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Non-Confidential Version

23 October 2020

Subject: TD0001 - Welded Tubes and Pipes originating in China, Belarus and Russia -Comments concerning the questionnaire reply submitted by UK Steel

Our client: China Chamber of International Commerce

On behalf of China Chamber of International Commerce ("CCOIC"), we hereby submit our comments regarding the questionnaire reply of UK Steel published by TRID on 17 September 2020.

In particular, our comments concern the following issues:

- CCOIC respectfully requests the TRID to terminate the investigation immediately, as the volume of imports from China during the injury period is negligible;
- Or as an alternative, CCOIC respectfully requests the TRID to amend the now effective anti-dumping duty;
- CCOIC respectfully requests the TRID to reject UK Steel's claim of replacing Chinese export price;
- CCOIC opposes any methodology to calculate normal value that is not in accordance with the Anti-Dumping Agreement (the "ADA"); and
- CCOIC respectfully requests the TRID to conduct an objective injury analysis.

1. CCOIC respectfully requests the TRID to terminate the investigation immediately, as the volume of import from China during the injury period is negligible.

Firstly, as emphasized in CCOIC's comments submitted on 27 May (the "27 May Comments"), according to the UK Customs statistics, Chinese imports of the PUI represented only 1% of the total imports of the UK during the injury period, a percentage much lower than the 3% threshold for one country as provided in Article 5.8

of the ADA. Moreover, the collective volume of imports from China, Russia, and Belarus is below the 7% threshold – the threshold for cumulative assessment provided in Article 5.8 of the ADA.

Secondly, even UK Steel itself acknowledged the collective volume of imports from the three countries was negligible during the injury period, by stating "*given the absence of specific price information on export prices from these three countries (due to negligible or no imports during the period of investigation)*...(emphasis added)" in its questionnaire response. Therefore, the fact that the volume of the product under investigation (the "PUI") from China during the injury period is not disputed; such and should warrant an immediate termination of the current investigation in accordance with Article 5.8 of the ADA and Regulation 64 of Regulation 15(3) of the Trade Remedies (Dumping and Subsidisation) (EU Exit) Regulations 2019 (the "EU Exit Regulations").

2. As an alternative, CCOIC respectfully requests the TRID to amend the now effective anti-dumping duty

As an alternative, if the TRID decides that it will not terminate the investigation, CCOIC respectfully requests the TRID to amend the anti-dumping duty for the following reasons.

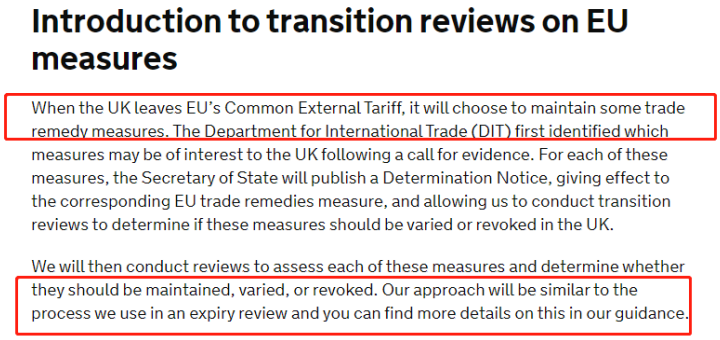
2.1 The recalculation of the anti-dumping duty is in line with the legislative intent of the ADA and the UK law and also the current circumstances of the UK industry

It should be emphasized that the review procedure applies if the circumstances on the basis of which the definitive measures were implemented have changed. The purpose of the review procedure was therefore to adapt the duties imposed to take account of evolution in the factors which gave rise to them.[1] This purpose is in accordance with the idea of the TRID in conducting the transition review and Article 11.2 of the ADA.[2]

Moreover, it is clear from the *Guidance: How we carry out transition reviews into EU measures* (the "*Guidance*") and Regulation 98(8) of the EU Exit Regulations that the trade remedy authority will conduct reviews to assess each of the transitional measures and determine whether they should be maintained, varied, or revoked under the current circumstances.[3] In the present case, CCOIC would like to point out that the situation in the UK has changed dramatically from the original review and therefore it is necessary

[1] *See* Case T 654/16, *Foshan Lihua Ceramic Co. Ltd v. Commission*, EU: T:2018:525, para. 26.
[2] *See* Guidance: How we carry out transition reviews into EU measures, available at https://www.gov.uk/government/publications/the-uk-trade-remedies-investigations-process/how-we-carry-out-transition-reviews-into-eu-measures.
[3] *Ibid*.

to reassess the dumping and injurious indicators.



Introduction to transition reviews on EU measures

When the UK leaves EU's Common External Tariff, it will choose to maintain some trade remedy measures. The Department for International Trade (DIT) first identified which measures may be of interest to the UK following a call for evidence. For each of these measures, the Secretary of State will publish a Determination Notice, giving effect to the corresponding EU trade remedies measure, and allowing us to conduct transition reviews to determine if these measures should be varied or revoked in the UK.

We will then conduct reviews to assess each of these measures and determine whether they should be maintained, varied, or revoked. Our approach will be similar to the process we use in an expiry review and you can find more details on this in our guidance.

Firstly, compared with the period of investigation in the original review and the first sunset review, the domestic industry in the context of the current transition review investigation refers to the UK industry, rather than the EU industry. This means that there will exist a huge difference concerning market size, number of companies, production capacity, *etc*. For instance, the consumption of the PUI in the EU is around 404,000 to 562,000 tonnes from 2010 to 2013,[4] while the UK market is between 100,000 and 150,000 tonnes per annum.[5] The EU data even does not take into account the more substantial increase in demand for steel products in the EU in recent years.[6] Moreover, unlike in the EU, the number of companies producing the PUI in the UK was rather small (only Tata Steel and Liberty Steel produced the PUI),[7] whereas there were eleven manufacturers of the like product in the EU.[8]

With regard to production, it is estimated that the production of the UK industry is around 10,000 to 50,000 tonnes per annum.[9] While in the EU, as can be seen from the definitive measures regulation of the first sunset review, the production was around 277,000 to 437,000 tonnes from 2010 to 2013. According to the Defense Committee of the EU welded steel tubes industry, the Union industry managed to initiate a recovery by adapting and optimizing production capacities.[10] Hence, the variance in production is likely to widen further.

Secondly, following the Brexit, the UK forms, by its own, a separate domestic industry

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[4] Commission Implementing Regulation (EU) 2015/110, p. 14, para. 122.
[5] UK Steel questionnaire response, p. 24, para 4.
[6] *See* OCED Steel Market Developments Report for Q4-2019, p. 12, available at https://www.oecd.org/sti/ind/steel-market-developments-Q4-2019.pdf.
[7] UK Steel questionnaire response, p. 29, para 3.
[8] Executive Summary of the request of an expiry review on anti-dumping measures on certain welded tube imports originating in Belarus, People's Republic of China and Russia, p. 3, para 5, available at https://trade.ec.europa.eu/tdi/case_history.cfm?ref=com&init=449&sta=1&en=20&page=1&number=&prod=welded%20&code=&scountry=all&proceed=all&status=all&measures=all&measure_type=all&search=ok&c_order=name&c_order_dir=Up.
[9] In UK Steel's questionnaire response, the domestic consumption is around 100,000-150,000, and the imports are around 100,000 tonnes per annum.
[10] *Supra* note 8.

for the purposes of anti-dumping investigation, and a separate customs territory for the purposes of imposition of anti-dumping duties. Therefore, the principal risks and uncertainties caused by Brexit on the UK Steel industry should be taken into consideration. For instance, TATA Europe declares that the UK economic growth eased to 1.4% in 2018 as compared to 1.7% in 2017, mainly due to ongoing uncertainty towards Brexit which caused businesses to postpone decisions regarding future investments. Moreover, according to a report published by UK Steel, the UK steel benefits from EU-wide collaboration on vital R&D projects via the Research Fund for Coal and Steel ("RFCS"), while the RFCS is funded by the interest received from the financial reserve accumulated by the former European Coal and Steel Community (ECSC). According to UK Steel, the UK steel companies were likely to lose access to this fund in both a no-deal scenario and in the event the Withdrawal Agreement was approved.[11] Unsurprisingly, the potential uncertainties would affect the decision making strategy of business operators in the UK domestic industry.

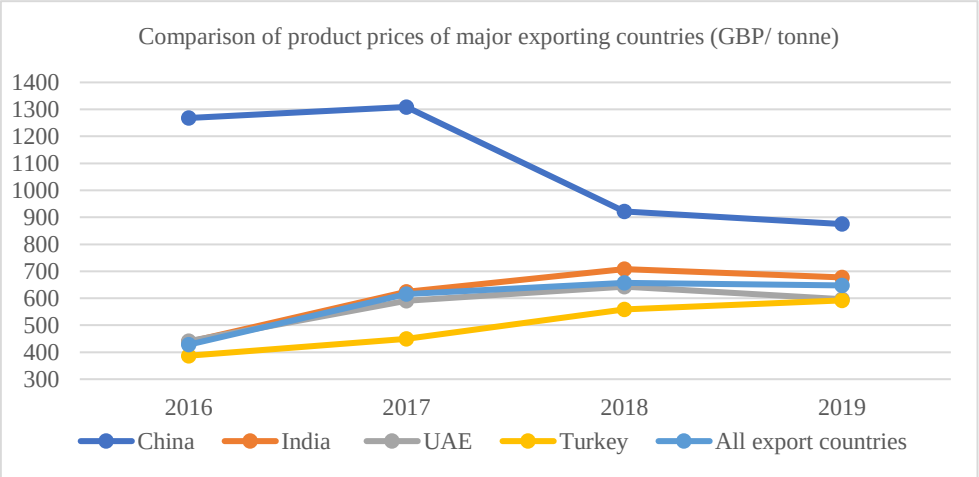
Based on the foregoing, the condition of the UK industry has undergone a significant change comparing with the period in the original review and the first sunset review. Therefore, the reassessment of the original measure is indispensable.

2.2 The recalculation of the anti-dumping duty will create a level playing field in the market.

Pursuant to the *Guidance* on applying the Economic Interest Test (EIT)[12], when the TRID is carrying out transition reviews, it shall apply the EIT to determine the expected effect on the UK of maintaining, changing or removing the measure, compared to the effect of taking no action.

In the present case, CCOIC submits that maintaining the anti-dumping duty on the PUI from China would not meet the EIT. According to the UK Customs data, the average unit price of Chinese imports during the injury period was significantly higher than that from all other exporting countries and that of all the exporting countries. However, based on the UK Customs, during the injury period, the import volume of the PUI from China only accounts for less than 1% of the total imports, while the imports from Turkey and UAE account for 66% and 20%, respectively. Hence, it is not surprising that based on the questionnaire reply of UK Steel, the import of products from Turkey and the UAE is being done at prices that undercut UK market rates, thereby causing injury to the domestic producers.

[11] UK Steel, Implications of a No-Deal Brexit for UK Steel Companies, p. 6, para. 30, available at https://www.makeuk.org/insights/publications/implications-of-a-no-deal-brexit-for-uk-steel-companies.
[12] Guidance: How we apply the Economic Interest Test, available at https://www.gov.uk/government/publications/the-uk-trade-remedies-investigations-process/how-we-apply-the-economic-interest-test.



Source: UK Customs

In this respect, CCOIC submits that adjustment of the anti-dumping duty on the PUI from China is necessary and it would create a more competitive environment for the UK industry, with more abundant and appropriately priced products available to downstream industries. CCOIC believes that the UK investigating authorities have the capacity to recalculate the dumping and injury margins using available data.

2.3 The application of the lesser duty rule in the recalculation of the anti-dumping duty must be followed.

CCOIC would like to remind the TRID of the requirement concerning the application of the lesser duty rule if the TRA decides to recalculate the anti-dumping duty. In this regard, Regulation 99(6)(a) of the EU Exit Regulations states that:

> *"Where the TRA makes a determination that the application of an anti-dumping amount or a countervailing amount to goods should be varied, that variation must not comprise or include reducing or increasing such amount to an amount which -*
> *(a) in the case of an anti-dumping amount, exceeds the margin of dumping or, if less than the margin of dumping, the amount which the TRA is satisfied would be adequate to remove the injury to UK industry caused by the dumped goods* (emphasis added);*"*

Therefore, in case where the injury caused by dumped imports could be removed by imposition of a duty lesser than the calculated dumping margin, the TRA has the obligation to set the rate of any anti-dumping duties at the lower of the dumping or the injury margins.

3. CCOIC respectfully requests the TRID to reject UK Steel's claim on the replacement of Chinese export price.

In its questionnaire reply, UK Steel claimed that the "*export prices from China to other markets should be used as a means of comparison to the normal value"* since the *"imports of the product in question to the UK were insignificant during the investigation period.*"[13] On this basis, UK Steel used the Chinese exports to the Philippines to establish Chinese export prices.

In this regard, firstly, CCOIC would like to point out that pursuant to Article 2.3 of the ADA, the export price may be constructed only under two circumstances, *i.e.* (i) when there is no export price, or (ii) where it appears to the authorities concerned that the export price is unreliable because of association or a compensatory arrangement between the exporter and the importer or a third party.[14] It is clear that in the present case, neither of the two conditions is met since there do exist Chinese export data and UK Steel failed to present any evidence proving that the export price is unreliable. Moreover, none of any WTO cases indicate that the mere fact that the imports of the PUI are insignificant during the injury period would be a satisfying basis to discard the actual export price and then construct the export price on other bases.

Secondly, it is worth noting that Regulation 15(3) of the EU Exit Regulations almost mirrors Article 2.3 of the ADA which specifies that "export price may be constructed only under two circumstances, i.e. (i) where there is no export price, or (ii) the TRA determines that the price is unreliable because of an association or a compensatory arrangement between the overseas exporter and the importer of the goods concerned in the United Kingdom or the overseas exporter and a third party. Indeed, contrary to what the UK Steel suggested, neither the WTO law nor the UK law stipulates that representativeness of the quantity of the exports may justify the use of constructed export price. It is therefore submitted that UK Steel's replacement of the export price of Chinese exports is without merit.

Furthermore, in case where it appears that the export price is unreliable, Article 2.3 of the ADA and Regulation 15(4) of the EU Exit Regulations firstly allows the export price to be constructed on the basis of "the price at which the goods concerned are first sold to an independent buyer. Only when the goods concerned are not resold to an independent buyer or are not resold in the condition as imported, the authority may determine on other reasonable bases. Therefore, in the present case, even if the authority holds that China's export prices may be unreliable while they clearly are not, adjustments shall be made on the basis of export prices, rather than a direct replacement

[13] UK Steel questionnaire response, p. 19, para. 5.
[14] The Anti-Dumping Agreement, Article 2.3.

from other sources. CCOIC submits that UK Steel's claim is a clear violation of the ADA and the EU Exit Regulation.

Based on the foregoing and considering the fact that no Chinese export producer has cooperated with the investigation, CCOIC respectfully suggests the TRID to use the customs statistics data from UK Customs to arrive at an appropriate export price based on two reasons: (i) the information is readily available; and (ii) the information is reliable. As provided by CCOIC in the 27 May Comments, based on the statistics from the UK Customs, the volume of imports from China under HS codes 7306 3041, 7306 3049, 7306 3072, and 7306 3077, the HS codes under which the POI is classified, were 647 tonnes. This statistic was reaffirmed by UK Steel in its questionnaire reply which further proved the accuracy and reliability thereof.

Thirdly, it is apparent from Article 3.1 of the ADA that for the purpose of injury determination, an objective examination of the volume of the dumped imports and the effect of the dumped imports on prices in the domestic market for like products is needed. In this respect, Article 3.2 further stipulates that:

> *"With regard to the effect of the dumped imports on prices, the investigating authorities shall consider whether there has been a significant price undercutting by the dumped imports as compared with the price of a like product of the importing Member, or whether the effect of such imports is otherwise to depress prices to a significant degree or prevent price increases, which otherwise would have occurred, to a significant degree* (emphasis added)*."*[15]

In this regard, the Appellate Body in *Mexico — Anti-Dumping Measures on Rice* provides further guidance on an objective examination in the injury analysis:

> *"…under Article 3.1, an injury analysis can be "objective" only "if it is based on data which provide an accurate and unbiased picture of what it is that one is examining". This view is consistent with the Appellate Body's statement [at paragraph 193] in US — Hot-Rolled Steel regarding the requirement to conduct an "objective examination" under Article 3.1 of the Anti-Dumping Agreement…*(emphasis added)*"*[16]

In this respect, CCOIC submits that if the export price of dumped imports cannot be established, or cannot be established by the export price to third countries, such "export price" cannot be regarded as accurate and unbiased. Furthermore, if the appropriate

[15] The Anti-Dumping Agreement, Article 3.2.
[16] WTO Appellate Body Report, *Mexico — Anti-Dumping Measures on Rice*, para. 180.

export price cannot be established, the investigating authority would not have the information necessary to determine whether there has been a significant price undercutting or price depression. Therefore, in this case, the imposition of anti-dumping duty is groundless.

4. CCOIC opposes any methodology to calculate normal value which is not in accordance with the ADA.

4.1 Article 15(a) of the Chinese WTO accession protocol has expired in December 2016 and Regulation 14(1)(b) is therefore not applicable to China

CCOIC would like to point out that Article 15 of the Chinese WTO accession protocol, which stipulates that the application of a special method on costs substitution for non-market economies shall be terminated 15 years after China's accession to the WTO is, in fact, the exact wording of the original provisions of the Bilateral Agreement between China and the United States on China's Accession to the WTO. This was indeed the official position of the United States. The official position was made clearer in a hearing held by the United States House of Representatives Committee on Ways and Means on 3 May 2000, titled "Accession of China to the WTO".[17]

To persuade the U.S. Congress to grant China permanent normal trade relations, almost every U.S. government spokesperson suggested that China's accession to the WTO was in the interest of the United States, referring to the idea that "non-market economy approaches" would apply to China for 15 years. For instance, the then Secretary of the Treasury, Lawrence H. Summers, mentioned that: *the agreement includes a provision recognizing that the U.S. may employ special methods, designed for non-market economies, to counteract dumping by Chinese exporters for 15 years after its accession.*[18] The then-Secretary of Commerce, William M. Daley, stated that: *we have also ensured that American firms and workers will have strong protection against unfair trade practices, including dumping. China has agreed to guarantee our right to continue using our current methodology (treating China as a nonmarket economy) in antidumping cases for fifteen years after China's accession to the WTO*.[19]

Moreover, on the eve of China's accession to the WTO, the Council of the EU adopted a decision on 19 October 2001 in support of China's WTO accession position.[20] In its proposal for the decision, the European Commission provided a clear interpretation of

[17] Hearing before the committee on ways and means, house of representatives, one hundred six congress, second session, May 3, 2000, serial 106-105, U.S. Government Printing Office, Washington: 2001.
[18] *Ibid*, p.26, para. 13.
[19] *Ibid*, p.36, para. 6.
[20] Adoption of Council Decisions establishing the Community position within the Ministerial Conference set up by the Agreement establishing the World Trade Organisation - on the accession of the People's Republic of China to the World Trade Organisation.

Article 15 of the Chinese WTO accession protocol that the special provision shall expire after 15 years:

> *"54. Finally, in China's Protocol of Accession there are key provisions specifying how the trade defense instruments (anti-dumping, anti-subsidy, safeguards) may be used to deal with imports specifically from China. In reflection of the fact that China's economy is still in transition, there will be derogations from the WTO rules, available for a certain period of time, which will permit Members to maintain tighter control over injurious inflows of goods from China (whether due to their high volume or low-price) than would normally be the case* (emphasis added).
>
> *55. The EU's present legislation which provides specific procedures for dealing with cases of alleged dumping by Chinese exporters, which may not yet be operating in normal market economy conditions, will remain available for up to fifteen years after China enters the WTO* (emphasis added)*."*[21]

Furthermore, the WTO's position towards Article 15 of the Chinese WTO accession protocol was made clear by the Appellate Body in *EC — Fasteners (China)*:

> *"Paragraph 15(d) of China's Accession Protocol establishes that the provisions of paragraph 15(a) expire 15 years after the date of China's accession (that is, 11 December 2016). Since paragraph 15(d) provides for rules on the termination of paragraph 15(a), its scope of application cannot be wider than that of paragraph 15(a). Both paragraphs concern exclusively the determination of normal value. In other words, paragraph 15(a) contains special rules for the determination of normal value in antidumping investigations involving China. Paragraph 15(d) in turn establishes that these special rules will expire in 2016 and sets out certain conditions that may lead to the early termination of these special rules before 2016* (emphasis added)*."*[22]

Hence, there is no doubt that Article 15(a) of the Chinese WTO accession protocol has expired. Accordingly, UK Steel's claim that Regulation 14(1)(b) is applicable to China shall be thus rejected.

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[21] Proposal for a Council Decision establishing the Community position within the Ministerial Conference set up by the Agreement establishing the World Trade Organization on the accession of the People's Republic of China to the World Trade Organization, available at https://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:52001PC0517:EN:HTML.

[22] WTO Appellate Body, *EC — Fasteners (China)*, para.289.

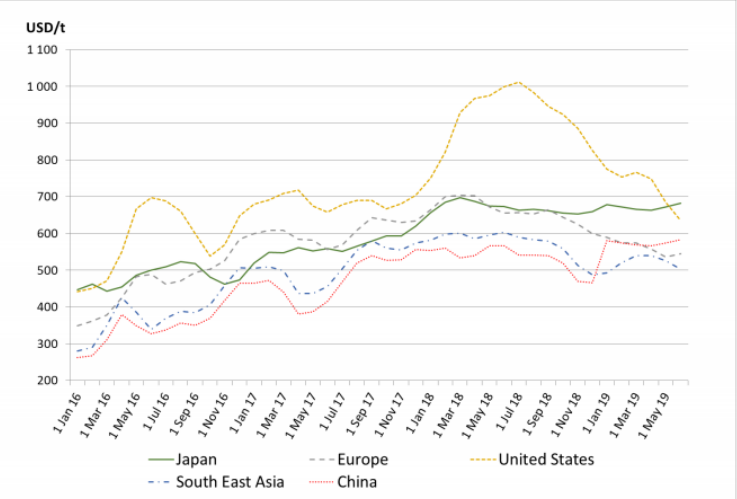
4.2 There is no particular market situation concerning the PUI during the injury period in China and UK Steel's claim of applying Regulation 7(2)(b) shall be rejected.

In UK Steel's questionnaire reply, it asked the TRID to determine that "a particular market situation exists (Regulation 7 (2)(b)) in China and that prices are artificially low, reflecting 'non-commercial factors' such that it is a proper comparison is not permitted." In this regard, CCOIC notes that apart from this assertation, no relevant evidence was provided to prove the existence of the alleged "particular market situation" concerning the PUI during the injury period. UK Steel only provides the determinations and reports from other jurisdictions and seems to adopt, by default, the view that the whole "Chinese steel industry" is distorted. Additionally, the information provided by the UK Steel to support its claim on the existence of "government intervention" in China is inadequate and ill-founded. The major supporting documents cited by UK Steel, *i.e.* the "US-China Economic and Security Review Commission – Evaluation of China's non-market economy status – Issue Brief", the "Commission Staff Working Document on Significant Distortions in the Economy of the People's Republic of China for the Purposes of Trade Defence Investigations", and the findings in Investigations by the Canada Border Services Agency (CBSA), the European Commission and the Australian authorities, are either too general or outdated, therefore irrelevant to the current investigation.

Secondly, CCOIC expresses its strong objection to UK Steel's claim that a particular market situation exists in China. The TRID cannot continue to rule out the use of constructed normal value based on the previous determinations from other sources or non-specific industries. The claim of UK Steel has no basis in law. Under the UK legislation, the question is "whether the circumstances of the market in the exporting country are appropriate for the determination of price". The "market" in this context shall be the market in which the like goods are sold. It is therefore necessary to assess market conditions in the market for the PUI. The PUI in this investigation is welded tubes and pipes. Based on CCOIC's knowledge and available public information, the welded tubes and pipes market in China is a competitive one and the price of the PUI sold fully reflects the market condition. This is a market in which buyers and sellers of making transactions regarding welded pipes and tubes based on the conditions of supply, demand and technological innovation. As shown by the chart below contained in the OECD Steel Market Developments Report for Q4-2019, the steel price for flat products, which is the main material for producing the PUI, from 2016 to 2019 was in line with the world market.[23]

[23] *See* OCED Steel Market Developments Report for Q4-2019, p. 22, available at https://www.oecd.org/sti/ind/steel-market-developments-Q4-2019.pdf.

Figure 6. Steel price for flat products, by region



Therefore, CCOIC requests the TRID to reject UK Steel's claim to apply Regulation 7(2)(b).

4.3 CCOIC strongly opposes any methodology to calculate normal value that is not in accordance with the ADA.

In the questionnaire reply, UK Steel requested the TRID to construct the normal value for China on the basis of cost of production plus SGA and profit. In this regard, it is important to note that the Appellate Body in *EU – Biodiesel* pronounced that:

- *insofar as the cost of production is concerned, the costs "calculated on the basis of records kept by the exporter or producer" under Article 2.2.1.1 must lead to a cost "in the country of origin* (emphasis added);[24]
- *although the source of the information regarding the cost does not necessarily need to be from "inside the country of origin, whatever the information that it uses, an investigating authority has to ensure that such information is used to arrive at the "cost of production in the country of origin* (emphasis added);[25]
- *the EU authorities selected the surrogate price for soybeans that did not represent the cost of soybeans in Argentina for producers or exporters of biodiesel* (emphasis added).[26]

In the present case, CCOIC submits that using a foreign benchmark evidently will not accommodate the conditions of the Chinese market and such a benchmark does not represent the cost "in the country of origin". Hence, CCOIC urges the TRID to use the

[24] WTO Appellate Body Report, *EU – Biodiesel*, paras. 6.23.
[25] *Ibid*, paras. 6.70 and 6.73.
[26] *Ibid*, para. 6.81.

comparable price to determine the normal value according to Regulation 7(1) of the EU Exit Regulation.

5. CCOIC respectfully requests the TRID to conduct an objective injury analysis.

Pursuant to Regulation 98(6)(b) of the EU Exit Regulation, a transition review shall assess whether there would be injury to the UK industry in those goods if an anti-dumping amount were no longer to apply to those goods. To better elaborate the provision, Regulation 98(9) provides that Parts 2, 3, 4, and 6 apply to reviews conducted under this Part to the extent that the TRA considers relevant.

CCOIC submits that an injury analysis is needed to conduct a transition review. In this regard, Regulation 30(2) stipulates that in order to determine whether a UK industry is suffering or has suffered injury the TRA must consider the following factors:

- the volume of the dumped goods during the injury period
- the effect of the dumped goods on prices of the like goods in the United Kingdom during the injury period
- the consequent impact of the dumped goods on a UK industry during the injury period; and
- any other factors it considers relevant.

Regarding the first factor, Regulation 31 provides that the TRA must consider whether there has been a significant increase in the dumped goods in the UK either in absolute terms or relative to domestic production or consumption. As demonstrated in the 27 May Comments, Chinese imports of the subject goods accounted for only 1% of the total imports of the UK from 2016 to 2019, among which 647 tonnes in 2019, 540 tonnes in 2018, 372 tonnes in 2017, and 320 tonnes in 2016 respectively. Therefore, there was no significant increase in the dumped goods imported from China to the UK in absolute terms. Moreover, as provided by UK Steel, the UK market is between 100,000 and 150,000 tonnes per annum. In this respect, compared with the consumption, it would not be fair enough to say that there has been a significant increase in the dumped goods imported from China in relative terms since the fluctuation of the share of Chinese import is negligible.

Regarding the second factor, Regulation 32 provides that the TRA must consider (i) whether there has been significant price undercutting by the dumped goods, and (ii) the dumped goods have depressed or suppressed domestic prices of the like goods produced in the United Kingdom to a significant degree. Firstly, CCOIC would like to submit that the UK domestic industry failed to provide any information in regard to depression and suppression by Chinese imports. Secondly, as mentioned before, the average unit price of Chinese imports during the POI was significantly higher than that of products from

all other exporting countries. Moreover, the UK average export prices were much higher than the Chinese import prices except in the year 2016. Hence, it cannot conclude from these two factors that the UK industry is suffering or has suffered injury made by the imports of the PUI from China.

In addition, UK steel stated that the UK domestic prices are currently depressed due to undercutting (possibly dumping) from other countries and difficult market conditions, which proves that even if there was price undercutting, it was not caused by Chinese imports.[27]

Regarding the third factor, Regulation 33 provides that the TRA must take into account all relevant economic factors and indices having a bearing on the UK industry including:

- actual and potential decline in sales, profits, output, market share, productivity, return on investments, or utilisation of capacity
- factors affecting domestic prices of the like goods
- in the case of dumping, the magnitude of the margin of dumping
- actual and potential negative effects on cash flow, inventories, employment, wages, growth, the ability to raise capital or investments

CCOIC notes that in the questionnaire response submitted by UK Steel, it analyzed the situation of the UK industry from several aspects, including price undercutting, demand, overcapacity, global trade tensions, Brexit, COVID-19, and employment. In this respect, CCOIC submits that the analysis is inadequate under Article 3.4 of the ADA, which states that:

> *"The examination of the impact of the dumped imports on the domestic industry concerned shall include an evaluation of all relevant economic factors and indices having a bearing on the state of the industry, including actual and potential decline in sales, profits, output, market share, productivity, return on investments, or utilization of capacity; factors affecting domestic prices; the magnitude of the margin of dumping; actual and potential negative effects on cash flow, inventories, employment, wages, growth, ability to raise capital or investments* (emphasis added)*."*[28]

Article 3.4 was further developed by the Appellate Body in *Thailand — H-Beams,* which provides that:

> *"We conclude that the Panel was correct in its interpretation that Article*

[27] UK Steel questionnaire response, p. 24.
[28] The Anti-Dumping Agreement, Article 3.4.

3.4 requires a mandatory evaluation of all of the factors listed in that provision, and that, therefore, the Panel did not err in its application of the standard of review under Article 17.6(ii) of the Anti-Dumping Agreement (emphasis added). "[29]

Therefore, CCOIC would like to remind the TIRD that in the absence of the cooperation of the UK domestic industry producers, the accuracy of the relevant injury data and the factual basis shall still be in accordance with the legal requirements.

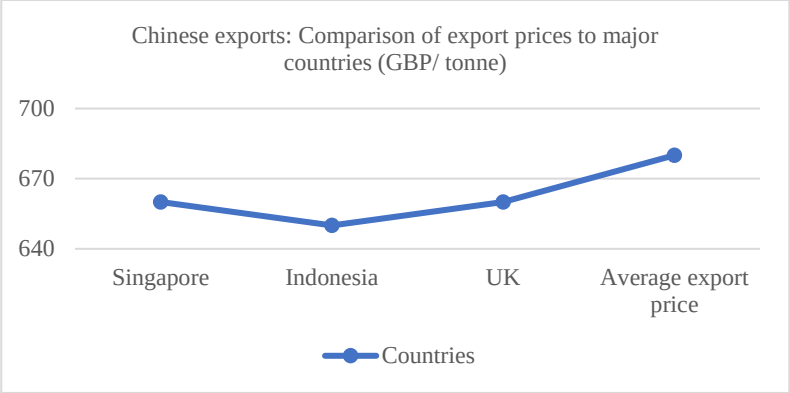
Furthermore, CCOIC acknowledges that nothing in the ADA prevents a Member from requiring its investigating authorities to examine, in every investigation, the potential relevance of a particular "other factor" that is not listed in Article 3.4. In this respect, CCOIC notes the *Guidance* further illustrates a number of factors needed to be considered for the injury analysis, including (i) the evidence of dumping; (ii) the exporter's current and potential capacity to export the goods; (iii) the attractiveness of the UK market; (iv) export prices to third countries (and their relationship to export prices to the UK market); (v) whether there is evidence that exporters have previously or habitually circumvented or absorbed the effects of trade remedy measures and continued to export their goods at the same prices; and (vi) historic export data. [30]

CCOIC would like to remind TRID that most of the factors, except factors (i) and (iv), have been analyzed in the 27 May Comments and therefore there is no need to repeat in the present comments. With regard to the evidence of dumping, CCOIC submits that there is no evidence that the Chinese exports were made at a dumped price for the following reasons. First, since the dumping margin shall be determined on the level of exporting producer, while in the present case, no Chinese export producer has cooperated and therefore the export price regarding the respective producers cannot be established. Second, if the TRID decided to construct the export price on other basis, as mentioned by CCOIC, the data from UK Customs would be the most appropriate. Again, as mentioned in the previous section, during the injury period, the unit price of PUI importing from China, which is 1268 £/ton is significantly higher than other countries and the average price of all the exporting countries, which is 427 £/ton. Moreover, as provided by UK Steel, if the import price of 592.06 £/ton would undercut the UK domestic price at the level from 5-17%, the UK domestic selling price in no way exceeds 750 £/ton. Therefore, there is absolutely no possibility of dumping by Chinese imports.

Concerning the export prices to third countries, CCOIC compared the export prices to

[29] WTO Appellate Body Report, *Thailand — H-Beams,* para. 128.
[30] Guidance: How we carry out transition reviews into EU measures, available at https://www.gov.uk/government/publications/the-uk-trade-remedies-investigations-process/how-we-carry-out-transition-reviews-into-eu-measures.

the UK with other major importing countries under the most similar HS code, 7306 3090. As demonstrated in the chart below, the export price to the UK is in line with the export price to major third countries, such as Indonesia, Singapore, and the price is also in accordance with the average export price to all countries.



Source: ITC Trade Map

6. Conclusion

In light of the foregoing, CCOIC respectfully requests the TRID to terminate the present transition review investigation.

Should the TRID, in any event, not terminate the present investigation, CCOIC respectfully requests the TRID to amend the now effective anti-dumping duty in accordance with the ADA and the EU Exit Regulation, or at least, not to accept the illegal claim put forth by UK Steel on the replacement of Chinese export price.