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 transitional review of the anti-dumping duties

on certain welded tubes and pipes of iron or non-alloy steel

originating in China, Belarus and Russia (TD0001)

Submission of GOC

The Government of the People's Republic of China ("GOC") would like to extend its compliments to the UK Trade Remedies Investigations Directorate ("TRID").

This submission is provided by GOC. By this submission, GOC would like to express its concerns and requests regarding the transition review of the anti-dumping measure on certain welded tubes and pipes from Belarus, China and Russia (WTP measure). The submission contains the following issues:

- The maintenance or application of the EU measures by the UK lacks legal basis;
- The continued application of the EU measures by the UK without WTO-compliant investigation after the Brexit transition period is inconsistent with the Anti-dumping Agreement (ADA);
- The initiation and on-going transition review TD0001 are inconsistent with the ADA;
- Conclusion.

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

1.1 The Brexit provides no international law basis for the UK to maintain or continue to apply the EU's measures.

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. That is to say, there is no relationship between the UK and the EU measures post Brexit, and the UK is not entitled to be the party of implementing or reviewing the EU measures. 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, nor does its domestic legislation bar the Department for International Trade (DIT) or TRID to conduct an *ab initio* investigation in accordance with WTO rules.

It had been proved by the facts and laws after the Brexit transition period that all treaties concluded by EU with third parties have ceased to apply to the UK, and the UK can not maintain and transit these treaties, which means that the UK must negotiate with the parties who wish to conclude the treaties with UK, just as what the UK is doing now to negotiate and conclude new trade treaties with many trading partners. The trade remedy measures are not even considered as a matter suitable for inheritance or continued application in the international law, and can not be maintained or transited by the UK.

1.2 The EU stated that all its trade measures measures in force no longer applied to the UK after the Brexit transition period.

In the EU's Notice regarding the application of anti-dumping and anti-subsidy measures in force in the European Union following the withdrawal of the United Kingdom and the possibility of a review (2021/C 18/11), it 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,*"[1] which means that the existing anti-dumping and anti-subsidy measures of the EU including the WTP measure no longer apply to the UK from 1 January 2021.

1.3 There are no laws to authorise the UK to maintain or continue to apply the EU's measures which had no longer applied to the UK.

After the end of the transition period, the UK no longer belongs to the EU Customs Union, and is a completely independent WTO member. There are no laws or WTO rules to authorise the UK to maintain or apply other WTO member's trade remedy measures like the EU's measures without WTO-compliant investigation. In order to avoid a trade defense vacuum, the UK has set forth a transition review in an attempt to make the application of the EU measures appear to be WTO-compliant. However, the

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[1] Official Journal of the European Union. (2021, January 18). EUR-Lex - 52021XC0118(05) - EN - EUR-Lex. https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:52021XC0118(05).

unilateral act or legislation does not grant the UK the right to apply the other WTO member's trade remedy measures such as the EU's measures without WTO-compliant proceedings or ratify such right.

2. The continued application of the EU measures by the UK without WTO-compliant investigation after the Brexit transition period is inconsistent with the ADA.

2.1 The application of he EU measures without WTO-compliant investigation is inconsistent with Article 1 and 5 of the ADA.

At present the UK is applying the EU measures even after the Brexit transition period. Take the anti-dumping measures as an example, as stipulated in the ADA, WTO members must meet the following conditions in order to justify the imposition of anti-dumping duties:

- an investigation shall be duly initiated and conducted in accordance with the ADA;
- based on the results of the investigation, it shall be determined that:
  (1) dumping is occurring;
  (2) domestic industry producing like goods in the importing country suffers from material injury, threat of material injury or material retardation; and
  (3) there is a causal link between the dumping and the injury.

However, no evidence with regard to the above conditions has been provided before the UK applied the trade remedy measures. It is inconsistent with Article 1 and 5 of the ADA that the UK directly apply the WTP measure without WTO-compliant investigation.

2.2 The on-going application of the EU measures to the imports to the UK lacks factual basis and is inconsistent with Articles 2, 3, 4 and 6 of the ADA.

The EU existing measures are imposed based on the EU's trade remedy legislation as well as information and data regarding domestic industry, like products, dumping margin, injury margin, causation, and public interest from the 28 countries rather than that of the UK market only. For the UK to introduce such measures, all the above need to be examined in the UK context. No review other an *ab initio* investigation can fulfil such a task.

For example, after Brexit, the market size of the EU decreases. The impacts of the

decreases in the EU's market size include (1) the initial dumping margin determination may be inappropriate, and (2) the injury determination may be inaccurate.

To facilitate the TRID's understanding of the impacts brought by a diminished market size, GOC hereby takes the current investigation as an example. In the current case TD0001, the now-effective 90.6% country-wide duty regarding the imports from China is indeed the injury margin determined by the European Commission after taking into account the information from both the sampled EU and UK producers. Specifically, a definitive sample of 9 companies was ultimately selected in the original investigation based on representativity in terms of the production and sales volumes of the welded tubes during the period of investigation (POI). [2] The sampled producers, respectively located in Czech Republic, Poland, the UK, the Netherlands, Spain, Sweden, Romania, and Italy, accounted for 67% of the total European Union production during the POI. This sample was considered representative for the examination of the possible injury to the European Union industry. In 2015, the determination was maintained in the first sunset review by taking into account the affected domestic industry. The UK producer was included in the representative sample for injury assessment. [3]

However, after the end of the transition period, the EU's injury determination including the UK producers will obviously no longer be appropriate and reasonable. The UK no longer belongs to the EU Customs Union, but a completely independent market. That means, the cornerstone of the application of the original EU anti-dumping measures has been substantially changed. No matter the alleged dumping imports, the injury suffered by the domestic industry, or the causality shall be reassessed on a case-by-case basis in accordance with the situation of the relevant market in the UK.

The UK terminated most of the EU measures after Brexit which proved that the core elements of the EU measures are huge different from that of the UK. In fact the UK was aware of the flaws as it proceeded to call for evidence some two years ago and transition the measures it deemed warranting review. And further the UK has set forth a transition review chapter in its relevant legislation, all in an attempt to make the

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[2] COUNCIL REGULATION (EC) No 1256/2008 of 16 December 2008 imposing a definitive anti-dumping duty on imports of certain welded tubes and pipes of iron or non-alloy steel, recital 20.
Https://Eur-Lex.Europa.Eu/LexUriServ/LexUriServ.Do?Uri=OJ:L:2008:343:0001:0038:EN:PDF.
https://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2008:343:0001:0038:EN:PDF

[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 12.
Https://Eur-Lex.Europa.Eu/Legal-Content/EN/TXT/PDF/?Uri=OJ:JOL_2015_020_R_0004&from=EN.
https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=OJ:JOL_2015_020_R_0004&from=EN

transition appear to be WTO-compliant. However, the above unilateral act or legislation does not grant the UK the right to adopt the EU measures without WTO-compliant proceedings or ratify such right, or release the UK from its obligations with respect to such principles as due process or transparency.

To sum up, GOC submits that the data and facts of the UK market can not support to apply the EU measures to the imports to the UK. The application of the EU measures lacks factual basis and inconsistent with Article 2, 3, 4 and 6 of the ADA.

2.3 The same duty amount as the EU measures applied to the imports into the UK is inconsistent with Article 9.1 and 9.3 of the ADA.

After the end of the transition period, the UK continues to apply the EU measures and the same amount as the EU anti-dumping duty applies to the same goods imported to the UK. But obviously the UK no longer belongs to the EU Customs Union, and is a completely independent market.The dumping margin of the same goods imported to the UK, if there is, is high likely different from the dumping margin at the EU measures. So application of the same duty amount as the EU measures to the imports to the UK is inconsistent with the Article 9.1 and 9.3 of the ADA which clearly envisages that the amount of the anti-dumping duty to be imposed shall be the full of dumping or less.

3. The initiation and on-going transition review TD0001 are inconsistent with the ADA.

3.1 The so-called "transition review" including TD0001 is inconsistent with Article 11 of the ADA and hence should be conducted as a new investigation.

In order to avoid a trade defense vacuum, the UK has set forth a transition review part in the Trade Remedies (Amendment) (EU Exit) Regulations 2019 and the Trade Remedies (Increase in Imports Causing Serious Injury to UK Producers) (EU Exit) Regulations 2019, all in an attempt to make the transition appear to be WTO-compliant. However, the unilateral act or legislation does not grant the UK the right to adopt the measures without WTO-compliant proceedings.

The transition anti-dumping review, for example, does not constitute a review investigation within the meaning of the ADA. The review under the ADA aims to determine whether the current in-force measure shall be maintained, varied, or revoked, which means that all the determination pertaining to the review must be established based on the existing measure. However, as all the EU measures in force no longer apply to the UK from 1 January 2021. So the "transition review" has none

subject measure of the review and it is not a review under of Article 11 of the ADA. It should be a totally a new invesitgation and without relationship with the EU measures.

To sum up, GOC submits that the transition review including TD0001 is not a review under of Article 11 of the ADA, by its nature, is indeed a new investigation. So TRID should conduct the on-going investigation as an *ab initio* investigation in accordance with the requirements of the WTO rules

3.2 The failure to disclose the information received in the call for evidence and the application to initiate TDOOO1 is inconsistent with Article 6.1 and 6.2 of the ADA.

In this regard, GOC submits that, although DIT has launched the call for evidence to identify whether there is a UK interest in the existing EU measures, the DIT failed to disclose the exact period and details regarding the information received in connection to a particular case, which renders the accuracy and relevance of these data questionable.

The on-going transition review TD0001 was initiated by the DIT, no application or evidence, or even a non-confidential version thereof, was made available to the interested parties. In this respect, Article 6.1.3 of the ADA clearly envisages that the disclosure of the application in the anti-dumping investigation is needed, which reads that:

> *As soon as an investigation has been initiated, the authorities shall provide the full text of the written application received under paragraph 1 of Article 5 to the known exporters and to the authorities of the exporting Member and shall make it available, upon request, to other interested parties involved (emphasis added).*

In this regard, *Mexico — Anti-Dumping Measures on Rice* further provides that:

> *Extending the duty to give notice under Article 6.1 to exporters of which the investigating authority does not know, but of which it might have obtained knowledge, would imply that, under Article 6.1, the investigating authority is subject to a duty to undertake an inquiry, which may be extensive, to identify the exporters. We cannot find, in Article 6.1 or anywhere else in the Anti-Dumping Agreement, any legal basis for such an obligation, which in some circumstances could be onerous (emphasis added).* [4]

In this case, although no exporting producer from the PRC has made them known to

[4] WTO Appellate Body Report, *Mexico — Anti-Dumping Measures on Rice*, para. 251.

the TRID, China Chamber of International Commerce, as well as Russian exporting procedures, did contact the TRID and submitted questionnaire replies and comments. Moreover, as affirmed by UK Steel, there do exist imports of the subjected product from the PRC during the POI, substantiating the existence of the exporters. Hence, the TRID, as the investigating authority, has the obligation under the ADA to identify them and provide the evidence for initiating the investigation in a due manner.

GOC respects the domestic industry's demand for confidential treatment regarding the information provided during the call for evidence, but there was no non-confidential summary to be submitted and disclosed. The investigation authority's mere publication of the results thereof seriously infringes the right of interested parties to defend themselves, which is not in line with Article 6.2 of the ADA.

In this regard, it is remarkable that in several WTO cases, the Appellate Body has emphasized the significance to respect the "fundamental due process rights"[5], "full opportunity for the defense of [its] interests"[6] In particular, in *EC — Fasteners (China),* the Appellate Body illustrates that:

> [...] *the investigating authority must seek to balance the submitting party's interest in protecting its confidential information with the prejudicial effect that the non-disclosure of the information may have on the transparency and due process interests of other parties involved in the investigation to present their cases and defend their interests* [emphasis added].[7]

The Appellate Body further states that:

> ... *we disagree with the Panel that the "nature" of the obligations in Articles 6.2 and 6.4 of the Anti-Dumping Agreement is such that a complaining party need only list these Articles in order to satisfy the requirements in Article 6.2 of the DSU to "provide a brief summary of the legal basis of the complaint sufficient to present the problem clearly", and to notify the respondent and third parties of the nature of the case raised. We are of the view that the obligations contained in Articles 6.2 and 6.4 of the Anti-Dumping Agreement are relatively broad in scope and apply on a continuous basis throughout an investigation* ....(emphasis added). [8]

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[5] WTO Appellate Body Report, *EC — Fasteners (China)*, para. 609.

[6] See also, WTO Appellate Body Report, *EC — Tube or Pipe Fittings*, para. 149; WTO Appellate Body Report, *US — Oil Country Tubular Goods Sunset Reviews*, para. 246; WTO Appellate Body Report, *EC — Fasteners (China)*, para. 481

[7] WTO Appellate Body Report, *EC — Fasteners (China)*, para. 539

[8] WTO Appellate Body Report, *EC — Fasteners (China)*, para. 598.

Hence, GOC submits that TRID's failure of disclosing non-confidential summary of the information during the call for evidence and the application to initiate TD0001 is not sufficient and does not satisfy the requirements of the ADA.

3.3 TRID failed to demonstrate the initiation of TD0001 complied with Article 5.4 of the ADA.

In the framework of Call of Evidence an application to maintain measures is needed to be supported by UK businesses which produce a sufficient proportion of those products. But after the initiation of TD0001 TRID did not disclose the information on the production and sales of welded tubes and pipes producers and the applicant including the supporters in the UK. Whether the application has been made by or on behalf of the domestic industry is in doubt.

GOC submits that TRID failed to demonstrate the initiation of TD0001 comply with Articles 5.4 the ADA.

4. Conclusion

The maintenance or application of the EU measures by the UK lacks legal basis.The continued application of the EU measures by the UK without WTO-compliant investigation after the Brexit transition period as well as the initiation and on-going transition review TD0001 are inconsistent with the ADA.

GOC urges the DIT to consider above comments so as to terminate the application of all the EU's measures in the UK and conduct the TD0001 and any other such review as *ab initio* WTO-compliant investigations.