



**Department for International Trade
Trade Remedies Investigation Directorate
North Gate House, 21-23 Valpy Street,
Reading Berkshire RG1, 1AF,
United Kingdom**

05 May 2020

VERSION OPEN FOR INSPECTION BY INTERESTED PARTIES

Subject: TD0001. Transition review of the anti-dumping measures applicable to imports of certain welded pipes and tubes of iron and non-alloy steel originating in Belarus, the People’s Republic of China and Russia initiated by the Trade Remedies Investigation Directorate of the Department for International Trade on accordance with the Notice of Initiation No. TD0001.

Name of the applicant: the TMK Group (comprising PAO Seversky Pipe Plant and PAO Taganrog Metallurgical Plant)

Address: 40, bld. 2a, Pokrovka Str., Moscow, 105062, Russia

The TMK Group reserves the right to present further arguments and evidence at a later stage and throughout the course of the Transition Review.

Mesdames,

Dear Sirs,

By way of a Notice of Initiation (“the Notice”) published by the Secretary of State for International Trade of 6 February 2020, the Department for International Trade (“the Department”) initiated a transition review No.TD0001 of the anti-dumping measures applicable to imports of certain welded tubes and pipes of iron or non-alloy steel (“WPT”) originating in the Republic of Belarus, the People’s Republic of China, and the Russian Federation (“the Transition Review”).

This Memorandum (“the Memorandum”) submitted by the TMK Group (“TMK Group”) provides comments in response to the Transition Review of the anti-dumping measures applicable to imports of WPT originating in Russia. The Memorandum consists of the following elements:

I. General Comments

1. The volume of goods is negligible
2. WTO rules on review:
 - Necessity requirement
 - Violation of standards during an initial investigation
3. Cost adjustment methodology

II. Conclusion

Based on these elements, the TMK Group demonstrates that the repeal of the anti-dumping measures on WPT from Russia is warranted.

I. GENERAL COMMENTS

1. The volume of goods is negligible

The Transition Review investigation will cover the period from 1 January 2016 to 31 December 2019. According to the data provided by the HM Revenue and Customs (<https://www.uktradeinfo.com/>)¹, goods under HS code tariff classification 7306 30² (which are the subject of the covered anti-dumping measures) were imported from Russia into the UK only in 2016. Moreover, only 720,623 kg of the goods under referred tariff classification were imported from Russia into the UK in the specified year. At the same time the total UK import of WPT in 2016 amounted to 74,064,094 kg. This means that imports from Russia consist less than 1% of the total import of the covered goods in the UK.

A meaning of “negligible” in relation to dumped goods is provided in Article 4 of the Trade Remedies (Dumping and Subsidization) (EU Exit) Regulations 2019. The volume of dumped goods is negligible where the exporting country or territory accounts for less than 3% of imports of the like goods imported into the UK. Article 5.8 of the WTO Anti-Dumping Agreement (“the AD Agreement”) contains the same provision about the quantity of negligible import. As imports from Russia represent less than 1% of the total import of WPT to the UK, it is clear that the volume of those goods is negligible even in cases when such goods could be recognized as being dumped.

The Transition Review appears to be substantially different from a review in the meaning of Article 11 of the AD Agreement due to the unique character of Brexit. The UK’s exit from the EU has totally changed the market and conditions of trade. As a result, the Transition Review has the following differences in comparison to the review under Article 11 of the AD Agreement:

1) The ordinary review provides that newly introduced measures either extend the application of previously adopted measures within the same market or replace them. In this case new measures applying to a new market are introduced since the EU and UK markets are no longer regarded as a single market. The new measures do not replace the previous measures, which stay in force in the EU market. It should be mentioned that the EU is currently revising its own measures of the same type.

2) A significant market change requires a more thorough evaluation of current conditions rather than just a review. Thus, the ordinary review is not taken in a situation of a complete change of the market volume, its special features, means of delivery and legal regulation.

This means that the Transition Review is in fact a new investigation and not a review under the meaning of the AD Agreement. Hence the negligible import of WPT from Russia can be taken into account in case of the Transition Review as a reason for repealing of the anti-dumping measures against WPT from Russia. It should be noted that such negligible amount of imports from Russia cannot create an injury to the corresponding UK industry.

2. WTO rules on review

Necessity requirement

Even if the Transition Review can be recognized as a review under the Article 11.1 of the AD Agreement, this Article states that “an anti-dumping duty shall remain in force **only as long as** and to the extent **necessary** to counteract dumping which is causing injury”. The Panel in *US – DRAMS* described that rule in as “a general necessity requirement”³. In the referred case the Panel stated that “the necessity of the

¹ Data is available in the Annex 1.

² Tariff classifications: ex 7306 30 41 (TARIC code 7306 30 41 20); ex 7306 30 49 (TARIC code 7306 30 49 20); ex 7306 30 72 (TARIC code 7306 30 72 80); ex 7306 30 77 (TARIC code 7306 30 77 80).

³ Panel Report, *US – DRAMS*, para. 6.41.

continued imposition of the anti-dumping duty can only arise in a defined situation pursuant to Article 11.2: viz to offset dumping".

It is clear that the volume of WPT imports from Russia to the UK cannot cause injury to UK domestic producers because of negligible amount of such imports. There are also no claims from UK producers of WPT on dumped imports from Russia.

The UK market is neither attractive for nor prioritized by Russian producers of WPT. Export from Russia to the UK is economically impracticable and creates disadvantages of deliveries to the UK from Siberia and Ural. In addition, consumption is stable both in Russia and in the countries of the near abroad (including Kazakhstan, Belarus, Azerbaijan, etc.) – historical partners unlike the UK. Moreover, the TMK group doesn't have enough capacities for increasing exports of WPT to the UK.

Another relevant factor is the statistical data. The UK was on the 5th place between the EU countries on steel production.⁴ The UK steel industry is small compared to other manufacturing industries. It takes only 0.1% of the UK economy and 0.7% of manufacturing output.⁵ According to the number of employees in leading steel industries in the EU in 2018 the UK took only the 8th place.⁶ This data demonstrates that trade remedies on steel operate foremost in the interests of the particular EU member states.

It is also necessary to notice that Article 4.1.3. of the Notice of initiation of an expiry review of the anti-dumping measures applicable to imports of certain welded pipes and tubes of iron or non-alloyed steel originating in Belarus, the People's Republic of China and Russia (2020/C 24/08) tells about no significant import volumes from Russia even to the EU. Para. 64 Commission implementing regulation (EU) 2015/110 also demonstrates that the quantities of WPT from Russia were very limited.

Based on these arguments it seems clear that the requirement of "necessity" is not satisfied in relation to the anti-dumping duty on WPT from Russia. That means if the concerned measure remains in force it will be illegal under Article 11 of the AD Agreement.

Violation of standards during an initial investigation

Article 3.2 of the AD Agreement requires that the investigating authorities "consider whether there has been a significant increase in dumped imports". The anti-dumping duty on WPT from Russia was originally imposed by Council Regulation (EC) No 1256/2008 of 16 December 2008. The statistics contained in Table 2 of the named Regulation demonstrates that there was no sharp increase in WPT imports from Russia. Following that statistics, it was low (not sharp) growth in Russian import in 2006 and during the investigation period, but in 2005 it was sharp reduction in import of WPT from Russia.

Table 6 Council Regulation (EC) No 1256/2008 presents some decrease of the EU production in WPT goods compare to 2004 (but it was some increase in 2006). At the same time, it was very sharp increase of WPT import from PRC and Turkey (Table 2). Therefore, import from PRC and Turkey could be the reason of the EU production decrease. The growth of Russian import of WPT is absolutely incomparable to the growth of PRC and Turkey imports. Moreover, as it was noted above, Russian import had a significant decrease in 2005.

The facts above demonstrate incorrect evaluation of the significance of Russian imports increase. Under the such circumstances the anti-dumping measures on WPT from Russia initially were imposed inconsistently with Article 3.2 of the AD Agreement. That reflects on the consistency to the AD Agreement of the all other consequential EU reviews on the anti-dumping measures on WPT from Russia. Such circumstances should be considered under the Transition Review.

⁴ Briefing paper Number 07317, 2 January 2018, UK steel industry: statistics and policy.

⁵ Briefing paper Number 07317, 2 January 2018, UK steel industry: statistics and policy.

⁶ <https://www.statista.com/statistics/640341/steel-industry-employment-european-countries/>. According to that statistics the number of employees in the UK in leading steel industries in 2018 was 15 811. At the same time in Germany (1st place between EU countries) were 84 230 employees.

3. Cost adjustment methodology

Anti-dumping measures applicable to imports of WPT from Russia were implemented by the Commission's 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 ("Commission implementing regulation (EU) 2015/110"). Relating to goods originating in Russia that decision was based on the so-called "cost adjustment" methodology.⁷

In the WTO case *Ukraine — Ammonium Nitrate*⁸ the Panel and the Appellate Body made their conclusion about "cost adjustment" methodology compliance with the WTO law. Measures under this case were taken by Ukraine on the same basis of "cost adjustment" as it was made by the Commission's implementing regulation (EU) 2015/110. In both cases the normal value of goods was constructed taking into account the average price of Russian gas when sold for export at the German/Czech border (Waidhaus).⁹ In the *Ukraine — Ammonium Nitrate* case the Panel found and the Appellate body uphold its position that Ukraine acted inconsistently with some relevant to this Memorandum provisions of the AD Agreement:

- Article 2.2.1.1 of the AD Agreement, because Ministry of Economic Development and Trade of Ukraine did not provide an adequate basis under the second condition in the first sentence of that provision to reject the reported gas cost¹⁰;
- Article 2.2 of the AD Agreement, because, when constructing normal value, Ukrainian investigating authorities used a cost for gas that did not reflect the cost of production in the country of origin¹¹.

Those conclusions demonstrate that anti-dumping measures applicable to imports of WPT from Russia on the basis of the Commission's implementing regulation (EU) 2015/110 are also legally flawed. That means that the adoption of measures on the basis of the named regulation will also be inconsistent with the provisions of the WTO agreements. It is also worth mentioning that the EU "cost adjustment" methodology is currently subject to a dispute settlement proceeding in the WTO¹².

II. CONCLUSION

There are the following conclusions based on the arguments above.

Negligible (less than 1% in that case) share of the WPT imports from Russia could not be an injury to the UK industry or establish a likelihood of such injury. There is no evidence of any ability for increasing WPT imports from Russia. To the opposite, the UK market is not attractive for Russian producers, including the TMK Group, because of economic impracticability of such exports and stable consumption in Russia and traditionally importing countries.

The anti-dumping measures on WPT from Russia are also in contravention to the WTO law and practice, because such measures were applied with use of the "cost adjustment" methodology, especially in the light of WTO Appellate Body decision on dispute *Ukraine — Ammonium Nitrate (Russia)*, where Ukraine

⁷ Paras. 68-71 Commission implementing regulation (EU) 2015/110.

⁸ DS493: *Ukraine — Anti-Dumping Measures on Ammonium Nitrate*.

⁹ Para. 69 Commission implementing regulation (EU) 2015/110; Panel Report, *Ukraine — Ammonium Nitrate (Russia)*, fn 107.

¹⁰ Appellate Body Report, *Ukraine — Ammonium Nitrate (Russia)*, para. 7.6.

¹¹ Appellate Body Report, *Ukraine — Ammonium Nitrate (Russia)*, para. 7.8.

¹² DS494: *European Union — Cost Adjustment Methodologies and Certain Anti-Dumping Measures on Imports from Russia — (Second complaint)*

actions in part of the “cost adjustment” methodology were recognized inconsistent with some provisions of the AD Agreement. Thus the imposition of the anti-dumping measures on WPT in the UK after the Transition Review on the basis of the Commission’s implementing regulation (EU) 2015/110 will be inconsistent with the WTO law.

It is also should be noticed that Brexit caused not only economic uncertainty, but the uncertainty about the rules of trade applied by UK vis-à-vis its former partners in the EU and other countries. The UK independent trade policy framework is also yet to be set.

After 17 years of application of anti-dumping measures, the current Transition Review proceeding is unreasonable, and the measures against Russia must be repealed.

ANNEX 1

Net mass (kg)			Flow Type(F)	Year(F)	Month(F)					
EU Indicator	Continent	Country	Import							
			2020	2019	2018	2017	2016	2015		
EU	European Community		..	..	..	..	..	..
NON EU	Asia and Oceania	Australia	..	7	..	..	..	25,338
		China	1,054,553	7,114,121	8,026,721	7,748,628	5,731,786	8,863,269		
		Hong Kong	1,518	150	..	41,631	13,991	21,756		
		India	2,920,066	10,236,197	12,722,376	18,929,221	17,322,324	21,276,650		
		Japan	67,059	482,293	800,899	825,764	888,536	1,171,273		
		Pakistan	..	700,737	326,332	244,150	788,166	803,004		
		Singapore	..	..	..	..	19,920	221,021
		South Korea	1,526	4,388	376	3,249	89,901	47,490		
		Sri Lanka	..	..	3,616	..	..	..
		Taiwan	2,324	65,352	198,622	461,484	590,039	630,251		
		Thailand	..	137	76	..	..	..
		Vietnam	..	..	..	..	..	71,026
		Total			4,047,046	18,603,382	22,079,018	28,254,127	25,444,663	33,131,078
		NON EU	Eastern Europe	Azerbaijan	989
Montenegro	174,520			..	..	..	..	..
Russia	..			..	..	..	753,548	..
Total			174,520	..	989	..	753,548	..		
Latin America and Caribbean			..	116	63	60	66,101	..		
Middle East and N Africa			4,841,567	13,380,999	4,972,858	2,609,122	5,563,087	11,328		
North America			30,187	491,815	2,710,619	3,054,075	2,540,721	6,348,137		
Sub-Saharan Africa			32,681	46,047	110,566	84,349	375,361	26,951		
NON EU	Western Europe exc EC	Iceland	..	..	..	..	150	..
		Norway	..	194	554	660	276	12,951		
		Switzerland	385,625	2,428,367	3,025,362	1,778,858	3,605,359	3,814,580		
		Turkey	13,363,916	68,674,493	77,222,647	62,880,837	81,060,305	74,859,785		
Total			13,749,541	71,103,054	80,248,563	64,660,355	84,666,090	78,687,316		
Total			22,875,542	103,625,413	110,122,676	98,662,088	119,409,571	118,204,810		
Grand Total			22,875,542	103,625,413	110,122,676	98,662,088	119,409,571	118,204,810		