TD0001 – Transition review on welded tubes & pipes from Belarus, Russia & China

UK Steel Response to documents on TRID public file

This paper responds to the following documents submitted to the TRID public file:

- CCOIC – non-confidential version of contributor anti-dumping questionnaire of 27 April 2020 ("CCOIC questionnaire").
- Comments submitted by Allbright Law Offices on behalf of China Chamber of International Commerce (CCOIC) of 27 May 2020 ("CCOIC submission I").
- Comments submitted by Allbright Law Offices on behalf of China Chamber of International Commerce (CCOIC) of 23 October 2020 ("CCOIC submission II").
- Comments submitted by the TMK group dated 5 May 2020 ("TMK submission").
- Comments submitted by the Ministry of Economic Development of the Russian Federation and the Ministry of Industry and Trade of the Russian Federation placed on public file 22 December 2020 ("Russian Ministry submission").

1 Status of transition review

The TMK submission argues that a transition review is substantially different from a review in the meaning of Article 11 of the WTO anti-dumping agreement (ADA). It suggests that it is a new investigation and not a review (Section I.1) and that, in any case, it is illegal under Article 11 (Section I.2) as there are no claims from UK producers.

In the CCOIC submission I, it is argued that a de novo determination of dumping, injury and causality is required. It points out that Article 9(1) of schedule 4 of the Taxation (Cross-Border Trade) Act 2018 states that an investigation can only be initiated on the own initiative of the Secretary of State if there is dumping causing injury and more than a negligible volume of imports. CCOIC argues that the transition review is an ADA Article 5 investigation and requests that TRID should clarify the legal basis for initiation of the transition review (Section 1.1).

These points fail to take into account the following:

- The existing measures are UK anti-dumping duties. As a member of the EU customs union, the UK 'pooled' its trade remedy policy with the other 27 member states. The DIT guidance to TRID states that the 'transition review is

comparable to an expiry review'. Unlike an expiry review, however, the review will not be reviewing the EU28 measure that was originally adopted. Rather, it will be reviewing the split off UK measure. This is a unique situation. The review will consider the UK part of the measure, while the investigation has to be seen in the context of the link to the original EU28 measure.

- The unique situation of the transition reviews means that there does not need to be a normal application for review as such from UK producers. The 'changed circumstances' of the existing measure being split into two is sufficient to justify the initiation of transition reviews. Nevertheless, the Department for International Trade published a call for evidence to identify which of the EU's existing trade remedy measures matter to UK businesses. The decision as to whether an existing measure would be maintained and subject to a transition review was based on 3 criteria:
  a) DIT received an application from UK businesses producing products subject to trade remedy measures
  b) the application was supported by a sufficient proportion of the UK businesses which produce those products
  c) the market share of the UK businesses which produce those products was above a certain level
- TRID/TRA has the authority to initiate a transition review as explicitly provided for in Regulations 97 to 98 of The Trade Remedies (Dumping and Subsidisation) (EU Exit) Regulations 2019 ("Dumping and Subsidy Regulations") as amended by statutory instrument 2019 No.1076. The Secretary of State authorises this by publishing a determination notice (Regulation 96 of the dumping and subsidy regulations).

2 Negligible volume of goods

The TMK submission points out that imports from Russia are less than 1% of total UK imports of the covered goods (Section I.1). It also states that the volume of WPT imports from Russia cannot cause injury because of negligible amount (Section I.2).

The CCOIC submission I states that Chinese imports account for only 1% of total UK imports and that termination is mandatory under Article 5.8 of the WTO ADA. The point is made again in the CCOIC submission II, referencing UK Steel's submission as evidence of negligible volumes.

Because this can only be considered as a review, the fact that the level of imports is negligible is irrelevant. As in any review, there may be no current injury because the measure is effective in restoring normal trading conditions. This is why both the WTO rules and UK legislation permit a review analysis to be based on likely recurrence of injury if the measures are removed.

As such the points made in this regard in all of the submissions noted at the start of this paper are not relevant to this transition review.

3 CCOIC request to amend the anti-dumping duty

The CCOIC submission II (Section 2) requests that if the TRID does not terminate the review (on the basis of an irrelevant point of negligible imports from China during the POI) it should amend the anti-dumping duty. Whilst the UK Dumping and Subsidy Regulations provide for the possibility of amending duties as part of a review, it is more than clear that TRID has considerable discretion in choosing whether to do so or not.

Regulation 98(8) of the Dumping and Subsidy Regulations states that "*A transition review may include…the consideration of whether…it is appropriate to recalculate the anti-dumping amount or countervailing amount*". The use of the word "may" is important here, stating that the TRID does not necessarily have to consider it at all. If the TRID does consider whether or not to recalculate the anti-dumping amount, it must then consider whether it is appropriate to do so. TRID's own guidance provides a clear example of when it would not be appropriate to recalculate the duty, or indeed where it isn't practically possible, stating that "*The existing measure may...have reduced or eliminated dumping and injury and there may be insufficient data available to calculate a dumping, countervailing or injury amount."*

This is quite evidently the case here, as the CCOIC submissions I and II note, imports during the POI from China were negligible and crucially there are no-cooperative Chinese producers. In such circumstances it is clear that the TRID has no reliable data on which to base a recalculation of dumping or injury in this particular review and therefore it should use the discretion provided by the Dumping and Subsidy Regulations and choose not to do so. For further argumentation on this point please see UK Steel's original submission section 6.

Given there is no reliable data on which to base a recalculation of the duty, the subsequent points made in Section 2 of the CCOIC Submission II are not relevant in this context.

Changes in Circumstances: Whilst it is correct to say that the change in circumstance of the UK leaving the EU provides the justification for the review, it on its own is not sufficient to require a recalculation of the duty amount. Without appropriate data/evidence from a cooperative Chinese producer or reliable import prices for the POI – the changes in circumstances outlined by the CCOIC cannot constitute a valid reason for recalculating duties.

Moreover, the CCOIC submission II provides no evidence with respect to:

a) How or why the specific changes in circumstances outlined should or could lead to a recalculation of duties
b) Any changes in circumstances with respect to Chinese Industry that would justify a recalculation of duties. Such changes would arguably provide a much more important basis for the recalculation of duties – and none have been provided.

Lesser Duty Rule: With respect to Section 2.3 made in the CCOIC submission II – regarding the application of the lesser duty rule (LDR); most importantly, given the lack of any data reliable to recalculate a new duty level, there will be no role for the LDR to play in this review. Furthermore, the current duty was set using the application of the EU's LDR which was compulsory at the time that these duties were set.

4 CCOIC Request to reject UK Steel's claim on replacement of Chinese Export Price

The CCOIC submission II requests that TRID reject the claim made by UK steel in its submission that the Chinese to UK export price should be replaced. This claim is made on the basis that both the UK Regulations and the WTO anti-dumping agreement only allow for replacement of the export price when a) there are no export prices or b) the export prices are not reliable due to a particular relationship between the exporter and the importer.

Such argumentation does not hold up for the following reasons:

a) The CCOIC submission II starts by claiming the whole review should be terminated on the basis of a lack of exports from China to the UK. It is inconsistent to subsequently claim that sufficient data exists on Chinese exports to the UK on which to base a new dumping calculation.

b) As stated in both the UK Steel Submission and those made by the CCOIC – exports do exist but at negligible levels due to the existence of the anti-dumping duty. HMRC data for the POI show that imports of Chinese welded tubes constitute between 0.3% to 0.5% of supply to the UK market during the POI – just 647 tonnes. This compares to imports of closer to 50,000 tonnes in 2007 before the measures were introduced and the high levels of dumping were taking place. 647 tonnes, just 1.3% of historical levels of imports does not constitute a reliable data set from which to base dumping and injury calculations.

c) Trade data from HMRC (and other equivalent national authorities) is the best available information we currently have for this review, but remains an imperfect data source. This is particularly the case when dealing with such tiny volumes of imports – just 647 tonnes in 2019. Even small volumes of imports wrongly classified, or prices included for product that does not precisely match that of the product in question, can provide an inaccurate picture of the actual selling prices of the product in question. Notwithstanding the point made above about negligible Chinese to UK exports – if the CCOIC wishes for actual Chinese export prices to be used it should encourage Chinese producers to cooperate and provide actual data for the product under investigation. In the absence of this, its requests in this respect are without warrant.

d) The CCOIC submission II goes on to say that "*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*". Such an argument is patently illogical. National authorities must have the discretion to make a judgement on what qualifies as 'no export price" – one assumes even the CCOIC would accept that a single tonne of exports reported at a 6-digit code level would not be sufficient on which to base any dumping or injury calculations. It is clear that the TRID must use its own discretion to interpret the WTO agreement and UK legislation with regards to what constitutes "no export price". UK Steel submits that in this particular case where there is no product specific data provided by a foreign producer, and the trade data available from other sources relates to such small volumes (less than 1% of imports) – TRID has no choice but to conclude that there exists "no export price".

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

Regulation 14(1)(b): The CCOIC submission II states, in Section 4, that Regulation 14(1)(b) of the UK Regulations do not apply because Article 15(a) of the Chinese WTO accession protocol expired in December 2016. This is not correct. The accession protocol actually specifies that para 15(a)(ii) expires after 15 years, it does not provide any statement on para 15(a) as a whole or paragraph 15(a)(i) in particular. With the expiry of 15(a)(ii) the accession protocol now reads:

(a) In determining price comparability under Article VI of the GATT 1994 and the Anti-Dumping Agreement, the importing WTO Member shall use either Chinese prices or costs for the industry under investigation or a methodology that is not based on a strict comparison with domestic prices or costs in China based on the following rules:

(i) If the producers under investigation can clearly show that market economy conditions prevail in the industry producing the like product with regard to the manufacture, production and sale of that product, the importing WTO Member shall use Chinese prices or costs for the industry under investigation in determining price comparability;

This clearly leaves open the possibility of using a methodology that is not based on a strict comparison with domestic prices or costs in China. Without para 15(a)(ii), importing countries can still use an alternative methodology unless the Chinese producers clearly show that market economy conditions prevail in the industry producing the like product. Given that the CCOIC has not provided any evidence of this, and there are no cooperative Chinese producers in this review – it stands to reason that TRID could legitimately utilise regulation 14(1)(b) of the UK Regulations.

Moreover, as stated in UK Steel's submission, leaked press reports on the confidential interim panel report in the case of EU – Price Comparison Methodologies (DS516) suggest that a WTO panel was going to confirm that the above argument is correct. China has prevented this from being published by its request to suspend the proceedings but the UK would certainly be within its rights to use regulation 14(1)(b) of the UK dumping and subsidy regulations. This provides extra flexibility in addition to that provided by regulation 13(1) (particular market situation). The UK should reject all Chinese prices and costs unless any of the exporters can provide evidence that they operate in market economy conditions. Given no Chinese exporters are cooperating in this review, this evidence has clearly not been provided.

Particular Market Situation: The CCOIC submission II argues that UK Steel has not submitted any evidence in support of its claim that a particular market situation exists in relation to the product under investigation. Furthermore it claims that no such particular market situation exists. Both of these claims are demonstrably false.

Firstly UK steel has provided ample evidence sourced from three different authorities (EU, Australia and Canada) on the various distortions, state interventions and non-market particularities of the Chinese steel market. This evidence refers both to the general steel market, but also specifically in relation to hot-rolled-coil (the primary input material that accounts for around 60% of the costs to make and sell welded tubes), and to closely related products such as hollow steel sections (another welded tube product). The CCOIC's claim that none of the evidence provided was product specific enough is patently false – UK Steel has provided the best available evidence of distortions in the market for the primary raw material of the product under investigation and of closely related products. In particular, the EU's report[1] into the distortions in Chinese markets was recently developed specifically to provide a highly credible evidence base on which to utilise its new alternative anti-dumping methodology.

Given the scale and widespread nature of the Chinese Government's interventions into the steel market, it is incredible that demonstrable distortions in the hot-rolled-coil market or that of hollow structural sections are absent from the market for these particular welded tubes. Indeed, the CCOIC uses market data pertaining to the 'flat products sector' (figure 6) as evidence that there is no 'particular market situation' with regards to welded tubes; thereby confirming the interrelated link between flat products markets and that of welded tubes. (It should also be noted that this data shows that Chinese domestic prices for flat products were significantly lower than all other regional prices shown from 2016 to 2018, and that during the POI Chinese prices followed a completely different trend to all other regional prices, including the US, EU and Japan)

Secondly, the CCOIC claims that none of the sources of information are recent enough to be relevant. This again is false:

[1] Commission staff working document on significant distortions in the economy of the PRC for the purposes of trade defence investigations (20.12.17)

- Commission staff working document on significant distortions in the economy of the PRC for the purposes of trade defence investigations – **December 2017**
- US-China Economic and Security Review Commission – Evaluation of China's non-market economy status – Issue Brief – **April 18 2017.**
- Australian Anti-Dumping Commission final report imposing anti-dumping duties on Hollow Structural Sections – **May 2017**
- Canadian Border Services Agency - Statement of Reasons' in its investigation into dumping of corrosion resistant steel sheet from China – **February 2019**

All of these reports and findings were published within 20 months of the POI, and there is no evidence whatsoever that the steel market in China has changed notably since then. Again, the CCOIC's claim that such reports are too historic to be relevant to this review simply do not stand up to examination.

Construction of normal value: The CCOIC submission II claims that the use of third country benchmarks in constructing the normal value (as proposed by UK Steel) are not in accordance with the WTO agreement, as they "*will not accommodate the conditions of the Chinese market and such a benchmark does not represent the cost "in the country of origin*"". In determining that UK Steel's proposed approach is not in line with the WTO agreement, the CCOIC submission II refers to the Appellate Body's ruling on EU – Biodiesel (DS473). There are a number of issues with this line of argumentation:

- Firstly no evidence at all is provided that the third country benchmarks used in UK Steel's response would not represent the cost in the country of origin. It is simply stated as fact.
- Secondly, the DS473 ruling hinged on the EU's rejection of the Argentinian exporters production costs because of state distortions. This is not relevant in this case because no records have been produced by Chinese exporters for TRID to reject.
- Finally, although the Appellate Body in its 2016 ruling on EU – Biodiesel (DS473) ruled that the EU erred in rejecting the Argentinian producers' production costs because of state distortions affecting internal soybean prices, they did not rule on the interpretation of the word "normally" used in Article 2.2.1.1 of the Anti-Dumping Agreement – "*costs shall <u>normally</u> be calculated on the basis of records kept by the exporter or producer under investigation*". The EU had relied on the argument that because of the state distortions, the producers' records did not "reasonably reflect the costs associated with the production and sale of the product", and the Appellate Body accordingly restricted itself to considering this issue: "*we consider it unnecessary to the resolution of the present claim to express any views on the arguments presented by the parties and third parties as to whether, in general terms, Article 2.2.1.1 permits derogations on grounds other than those expressly listed in Article 2.2.1.1*"

6 Request for an injury analysis

The CCOIC submission II (Section 5) calls for "an objective injury analysis" to be conducted, and claims such analysis is necessary in order to conduct the transition review. Furthermore it claims that all the factors outlined in Regulation 30(2) must be taken into account, including the volume of dumped goods, the effect of the dumped goods on UK prices, and the impact on UK industry. Such claims are again incorrect. Regulation 30 of the UK Dumping and Subsidy Regulations sets out requirements for injury analysis in an initial investigation before any measures are introduced, they are not relevant to a transition review. Such an analysis is not a requirement of a transition review, and indeed much of it is impossible.

The UK Regulations require a transition review to "*consider 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*." The wording of this requirement makes it clear that a traditional injury analysis (as detailed in Regulation 30) is neither a requirement or strictly possible. The TRID must examine whether injury would occur if the measure was removed – not whether injury is/was taking place during the specified injury period. This is for the simple reason that a review naturally examines a measure that is already in place and, if working effectively, has prevented the dumping of the relevant products. In the absence of dumping, there is no related injury to examine.

Section 5 of the CCOIC submission II makes similar claims about the need for the transition review to carry out analysis as detailed by Regulations 31, 32 and 33. As noted above, such analysis is not a requirement of a transition review, but rather that of an initial investigation. With the dumping having been prevented by the existing measure there should be no increase in dumping imports (Regulation 31), no ongoing effect of the dumped imports on prices (Regulation 32) and no ongoing impact of the dumped imports on UK industry (Regulation 33). Again, the WTO Anti-Dumping Agreement recognises this and is precisely the reason why it permits a review analysis to be based on likely recurrence of injury if the measures are removed.

As with much of the CCOIC's submission – this claim of a need for a completely new injury analysis, in line with Regulations 30-33, only makes sense if this is a new investigation rather than a review of an existing one. The UK Regulations are clear on this point, this is a transition review not a new investigation, and these are not new measures but rather existing ones that have been split from the EU's.

7 Identification of subject goods and trade data

The CCOIC submission I states that there is a discrepancy between the HS codes and product definition in the notice of initiation. Also, it claims that there is a discrepancy between 6 and 8 digit data. (Section 2)

The HS codes are perfectly consistent with the product definition in the notice of initiation. The CCOIC submission I fails to notice that the prefix 'ex' is attached to

each of the 8 digit codes. This is common terminology used by the WTO, EU and others to mean 'out of' i.e. the term ex means that only part of the 8 digit heading is covered by the investigation.

The CCOIC submission I is objecting to the use of 6-digit level data by TMK in relation to China. Of course there is a discrepancy between 6 digit and 8 digit data, as there is in relation to data covering only the product concerned within the 8 digit heading. Interested parties have to work sometimes with data broader than the actual product concerned because the specific data may not be available. Often useful inferences can be made from such data. However, if the exporters in a transition review cooperate, TRID/TRA will have accurate data on the level of imports. If they don't cooperate, TRID/TRA would be free to use whatever data is available as best information, subject to recognising that it does contain non-product concerned.

8 Incorrect evaluation of Russia imports increase

TMK argues that the facts demonstrate incorrect evaluation of the significance of Russian imports increase in the original EU investigation. It highlights the sharp increase from PRC and Turkey and points out that Russian imports decreased in 2005 with low growth in 2006 and IP (Section 2). This point was raised during the investigation and was dealt with by the Commission.

> *Certain parties argued that imports originating in Russia should be decumulated from the investigation as imports from this country show a diverging trend in import volumes and market share in a market where demand is increasing. In this respect, it should be noted that the volumes of imports into the Community market remained substantial at all times throughout the period under consideration. In addition, dumped imports from all three countries (Belarus, the People's Republic of China and Russia) increased significantly in the last two years which were analysed, and general price levels followed the same trends and were in the same order of magnitude, particularly in the IP as shown by individual company data. Furthermore all of the cumulated imports undercut the prices of the Community industry in the IP. (recital 32, Regulation 1256/2008)*

When imports are cumulated, a practice fully authorised by the WTO, it is not required that all of the imports show identical trends. It is true that the Chinese imports increased by a much bigger volume than the imports from Russia. However, the Chinese dumping margin and price undercutting were significantly higher than those of Russia. Yet dumping (10.1%-22.7%) and price undercutting (12%-15%) were both significant. In the absence of the high level of Chinese dumping and price undercutting, Russian imports could be expected to have increased at a much greater rate during this period. While the increase in Russian imports was relatively modest compared to the Chinese increase, it did fully meet the requirements to cumulate and to include Russia in the measures.

9 UK market not attractive for Russian producers

TMK claims that the UK market is neither attractive nor does TMK have enough capacity to export to UK. (Section 2)

The UK Steel non-confidential questionnaire response provides evidence that likely Russian dumping would be around 21.65% if the current measures were removed. In addition, published market data for Russian exports show that its current export prices would undercut UK prices by 40-60%. This suggests that the market is highly attractive to Russian exporters. Furthermore, the evidence suggests that spare capacity in Russia is in the millions of tonnes and significantly dwarfs the UK market of 100,000 to 150,000 tonnes. The available evidence suggests that TMK's claims are simply not true.

10 Price of Chinese imports relatively higher than other countries

The CCOIC submissions (I and II) argue that the price of Chinese imports are higher than other major exporters such as Turkey, India and the UAE. (Section 3.1)

However, the prices used are calculated from UK import statistics. The volume of Chinese imports is not significant (less than 1% of total imports) and therefore the prices are not reliable. Using the price of Chinese exports to its biggest overseas market as an indicator of likely price to the EU, the UK Steel questionnaire response found that Chinese dumping of 55% and price undercutting of 14% would be likely if the measures were to be terminated.

In section 3.3 of the CCOIC submission I, a graph derived from Eurostat data shows that Chinese prices to the UK are much lower than to other member states as evidence that the UK market is not so attractive. However, the quantities of the higher price markets are so small (even substantially less than the insignificant level of UK imports). Thus, again these prices are completely unreliable. If the chart does show anything, which is unlikely, it shows that Chinese export prices to the UK are lower than to other major EU member states.

11 Chinese production capacity

CCOIC Submission I states that in 2018, welded pipe production was about 48m tonnes. Of this, it argues, domestic consumption accounted for 92% and exports represented 8% (4m tonnes) (Section 3.3).

Bearing in mind that the UK market is only 100,000 to 150,000 tonnes, even a fraction of the 4m tonnes exported would have a very significant impact on the UK market if they were switched. UK Steel analysis submitted to TRID suggests that the UK is an

attractive market and it is clear that production capacities in China are massive. The difficult global market situation of 2020, including the impact of Covid-19, add to the risk that there is likely to be significant Chinese quantities diverted to the UK market if the measure is removed. In fact, removal of the measure for the UK, when the measure is in place in the EU, would substantially increase the attractiveness of the UK market.

12 Cost adjustment methodology

Section 3 in the TMK Submission cites the WTO findings in the Ukraine-Ammonium nitrate case, pointing out how Ukraine used a WTO-inconsistent cost adjustment methodology. It goes on to argue that the EU measures are also legally flawed and subject to current dispute settlement proceeding at WTO (DS494). The panel report in DS494 indeed finds that the EU measures on welded tubes used a WTO-inconsistent cost adjustment methodology and thus are not consistent with the EU's WTO obligations. The same point is raised in the Russian Ministry submission.

It should be noted that the EU has appealed against the panel's findings in DS494. However, due to the current impasse at the WTO Appellate Body, the appeal is unlikely to go ahead for the foreseeable future. This means that the panel report in DS494 is not finalised and does not yet have the status of adopted WTO jurisprudence. The issues are complex and, whilst the jurisprudence was already clear that the EU's old cost adjustment methodology was not WTO consistent, there are strong arguments that the EU can correct this in the current expiry review it is conducting.

TRID will not be using the contested cost adjustment methodology in any of its trade remedy investigations including transition reviews. Thus, TRID will assess the likely recurrence of Russian dumping by using a WTO consistent cost adjustment methodology. A similar methodology to that which the UK will use has been confirmed as WTO consistent in the dispute DS529 Australia – AD measures on A4 copy paper.

Moreover, as demonstrated in UK Steel's non-confidential submission to TRID, there is clear evidence of a likely reoccurrence of dumping from Russia into the UK if the measures are removed, and this is demonstrated without the use of any cost adjustments.

13 The state of the UK steel industry

The Russian Ministry submission (Section VI) claims that the UK steel sector is outperforming the EU steel industry in terms of production which is demonstrably false. The data presented has been selected to span a very short period of time and is misleading and meaningless in this context. An arbitrarily selected five months of production data tells us nothing of any use about the standing of an industry. The trend

has been quite the opposite with UK steel production declining approximately 1% each year from 2016 to 2020, to reach a historic low of 7.2 MT in 2020.

Moreover, even accurate data of the crude production of steel for the UK as a whole tells us next to nothing about the health of the welded tubes sector. The data presented is also incorrect – World Steel Association figures are displayed below and show an increase of just 4.7% from November 2019 to March 2020 instead of 14.5% which is claimed in the Russian Ministry submission.[2]

Month	UK Steel Production (thousand tonnes)
Feb-19	662.5
Mar-19	647.1
Apr-19	630.5
May-19	635.7
Jun-19	605.5
Jul-19	629.1
Aug-19	509.2
Sep-19	590.1
Oct-19	610.4
Nov-19	541.6
Dec-19	550.2
Jan-20	657.5
Feb-20	575.7
Mar-20	567.2
Apr-20	620.7
May-20	571.5
Jun-20	499.4
Jul-20	587.0
Aug-20	560.9
Sep-20	538.5

[2] Crude steel production monthly (worldsteel.org)