

**NON-CONFIDENTIAL
FOR INSPECTION OF INTERESTED PARTIES**

**Comments of the Ministry of Economic Development of the Russian Federation
and the Ministry of Industry and Trade of the Russian Federation regarding
a transitional review of the anti-dumping measures applicable to imports
of certain welded pipes and tubes from Russia, Belarus and China**

Referring to the Notice of initiation¹ of a transitional review of the anti-dumping duties on certain welded tubes and pipes of iron or non-alloy steel (hereinafter referred to as ‘WTP’) originating in the Republic of Belarus, the People’s Republic of China, and the Russian Federation (hereinafter referred to ‘the review’), the Ministry of Economic Development of the Russian Federation and the Ministry of Industry and Trade of the Russian Federation (hereinafter referred to as ‘the Russian side’) would like to draw attention of the UK Department for International Trade (hereinafter referred to as ‘the Department’) to the following considerations that show:

1) Absence of both legal and economic grounds to continue application of the measure after the end of the transition period for the withdrawal of the United Kingdom from the European Union (EU);

2) Obvious risks of violation of the WTO rules by the UK if the application of the measure is continued (resulting both from (a) already existing indications of WTO-inconsistency of the current review's initiation and suggested scope and (b) the risks of further WTO rules violation during the procedure of the review).

I. Initiation of the review

1. As we understand, the Department initiated the current review on its own initiative following the Notice of Determination² (hereinafter referred to as ‘the Determination’) on the anti-dumping duty on certain welded tubes and pipes of iron and non-alloy steel originating in Belarus, the People’s Republic of China and the Russian Federation. The Determination stated that it “follows a Call of Evidence conducted by the Department

¹ Notice of initiation of transitional review №TD0001 of the anti-dumping duties on certain welded tubes and pipes of iron or non-alloy steel originating in the Republic of Belarus, the People’s Republic of China, and the Russian Federation, 10 February 2020.

² Notice of determination: 2020/01, 6 February 2020. Anti-dumping duty on certain welded tubes and pipes of iron and non-alloy steel originating in Belarus, the People’s Republic of China and the Russian Federation.

for International Trade to identify anti-dumping and countervailing duties imposed by the EU that matter to UK industry”.

In the framework of that procedure the UK producers of goods subject to EU trade remedy measures should have expressed their opinion whether they support, are neutral to, or oppose the continuation of those measures when the UK operates its independent trade remedies system. They were also asked for data about their production and sales.³ Thus, the Department initiated the review without an application from the UK industry. However, before its initiation the Department collected data from the UK producers on their support for, or opposition to the current review.

After the initiation of the review the Department has not provided the interested parties with the information acquired during the Call of evidence procedure, particularly, data on production and sales of WTP in the UK and which companies provided this data.

In other words, for the purposes of the initiation of the review the Department has not demonstrated that the initiation is supported by the UK WTP producers:

- which account for no less than 25 per cent of total production of the like product produced by the domestic industry, and
- whose collective output constitutes more than 50 per cent of the total production of the like product produced by that portion of the domestic industry expressing either support for or opposition to the initiation of the review.

Thus, the Department failed to demonstrate that the requirements of Article 5.4 of the Agreement on Implementation of Article VI of the General Agreement on Tariffs and Trade (hereinafter referred to as ‘the Anti-dumping Agreement’) have been adhered to, and the review was initiated unlawfully.

2. Article 5.6 of the Anti-dumping Agreement provides that if the authorities concerned decide to initiate an investigation without having received a written application by or on behalf of a domestic industry for the initiation of such investigation, they shall

³ Final findings of the call for evidence into UK interest in existing EU trade remedy measures (<https://www.gov.uk/government/consultations/call-for-evidence-to-identify-uk-interest-in-existing-eu-trade-remedy-measures/outcome/final-findings-of-the-call-for-evidence-into-uk-interest-in-existing-eu-trade-remedy-measures>).

proceed only if they have sufficient evidence of dumping, injury and a causal link, as described in Article 5.2 of the Anti-dumping Agreement, to justify the initiation of an investigation.

The Russian side does not have the information which in the understanding of the Department constitutes “sufficient evidence” for initiation of this review.

First of all, in the Notice of initiation or elsewhere, the Department did not provide evidence substantiating the need to conduct the review for the purposes that were determined by the Department itself, namely to consider:

1) whether the application of the anti-dumping amount is necessary or sufficient to offset dumping of the relevant goods in the UK market; and

2) whether injury to the UK industry in the relevant goods would occur if the anti-dumping amount were no longer applied to those goods.⁴

Therefore, the requirements of Article 5.6 of the Anti-dumping Agreement have not been fulfilled even at the minimum level which was determined by the Department for itself.

Secondly, as it will be explained further in detail, the Russian side does not agree that the abovementioned scope of the review is enough for due and legitimate determination of the need for continued application of the measure.

Therefore, in our view, in order to initiate the review the Department needed “evidence of dumping, injury and a causal link” which must be full and sufficient in the meaning of Article 5.2 of the Anti-Dumping Agreement. The Department has not demonstrated the existence of such sufficient evidence.

As a result, the Department did not fulfill its obligations in accordance with Article 5.6 of the Anti-dumping Agreement at an appropriate level.

3. Lack of information on the degree of support for or opposition to the beginning of the review by the UK WTP industry, and lack of information on whether the Department has sufficient evidence of dumping, injury and a causal link in the understanding of Article

⁴ Notice of initiation of transitional review №TD0001 of the anti-dumping duties on certain welded tubes and pipes of iron or non-alloy steel originating in the Republic of Belarus, the People’s Republic of China, and the Russian Federation, 10 February 2020.

5.2 of the Anti-dumping Agreement, limits the opportunity of the Russian side to provide comments.

These comments are provided on the basis of information that the Russian side has at its disposal. However, having no other information, the Russian side does not have an opportunity to provide exhaustive and comprehensive comments with respect to this review.

In other words, the Russian side is of the view that the Department has failed to comply:

- with Article 6.2 of the Anti-dumping Agreement which states that “all interested parties shall have a full opportunity for the defense of their interests”;
- with Article 6.4 of the Anti-dumping Agreement, which prescribes to provide timely opportunities for all interested parties to see all information that is relevant to the presentation of their cases and that is used by the authorities.

In light of the above, the Russian side sees no grounds for initiation of the review. We urge the Department, in order to avoid violations of the WTO rules, to finish this review without application of the measure in the territory of the United Kingdom.

II. The scope of the review

According to paragraph 98 of The Trade Remedies (Dumping and Subsidisation) (EU Exit) Regulations 2019⁵ and the Notice of initiation of the review will consider:

- 1) whether the application of the anti-dumping amount is necessary or sufficient to offset dumping of the relevant goods in the UK market; and
- 2) whether injury to the UK industry in the relevant goods would occur if the anti-dumping amount were no longer applied to those goods.

We would like to draw the Department’s attention to the fact that neither examination based on these two grounds, nor any outcome of this examination will be sufficient for the purposes of continued application of the measure in the territory of the United Kingdom. Application of the measure, which was imposed by the EU to protect its industry, in the UK territory after the end of transition period can be justified only:

⁵ The Trade Remedies (Dumping and Subsidisation) (EU Exit) Regulations, №450, 6 March 2019.

1) in case full and comprehensive analysis is made in full compliance with Article VI of General Agreement on Tariffs and Trade ('GATT') and the Anti-dumping Agreement;

2) if the Department establishes as a result of such analysis:

a) existence of dumping on the UK territory, in accordance with Article 2 of the Anti-dumping Agreement;

b) presence of material injury or a threat of such injury to the UK WTP industry and their causal link with dumping, in accordance with Article 3 of the Anti-dumping Agreement.

Such a thorough analysis of the situation for the territory, WTP market and industry of the UK only has not been conducted yet. The measure was originally introduced after investigation where dumping, injury and causality determinations were made with regard to territory, WTP market and industry of the EU as a whole.

The determinations and conclusions made during EU anti-dumping procedures cannot be used during the current procedure. The reason is that the situation in the UK has not been specifically analyzed during the investigation of the EU, and that the European Commission committed violations of WTO rules during the original procedure (the Russian side will comment on them further).

We are concerned, that the review type chosen by the Department in order to determine whether the application of the measure is necessary, does not release the UK from the obligation to assess all of the abovementioned factors in relation to the UK territory, WTP market and industry. In other words, such a format does not let the Department to escape the analysis equivalent to the original investigation.

Absent the analysis applied to the United Kingdom which can confirm the presence of dumping, injury and causal link, the decision to continue the application of the measure in the UK will be inconsistent with its obligations under Articles 2 and 3 of the Anti-dumping Agreement, as well as in Article VI of GATT.

III. Lack of imports from Russia to the UK

According to Article 2.1 of the Anti-dumping Agreement, "a product is to be considered as being dumped, i.e. introduced into the commerce of another country at less than its normal value, if the export price of the product exported from one country to another

is less than the comparable price, in the ordinary course of trade, for the like product when destined for consumption in the exporting country.” As a result, if the product is not exported from one country to another there can be no positive determination of dumping.

According to Eurostat, Russian producers have not been exporting the WTP that are within the scope of the EU measure to the UK at least since 2000 (see table 1).⁶

table 1

Timeframe	Indicator	The UK imports of the WPT from Russia			
		73063041	73063049	73063072	73063077
2000-2019	euros	0	0	0	0
2000-2019	tonnes	0	0	0	0

Thus, the Russian product was not imported to the UK neither long before the original EU investigation period (1 July 2006 – 30 June 2007) nor during the application of the measure (the definitive measure was introduced on 20 December 2008).⁷

We proceed from the premise that lack of imports from Russia to the UK for the period of more than 20 years, including the period during which the original investigation took place, makes it impossible for the Department to establish dumping, injury and causal link in order to apply the measure after the transition period.

IV. Use of cost adjustment methodology during the original investigations

We want to draw your attention that the measure reviewed by the Department is currently subject to WTO dispute between Russia and the EU *European Union – Cost Adjustment Methodologies and Certain Anti-Dumping Measures on Imports from Russia (Second Complaint)*.⁸

⁶ In 2000-2019 Russia exported to the UK small amounts of WTP classified by 730630 customs code. However, more detailed statistics shows that these products were classified by codes other than 73063041, 73063049, 73063072 and 73063077.

⁷ Council Regulation (EC) 1256/2008 of 16 December.- recital 21, article 4.

⁸ WT/DS494/4, “II CLAIMS CONCERNING THE EXPIRY REVIEW AND THE DECISION ON EXTENSION OF ANTI-DUMPING MEASURES IMPOSED BY THE EUROPEAN UNION ON IMPORTS OF WELDED TUBES AND PIPES ORIGINATING IN THE RUSSIAN FEDERATION”.

The Russian side is still of the view that during the initial investigation and during the expiry review which preceded the extension of the measure, the European Commission violated WTO rules. These violations led to incorrect determination of dumping.

The violations occurred because the costs actually incurred by Russian WTP producers were adjusted in a WTO-inconsistent manner. As a result, the adjusted costs did not match the cost of production of WTP in the country of origin, that is, the Russian Federation.⁹

We would like to note that such adjustments were found to be WTO-inconsistent by WTO panels and the Appellate Body, namely in *EU – Biodiesel (Argentina)*¹⁰ and *Ukraine – Ammonium nitrate (Russia)*¹¹. Cost adjustments similar to the ones used by the European Commission in its anti-dumping procedures on Russian WTP have been found inconsistent with Articles 2.2 and 2.2.1.1 of the Anti-dumping Agreement.

In our view, should the Department abstain from using cost adjustments, it would avoid breach of WTO rules in this part. Therefore, we would like to warn the Department against using the cost adjustment methodology and against maintaining the duties calculated with its use by the European Commission.

V. Lack of spare capacities in Russia which can be used in order to oversupply the UK market

In our view, in the current market performance Russian WTP producers have no opportunities for substantial increase of their exports to the UK.

It is the internal market which is high-priority for Russian WTP producers. According to the independent analytical agency MetalExpert,¹² consumption of tubes used in construction sector (WTP are tubes with small and medium diameter used in construction sector), increased in Russia from 3483 thousands of tonnes in 2015 to 3749 thousands of tonnes in 2019 (table 2).

⁹ Council Regulation (EC) 1256/2008 of 16 December.- recital 111.

¹⁰ See report of the panel, WT/DS473/R, and report of the Appellate Body, WT/DS473/AB/R.

¹¹ See report of the panel, WT/DS493/R, and report of the Appellate Body, WT/DS493/AB/R.

¹² <https://metalexpert.com/ru/services/MetalExpertRus>

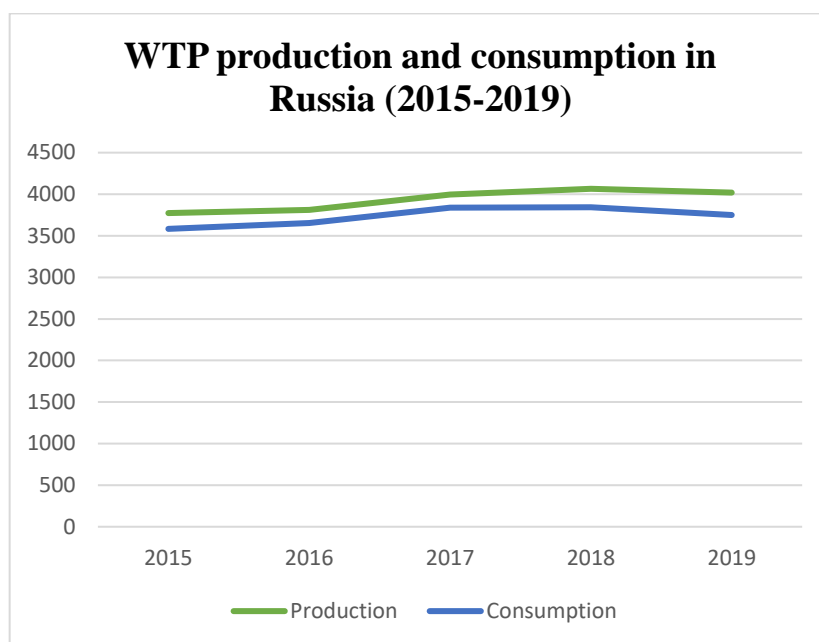
Consumption of WTP tubes in Russia according to MetalExpert in thousands of tonnes (table 2)

Type of product	2015	2016	2017	2018	2019
shaped tubes	2245	2339	2527	2482	2456
general purpose tubes	898	9445	983	1057	1049
water and gas pipes	340	310	328	304	244
all pipes used in construction sector	3483	3654	3837	3843	3749

At the same time, production of such tubes increased from 3773 thousands of tonnes in 2015 to 4018 thousands of tonnes in 2019. As it can be seen, this figure matched the level of consumption of WTP in Russia (table 3).

Production of WTP tubes in Russia according to MetalExpert in thousands of tonnes (table 2)

Type of product	2015	2016	2017	2018	2019
shaped tubes	2357	2492	2614	2628	2625
general purpose tubes	1053	991	1035	1120	1135
water and gas pipes	364	329	347	317	259
all pipes used in construction sector	3773	3812	3996	4065	4018



According to official statistics of the Federal Customs Service of the Russian Federation, Russian producers export the produced WTP in small volumes to the CIS countries, in particular, to Kazakhstan, Belarus, Azerbaijan and Uzbekistan (table 4).

Russian exports of WTP tubes classified
by 730630 customs code (table 4)

Destination	2015	2016	2017	2018	2019
Kazakhstan	81,1	79,7	78,5	77,0	81,2
Belarus	52,3	42,6	52,0	56,0	61,0
CIS	262,8	171,4	187,8	200,9	221,6
All countries	276,7	182,6	200,8	222,1	246,7

The fact that Russian WTP producers do not deem the UK WTP market attractive is supported by the data that Russia has not been exporting the product concerned to the UK since 2000, i.e. long before the measure was imposed in the EU.

One of the reasons is high logistical costs. According to the estimates of Russian producers, the costs of delivery from Russia to the UK account for 30% of the Russian WTP

price on the UK market. As a result, the UK is not an attractive market for the Russian WTP manufacturers.

VI. The state of the UK steel and WTP industries

According to the information we have, the UK steel industry (and WTP production is one of the branches of steel industry) is currently in a favorable position.

According to OECD data, the UK steel industry's production increased by 3,5% in 2018. At the same time, production of steel in the whole EU decreased by 0,2% with the UK being the leader in steel production increase among the EU countries.¹³

According to World Steel Association, production of steel in the UK decreased only by 0,6% in 2019. At the same time, decrease of the EU steel production was 4,9%.¹⁴ As a result, being part of the EU industry at least till the end of 2020, the UK steel industry is more competitive than the EU steel industry.

Moreover, according to the World Steel Association, the UK steel production grew in November 2019 – March 2020 by 14,5% (table 5).

the UK steel production (table 5)

Month	Thousands of tonnes
March 2020	630
February 2020	586
January 2020	666
December 2019	558
November 2019	550

According to the major UK steel producers' association "UK Steel", the UK steel industry demonstrates positive development trends:

¹³ Steel market development-Q2 2019.

¹⁴ <https://www.worldsteel.org/en/dam/jcr:391f9b61-488d-46d1-b611-c9a43224f9b8/2019%2520global%2520crude%2520steel%2520production.pdf>



- average salary in the industry is 28% higher than the national average;
- the UK steel industry is export-oriented and contributes 1,5 billion pounds to the UK trade deficit;
- 2 billion pounds is direct contribution of the UK steel industry to the UK economy;
- 3,8 billion pounds per year is the estimated the UK steel industry contribution to the UK economy by 2030.¹⁵

Besides, in 2019 the largest UK steel producer Tata Steel invested in new production lines. For instance, blast furnace № 5 reopened and major investments to replace steelmaking equipment were made at the factory in Port Talbot.¹⁶

We urge the Department to take this information into account in its assessment of the state of the UK steel and WTP industries.

¹⁵ UK Steel - KEY STATISTICS 2019.

¹⁶ Tata Steel in the UK.-c. 3.

(https://www.tatasteeleurope.com/static_files/Downloads/Corporate/News/Publications/Tata%20Steel%20UK%20Factsheet%202020.pdf)

Conclusion

Taking into account the lack of exports of goods from Russia to the UK for a long period of time (at least since 2000), the lack of intentions and capabilities of the Russian manufacturers to increase substantially WTP exports to the UK and injure (or threaten to injure) the UK WTP industry, the Russian side presumes that there are no grounds to maintain the measure.

Moreover, indications of WTO-inconsistencies that have already taken place and risks of further violations put the compliance of the UK with its international obligations under threat. In this context, should the Department decide to continue the application of the measure in the territory of the UK following the review, the WTO rules will be violated.

The Russian side urges the Department to take into consideration the information provided in these comments. We hope that the current review will be terminated without further application of the measure in the UK following the withdrawal of the UK from the EU.