON EU	Asia and Oceania	Australia	2,069	7	..	..	..	..	..	..
		China	7,080,680	7,114,121	7,627,276	8,026,721	6,541,279	7,748,628	4,604,685	5,731,786
		Hong Kong	1,050	150	..	..	55,737	41,631	30,696	13,991
		India	7,366,723	10,236,197	9,312,151	12,722,376	11,933,313	18,929,221	8,310,199	17,322,324
		Japan	2,043,547	482,293	3,240,286	800,899	3,540,532	825,764	4,694,397	888,536
		Pakistan	500,864	700,737	213,796	326,332	142,549	244,150	338,433	788,166
		Singapore	..	..	..	..	..	..	..	..
		South Korea	24,179	4,388	3,535	376	5,473	3,249	286,802	89,901
		Sri Lanka	..	..	15,793	3,616	..	..	..	..
		Taiwan	115,163	65,352	404,338	198,622	919,811	461,484	1,082,574	590,039
		Thailand	2,753	137	1,362	76	..	..	..	..
		Total	17,137,228	18,603,382	20,838,537	22,079,018	23,138,694	28,254,127	19,394,343	25,444,663
	Eastern Europe	Azerbaijan	..	..	4,255	989	..	..	..	..
		Russia	..	..	..	..	..	..	201,645	753,548
		Total	..	..	4,255	989	..	..	201,645	753,548
	Latin America and Caribbean		1,320	116	1,337	63	9,258	60	32,539	66,101
	Middle East and N Africa		7,992,355	13,380,999	3,176,327	4,972,858	1,552,084	2,609,122	2,520,833	5,563,087
	North America		1,658,351	491,815	5,624,429	2,710,619	5,731,263	3,054,075	4,623,396	2,540,721
	Sub-Saharan Africa		41,816	46,047	98,466	110,566	66,043	84,349	178,074	375,361
	Western Europe exc EC		49,556,939	71,103,054	53,364,970	80,246,563	37,228,079	64,660,355	40,211,676	84,666,090
Total			76,388,009	103,625,413	83,108,321	110,122,676	67,726,051	98,662,088	67,162,506	119,409,571
Grand Total			76,388,009	103,625,413	83,108,321	110,122,676	67,726,051	98,662,088	67,162,506	119,409,571

Import statistics of the subject goods:

		Import		2019		2018		2017		2016	
EU Indicator	Continent	Country	Value (£)	Net mass (kg)	Value (£)	Net mass (kg)	Value (£)	Net mass (kg)	Value (£)	Net mass (kg)	
EU	European Community		0	0	0	0	0	0	0	0	
NON EU	Asia and Oceania	Australia	2069	7	0	0	0	0	0	0	
		China	566739	647612	496228	540372	487820	372398	406188	320159	
		Hong Kong	0	0	0	0	21019	17307	0	0	
		India	4981911	7362120	8041093	11353850	8494737	13603648	5127872	11707685	
		Japan	2005465	442273	2967565	623013	3397282	792534	0	0	
		Pakistan	500864	700737	213796	326332	142549	244150	338433	788166	
		Singapore	0	0	0	0	0	0	3587	44	
		South Korea	1013	136	1113	104	0	206128	36832	0	
		Sri Lanka	0	0	15793	3616	0	0	0	0	
		Taiwan	0	0	272197	115615	127639	66440	75177	31154	
		Thailand	2753	137	1362	76	0	0	0	0	
		Total	8060814	9153022	12011147	12962978	12671046	15096477	6157385	12884040	
	Eastern Europe		0	0	0	0	0	0	190464	720623	
	Latin America and Caribbean		0	0	1337	63	0	0	31725	66098	
	Middle East and N Africa		7863275	13187539	3176327	4972858	1383075	2337902	2130109	4823956	
	North America		1136033	243402	1365202	288211	1769672	381874	1753062	586409	
	Sub-Saharan Africa		41816	46047	98466	110566	66043	84349	81780	158926	
	Western Europe exc EC		26701526	45035676	26322839	47119101	23150693	45522184	21340771	54624042	
Total			43803464	67665886	42975318	65453777	39040529	63422786	31685296	74064094	

Last, pursuant to Article 2.4 of the ADA, a fair comparison shall be made between the export price and the normal value. Therefore, in view of the potential differences between the export products and the domestic like products in terms of specifications, transportation conditions and duties, CCOIC respectfully requests TRID to make adjustment for those differences to ensure a fair comparison between the export price and the normal value.

3 THE INJURY ASSESSMENT AND THE CASUAL LINK ANALYSIS

3.1 The imports from China

- The Chinese imports is negligible in terms of volume

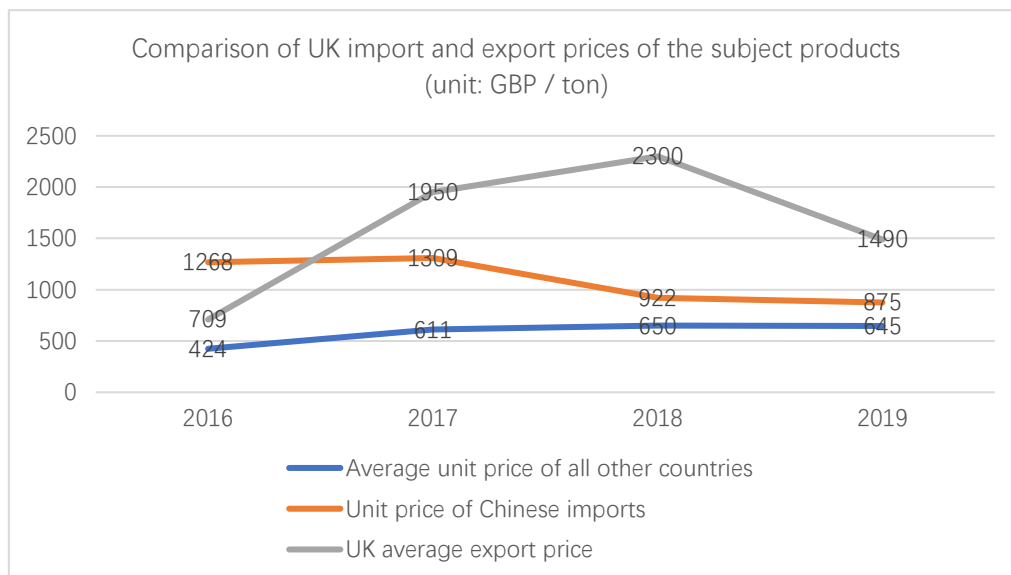
Imports under tariff codes 73063041, 73063049, 73063072 and 73063077 (in tonnes)

Item/Year	2019	2018	2017	2016
Chinese imports	647	540	372	320
Russian imports	0	0	0	720
Belarusian imports	0	0	0	0
Total imports	6767	65454	63423	74064
Share of Chinese imports	1%	1%	1%	1%
Accumulated share of imports of countries concerned	1%	1%	1%	1%

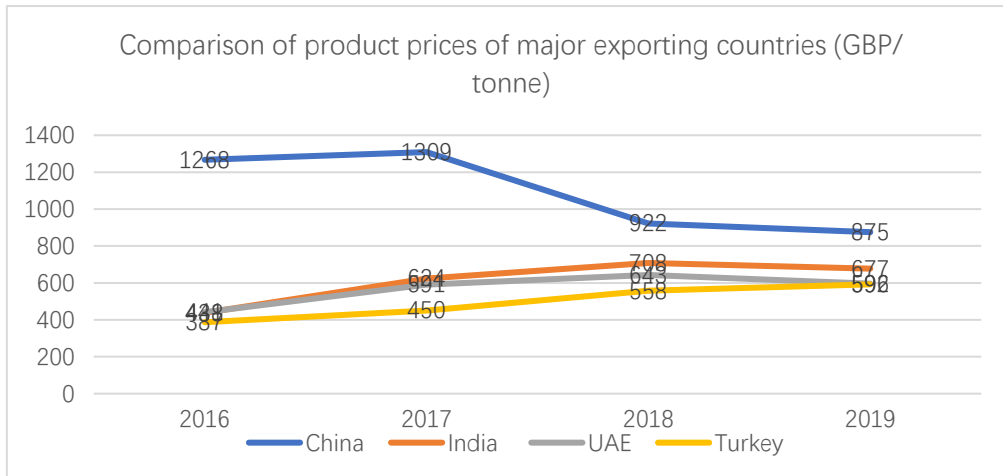
It derives from the UK Customs statistics, that during the POI, Chinese imports of the subject goods accounted for only 1% of the total imports of the UK, which were lower than threshold of 3% as defined in the ADA, and the cumulative imports from China, Russia and Belarus were also lower than the threshold of 7%. In such circumstances, immediate termination of the investigation is mandatory under Article 5.8 of the ADA and the Regulations. Hence, CCOIC requests respectfully that the current investigation shall be terminated immediately.

- The price of Chinese imports is relatively higher than other countries

According to the UK Customs data, the average unit price of Chinese imports during the POI was significantly higher than the average unit price of products from all other exporting countries.



Moreover, in the definitive regulation of the latest expiry review of the existing EU measure, the European Commission stated that Metal Bulletin reported a Chinese price level far below the average sales price of the Union industry and the average import prices into the Union from major exporting countries such as Turkey and India. It's submitted that the such information is outdated. Based on the statistics of the UK Customs, CCOIC submits that, the prices of Chinese imports have been consistently increasing and have remained higher than those of other major exporters such as Turkey, India and the UAE. In light of the above, CCOIC submits that the alleged injury suffered by UK domestic industry of the like product shall, in any event, not be attributed to the Chinese imports.



3.2 The performance of UK domestic industry

Since TRID has not disclosed any information regarding the performance of the UK domestic industry of the like product at the initiation stage, CCOIC requests the disclosure of such information to be made at the SEF stage and this shall not preclude CCOIC's right to submit comments on this matter when more information becomes available. That information shall in particular, include the non-confidential versions of the UK producers' responses to the questionnaire.

3.3 The causal link analysis

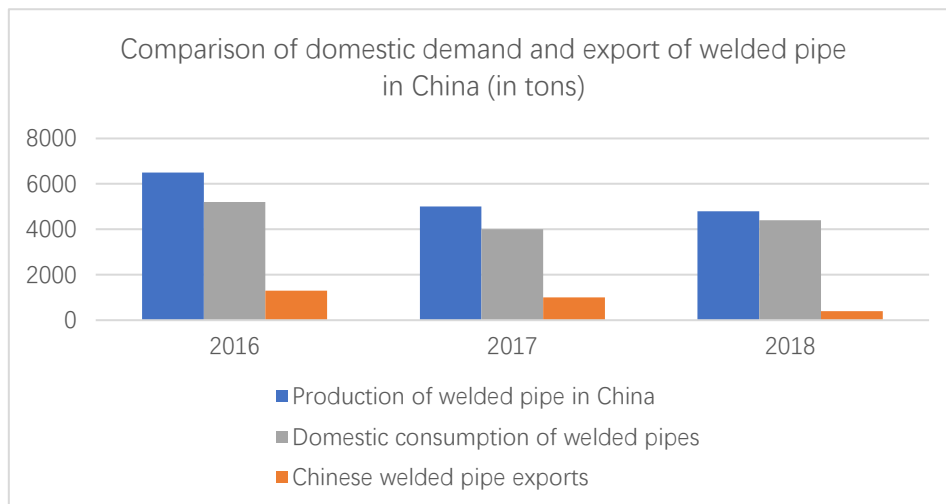
Article 11 of the ADA requires the review to assess whether the repeal of measures would be likely to lead to continuation or recurrence of dumping and injury. In this regard, CCOIC submits the following:

First, since 2008, due to the EU's continued imposition of high anti-dumping duties on Chinese products, Chinese producers have exported negligible volume to the UK in recent years, which are largely insufficient to cause injury to the UK domestic industry.

In addition, it's also noted that in the definitive regulation of the latest expiry review of the existing EU measure, the European Commission stated that the Chinese welded pipe industry had an annual output of 35 million tonnes in 2012, and the

applicant estimated that the production capacity exceeded by far 45 million tonnes per year. The total spare capacity would then exceed 10 million tonnes, which represented 25 times the total EU apparent consumption.³ In this respect, CCOIC submits that the Commission did not provided the source for those data, which called its accuracy into question. Moreover, even assuming the reliability of the above-mentioned data, given that the investigation period for injury in the present Transition Review is 2016-2019, much later than the period concerned of the abovementioned review, those data are largely outdated which can no longer be relied upon in the present investigation.

CCOIC submits that, after 2016, China's welded pipe industry production remains stable with a slight decline, and those products have been largely consumed on the domestic market. In 2018, for example, welded pipe production was about 48 million tonnes, while domestic consumption accounted for more than 92%, reaching 44 million tonnes, and exports accounted for only 4 million tonnes, targeting the Asian market.⁴

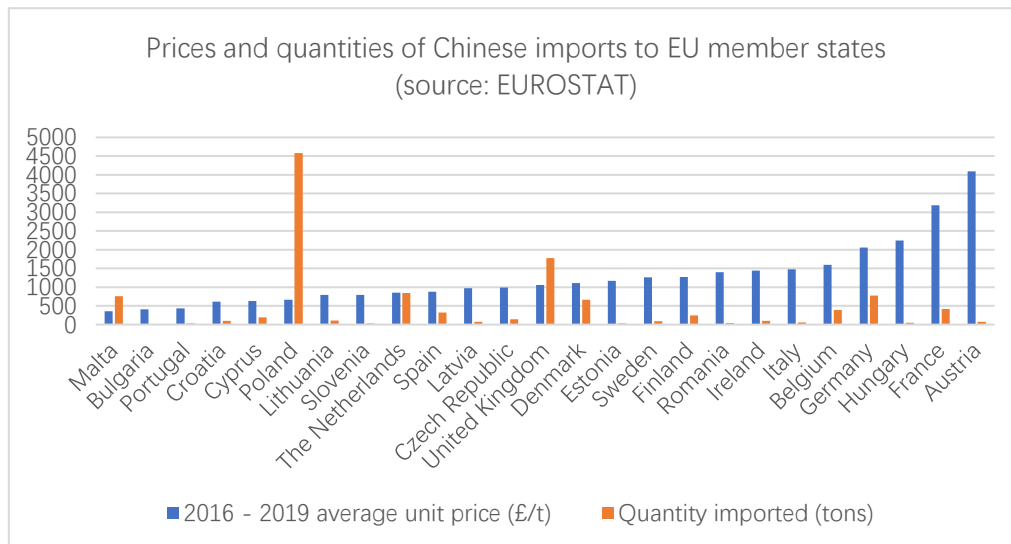


³ COMMISSION IMPLEMENTING REGULATION (EU) 2015/110 of 26 January 2015 imposing a definitive anti-dumping duty on imports of certain welded tubes and pipes of iron or non-alloy steel originating in Belarus, the People's Republic of China and Russia and terminating the proceeding for imports of certain welded tubes and pipes of iron or non-alloy steel originating in Ukraine following an expiry review pursuant to Article 11(2) of Council Regulation (EC) No 1225/2009, recital 55.

⁴ 2018 China Steel Pipe Market Outlook, https://www.sohu.com/a/306907857_649931.

As demonstrated from the chart above, during the period 2016-2018, China's welded pipe production steadily declined while the domestic consumption rebounded following a slight decrease, and production is mostly captured by the rising domestic consumption, with exports falling further. Therefore, CCOIC submits that in the case where the anti-dumping measures are repealed, Chinese imports are unlikely to cause injury to the UK domestic industry of the like product.

Second, CCOIC submits that the UK welded pipe market is not so attractive to Chinese exporting producers since the UK market does not have an advantage in terms of price and demand compared to the some EU member states, namely Poland, Germany, France and Finland.



Third, in the last five years, Chinese welded pipe products were not subject to trade remedy investigations other than those initiated in Australia and Mexico. It further confirms that the Chinese exporting producers have not constantly engaged in dumping.

Source: China Trade Remedies Information

Country	Form	Subject products	Product code	Date of initiation	Determination
Australia	Dumping and subsidisation	Precision Pipe and Tube Steel	7306.30.00.30 7306.50.00.45 7306.61.00.21	31 March 2020	
Morocco	Safeguard measures	Welded steel pipe	7305.31.10.00 7305.31.99.00 7305.39.10.00 7305.39.99.00 7306.19.10.90 7306.19.99.00 7306.30.10.99 7306.30.99.00 7306.50.10.	4 October 2019	Anti-dumping duty of 25%, valid for 200 days

			90		
			7306.50.99.00		
			7306.61.10.00		
			7306.61.90.00		
			7306.69.10.00		
			7306.69.99.00		
			7306.90.10.90		
			7306.90.99.00		
Mexico	Dumping	Carbon steel pipe	7306.19.99 7306.30.01 7306.30.99 7306.61.01	7 December 2016	Anti-dumping duty of \$0.356-0.618/kg on Chinese exporters from 9 March 2018

Based on the foregoing, CCOIC respectfully submits that:

- given the fact that the volume of the Chinese imports of the subject goods is less than 2 percent of the total imports to UK, which is considered de minimis, the anti-dumping measure against Chinese imports of WPT shall not be maintained in the UK;



- the existence of dumping and injury shall be assessed in regard to the UK industry and the UK market;
 - the determination of the normal value of Chinese companies shall be made on an objective and fair basis.
-