Non - Confidential Version
1 November 2021

TD0007 – Wire Rod originating in the People's Republic of China

Submission of China Chamber of International Commerce

On behalf of the China Chamber of International Commerce (CCOIC), we hereby submit our comments against the transition review TD0007 of the anti-dumping measures applicable to wire rod (WR or goods subject to review) originating in the People's Republic of China.

The comments are submitted on the following issues:
- The WTO's consistency of the UK's maintenance of the EU trade remedy measures is in doubt;
- The ongoing transition review being conducted by the TRA fails to comply with the obligations in the ADA regarding the principle of due process and transparency;
- The alleged "particular market situation" does not exist;
- Chinese imports did not cause injury to the UK industry.

1. The WTO's consistency of the UK's maintenance of the EU trade remedy measures is in doubt.

1.1 Condition for adopting trade remedy measures

CCOIC submits that the UK is not entitled to adopt the EU measures via its unilateral transition approach without abiding by the WTO rules, *i.e.*, Articles 1 and 5 of the Anti-dumping Agreement (ADA).

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

However, no evidence with regard to the above conditions has been provided at this stage.

1.2 The so-called "transition review" is not a review within the meaning of the ADA and shall be terminated immediately.

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

CCOIC submits that the transition anti-dumping review does not constitute a review investigation within the meaning of the ADA. The review under the ADA aims to determine whether the current measure in force shall be maintained, varied, or revoked, which means that all the determinations pertaining to the review must be established based on the existing measure. However, in the EU's Notice regarding the application of anti-dumping and anti-subsidy measures in force in the European Union following the withdrawal of the United Kingdom and the possibility of a review (2021/C 18/11), it clearly states that "*all anti-dumping and anti-subsidy measures in force apply from 1 January 2021 only to imports into the twenty-seven Member States of the European Union,*"[1] which means that the existing anti-dumping and anti-subsidy measures no longer apply to the UK from 1 January 2021. This renders the continuation of the transition review unjustifiable.

To sum up, CCOIC submits that the transition review, by its nature, is not a review under the ADA and shall be terminated immediately.

1.3 Even if the UK considers that the transition review is a "unique" review rather than an original investigation, its compliance with the WTO rules remains questionable.

There will be a gap, which may be longer for measures with later expiration dates, between the end of the transition period and the publishment of the transition review determination. During this period, the UK will continue to apply the original EU measures to the imports with no investigation in place, which is an undisputed violation of the WTO rule.

For instance, in the anti-dumping investigation against imports of Ceramic tableware/Kitchenware (AD586), where the UK determined to maintain the existing measures, the expiry date of the measure is 16 July 2024. This means the original EU anti-dumping duties will continue to apply until the outcome of the transition review is released. Hypothetically, if the transition review of AD586 were initiated not long before 16 July 2024, the anti-dumping duties would be in place until 2025, or even later.

In this regard, it shall be pointed out that the current effective measures are the trade remedy measures imposed by the European Commission in the EU customs union, which was determined by taking into consideration the situation and statistics of the EU28, rather than that of the UK market only. Following Brexit, the market size of the EU decreases. The impacts of the decreases in the EU's market size include (1) the initial dumping margin determination may be inappropriate, and (2) the injury determination may be inaccurate.

To facilitate the TRA's understanding of the impacts brought by diminishing market size, CCOIC hereby takes the current investigation as an example. In the current case, the now-effective 24.0% country-wide duty applying to the WR from China is indeed the injury margin determined by the European Commission after taking into account the information from both the EU and UK producers. Specifically, the European Commission sought and verified all the information deemed necessary for a determination of dumping, injury, and Community interest and carried out verifications at the

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

premises of 6 EU companies. [2]The EU producers, respectively located in Germany, Spain, Poland, Italy, the UK, and Belgium.

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

2. The ongoing transition review being conducted by the TRA fails to comply with the obligations in the ADA regarding the principle of due process and transparency.

CCOIC submits that even without considering the legality and compliance of the UK's succession or continued implementation of the EU's original trade remedies measures, the transition review being conducted by the TRA failed to comply with the obligations of the ADA with respect to principles of due process and transparency.

2.1 The information and evidence gathered in the call for evidence process have a hiatus between the evidence collected in the call for evidence and the POI of transition review, which questions the information and evidence in terms of relevance, credibility, and reliability.

Pursuant to Article 5.3 of the ADA, "*the authorities shall examine the accuracy and adequacy of the evidence provided in the application to determine whether there is sufficient evidence to justify the initiation of an investigation (emphasis added)*." Article 11.3 of the ADA also emphasizes that a duly substantiated request made by or on behalf of the domestic industry is needed.

Moreover, in *Mexico — Anti-Dumping Measures on Rice,* the panel held that:

> *This fifteen month gap between the end of the period of investigation and the initiation of the investigation amounts to a relatively lengthy hiatus. A great deal could have happened – or changed – over a fifteen month period, and there is simply no evidence on record in respect of it. A hiatus of such a duration is, in our view, sufficiently long as to impugn the reliability of the period of investigation to deliver, for the purposes of a determination, evidence that has the requisite pertinence or relevance (see para. 7.55 supra). In other words, given the passage of time and the uncertainty about the factual situation in that relevant interim, the information lacks credibility and reliability, thereby failing to meet the criterion of "positive evidence" pursuant to Article 3.1 of the AD Agreement* (emphasis added). [3]

[2] COMMISSION REGULATION (EC) No 112/2009 of 6 February 2009 imposing a provisional anti-dumping duty on imports of wire rod originating in the People's Republic of China and the Republic of Moldova, recital 11. https://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2009:038:0003:0024:EN:PDF.
[3] WTO Panel Report, *Mexico — Anti-Dumping Measures on Rice*, para. 7.64.

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

Secondly, CCOIC questions the relevance of the evidence collected during the call for evidence procedure. According to the report published by the DIT, the call for evidence was opened from 28 November 2017 to 24 August 2018, which implies that the information collected is at least more than three and a half years ago.[4] Take the very first transition review, for instance, the gap between the POI of the current investigation and the call for evidence is more than one year, not to mention the POI for the transition review that has not yet been initiated.

Thirdly, CCOIC notes that the DIT may argue that there are updates regarding the level of the EU measures, based on which the Secretary of State may reassess its determination in the call for evidence after considering the changes during the transition period.[5] However, CCOIC submits that those updates are neither comprehensive nor appropriate since they are only concerned with the changes before the transition period, rather than the possible changes thereafter. In addition, CCOIC is not aware of any interested party who has submitted evidence to prove the changing statistics no longer justify the maintenance of the measure at issue. On the contrary and from the perspective of the normal commercial logic, domestic industries are inclined to demonstrate that changed circumstances met the criteria of the call for evidence, just as the UK bicycle manufacturers have done.

In summary, CCOIC submits that the gap between the evidence collected in the call for evidence and the POI of transition review is too long to ensure the certainty, credibility, and reliability thereof, which fails to comply with Articles 5.3 and 11.3 of the ADA.

2.2 The failure to disclose the information received in the call for evidence is inconsistent with Article 6.1 and 6.2 of the ADA and therefore failed to respect interested parties' rights concerning due process and transparency.

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

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

[4] 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.

[5] https://www.gov.uk/guidance/trade-remedies-transition-policy.

Mexico — Anti-Dumping Measures on Rice further provides that:

> *Extending the duty to give notice under Article 6.1 to exporters of which the investigating authority does not know, but of which it might have obtained knowledge, would imply that, under Article 6.1, the investigating authority is subject to a duty to undertake an inquiry, which may be extensive, to identify the exporters. We cannot find, in Article 6.1 or anywhere else in the Anti-Dumping Agreement, any legal basis for such an obligation, which in some circumstances could be onerous (emphasis added).* [6]

In this case, although no exporting producer from China has made them known to the TRA, the CCOIC, as the professional association did contact the TRA and submitted questionnaire replies and comments. Moreover, as affirmed by UK Steel, there do exist imports of the subjected goods from China during the POI, substantiating the existence of the exporters. Hence, the TRA, as the investigating authority, has the obligation under the ADA to identify them and provide the evidence for initiating the investigation in a due manner.

Secondly, CCOIC respects the domestic industry's demand for confidential treatment regarding the information provided during the call for evidence. However, the investigation authority's mere publication of the results thereof seriously infringes the right of interested parties to submit a meaningful comment concerning the reliability and veracity of the information provided, which is not in line with Article 6.2 of the ADA.

It is remarkable that in several WTO cases, the Appellate Body has emphasized the significance to respect the "fundamental due process rights"[7], "full opportunity for the defense of [its] interests"[8] In particular, in *EC — Fasteners (China),* the Appellate Body illustrates that:

> […] *the investigating authority must seek to balance the submitting party's interest in protecting its confidential information with the prejudicial effect that the non-disclosure of the information may have on the transparency and due process interests of other parties involved in the investigation to present their cases and defend their interests* [emphasis added].[9]

The Appellate Body further states that:

> *… we disagree with the Panel that the "nature" of the obligations in Articles 6.2 and 6.4 of the Anti-Dumping Agreement is such that a complaining party need only list these Articles in order to satisfy the requirements in Article 6.2 of the DSU to "provide a brief summary of the legal basis of the complaint sufficient*

[6] WTO Appellate Body Report, *Mexico — Anti-Dumping Measures on Rice*, para. 251.
[7] WTO Appellate Body Report, *EC — Fasteners (China)*, para. 609.
[8] See also, WTO Appellate Body Report, *EC — Tube or Pipe Fittings*, para. 149; WTO Appellate Body Report, *US — Oil Country Tubular Goods Sunset Reviews*, para. 246; WTO Appellate Body Report, *EC — Fasteners (China)*, para. 481
[9] WTO Appellate Body Report, *EC — Fasteners (China)*, para. 539

> *to present the problem clearly", and to notify the respondent and third parties of the nature of the case raised. We are of the view that the obligations contained in Articles 6.2 and 6.4 of the Anti-Dumping Agreement are relatively broad in scope and apply on a continuous basis throughout an investigation ....* (emphasis added). [10]

Hence, CCOIC submits that the TRA's mere act of disclosing the result of the call for evidence and the legal basis for initiating the case is not sufficient and does not satisfy the requirements of the ADA.

3. The alleged "particular market situation" does not exist.

CCOIC is disappointed that UK Steel has once again applied the "particular market situation" label into the Chinese steel sector, this time against the WR industry in China.[11] The allegation appears to be based on these observations:

- Alleged distortions in the Chinese market affecting WR production and prices;
- Alleged distortions are specific to the WR industry based on evidence from other jurisdictions.

Apart from the assertation, no relevant evidence was provided to prove the existence of the alleged "particular market situation" concerning the WR during the injury period. UK Steel only provides the guiding plan published by the Chinese government and determinations or reports from other jurisdictions and seems to adopt, by default, the view that the whole "Chinese steel industry" is distorted. However, there has been no quantitive or qualitative assessment of the effect of these "distortions" either to the whole "Chinese steel industry" or the WR industry. CCOIC disagrees with the view that the existence of such distortions or the fact that government intervention and market distortions may "affect" a particular industry, somehow renders the Chinese market for WR as being subject to a "particular market situation".

Additionally, under the UK legislation, the question is "whether the circumstances of the market in the exporting country permit a proper comparison between the like goods and the goods concerned". The "market" in this context is indeed the market in which the like goods are sold. It is, therefore, necessary to assess market conditions in the market for the goods subject to review. The goods subject to review in this investigation are WR. Hence, UK Steel's accusation is simply irrelevant and ill-founded.

Furthermore, CCOIC notes that the UK Steel fails to acknowledge that the most influential factor in the cost of production and the prices of steel products in China is not the government's policies, but the cost of iron ore. The Chinese steel industry is heavily reliant on foreign inputs, of which 80% of its iron ore demand is imported, mostly from Australia and Brazil.[12]

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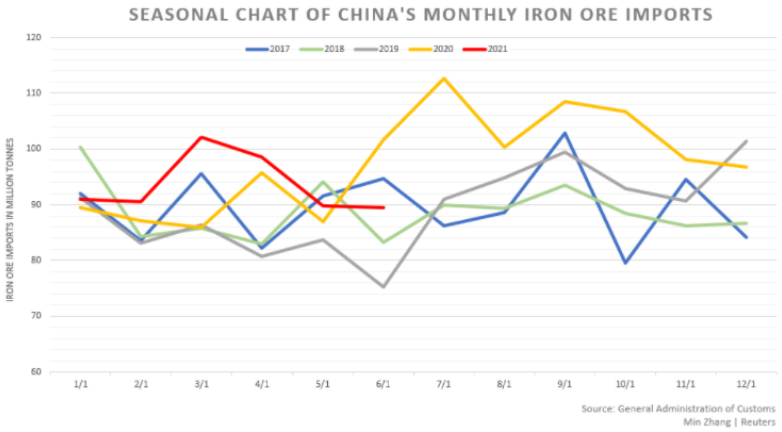
[10] WTO Appellate Body Report, *EC — Fasteners (China)*, para. 598.
[11] Appendix to UK Steel Questionnaire response, page 3.
[12] http://english.www.gov.cn/archive/statistics/202102/23/content_WS603461cfc6d0719374af94fd.html.



Source: Reuters[13]

Therefore, unless the behavior of the Chinese steel market is inconsistent with the market price of iron ore, it is clear that any policy by the Chinese government is unlikely to have a comparatively significant impact on the cost and price of Chinese steel products.

4. Chinese imports did not cause injury to the UK industry.

Item	Period/Region	201604-201703	201704-201803	201804-201903	201904-202003
Chinese imports value (Euro)	EU28	3,139,432	131,382	83,376	328,580
	UK	24,835	5,164	18,090	220,784
Chinese imports quantity (Ton)	EU28	6,975	45	36	121
	EU28 Index	**100**	**1**	**1**	**2**
	UK	54	2	5	44
Price (Euro/Ton)	EU28	450	2946	2329	2720
	EU28 Index	**100**	**655**	**517**	**604**
	UK	457	2347	3849	5008

Source: Eurostat, UK Trade Info [14]

According to the Eurostat and UK trade Info, during the injury period, the WR imported from China has seen a dramatic decrease in quantity and increase in price, both in the EU and UK markets. Hence, the data demonstrates that the UK domestic industry can never suffer an injury caused by WR imported from China.

[13] https://www.reuters.com/article/us-china-economy-trade-idUSKBN2EJ09S.
[14] See Appendix 1.