Non-Confidential Version

COMMENTS IN THE UK TRANSITION REVIEW OF ANTI-DUMPING DUTIES ON HIGH FATIGUE PERFORMANCE STEEL CONCRETE REINFORCEMENT BARS (REBAR) ORIGINATING IN THE PEOPLE'S REPUBLIC OF CHINA
(TD0010)

ON BEHALF OF

CHINA IRON AND STEEL ASSOCIATION (CISA)

AND ITS MEMBERS

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Brussels, Belgium

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1. INTRODUCTION

[1] On 29 April 2021, a notice of initiation of a transition review of the anti-dumping duties on high fatigue performance steel concrete reinforcement bars (rebar)[1] originating in the People's Republic of China was published by the UK Trade Remedies Investigations Directorate (TRID) of the Department for International Trade (DIT). [2]

[2] The UK transition review is related to the existing anti-dumping measures adopted in the European Union (EU).[3] Subsequent to the UK's withdrawal from the EU, the UK Secretary of State periodically publishes determination notices[4], authorizing the UK Trade Remedies Authority (TRA) to conduct transition reviews to determine if the existing EU trade remedy measures should be maintained, varied or revoked in the UK. A UK transition review considers whether the application of the EU anti-dumping amount is necessary or sufficient to offset dumping of the relevant goods in the UK market, and whether injury to the UK industry in the relevant goods would occur if the anti-dumping amount were no longer applied to those goods.

[3] This submission is made on behalf of the China Iron and Steel Association ("CISA") and its members. CISA is an association of exporting producers of steel products in China. Its members export various steel products (including rebar) to the UK market. CISA already registered as a contributor in this proceeding, and submitted its response to the contributor questionnaire in due course.

[4] In this submission, CISA will show the lack of a legal basis in relation to the imposition of the measures in the UK, as well as the transition review itself. As will be demonstrated by CISA, the only way in which the UK could lawfully adopt anti-dumping measures as currently in force is by conducting in full an

[1] The commodity codes covered by the existing measures are as follows: 7214 20 00 10; 7228 30 20 10; 7228 30 41 10; 72283 30 49 10; 7228 30 61 10; 7228 30 69 10; 7228 30 71 10 and 7228 30 89 10.
[2] On 1 June 2021, an independent non-departmental public body, UK Trade Remedies Authority (TRA) was established.
[3] The original measures were imposed by way of the European Commission Implementing Regulation (EU) 2016/1246 of 28 July 2016 imposing a definitive anti-dumping duty on imports of high fatigue performance steel concrete reinforcement bars originating in the People's Republic of China (OJ L 204, 29.7.2016). On 30 October 2020, the European Commission published a Notice of the impending expiry of the anti-dumping measures on rebar from China (OJ C366, 30.10.2020). It remains to be seen if the European Commission may later on initiate an expiry review of the original measures, in the absence of which, the EU measure will expire on 30 July 2021.
[4] It is noted that the determination notice for transitioning the EU measure imposed on this specific goods has been published. See Notice of determination 2020/09: anti-dumping duty on high fatigue performance steel concrete reinforcement bars (rebar) originating in the People's Republic of China, Published on 31 December 2020, at https://www.gov.uk/government/publications/trade-remedies-notice-anti-dumping-duty-on-high-fatigue-performance-steel-concrete-reinforcement-bars-rebar-originating-in-the-peoples-republic-of/notice-of-determination-202009-anti-dumping-duty-on-high-fatigue-performance-steel-concrete-reinforcement-bars-rebar-originating-in-the-peoples-r

independent investigation meeting the standards set by the World Trade Organization ("WTO") in its Anti-Dumping Agreement ("ADA").

[5] Moreover, as CISA will note in this submission, even if the legal requirements for the measures and the transition review were to be met, which is not the case, there would still not be a valid ground for a continuation of the measures. Firstly, due to the parallel imposition of safeguard measures, the UK industry already benefits from sufficient protection. Secondly, the non-existent or at least heavily decreased threat of injury is moreover lessened further by the recent cancelation of VAT rebates for most steel products by the Chinese authorities, as explained further in this submission. Finally, as CISA will show in this submission, the continuation of anti-dumping measures on rebar products does not at all meet the economic interest test.

[6] CISA herby reserves the right to present further evidence and arguments throughout any of the later stages of this proceeding. This includes hearings, which CISA may request in the due course of the proceeding, as well as post-hearing briefs. CISA also reserves its right to submit comments on the TRA's Statement of Essential Facts (SEF) once it becomes available.

2. LAWFULNESS AND VALIDITY OF MEASURES AND TRANSITION REVIEW

2.1. The continuation of EU measures in the UK following the Brexit is unlawful under the WTO ADA

[7] As set forth in the WTO ADA, an anti-dumping measure shall be applied only under the circumstances provided for the ADA. As such, Article 3.1 of the ADA clearly stipulates that:

> *"A determination of injury for purposes of Article VI of GATT 1994 shall be based on positive evidence and involve an objective examination of both (a) the volume of the dumped imports and the effect of the dumped imports on prices in the domestic market for like products, and (b) the consequent impact of these imports on domestic producers of such products.*"[5]

[8] In the case at hand, it is clear that the UK has not applied measures on the basis of a domestic investigation. Instead, the currently applicable measures in the UK are

[5] Article 3.1 of the WTO ADA. See also Article 5 of the WTO ADA specifying the conditions which must be met by such investigation. CISA maintains that as the UK authorities have never conducted a separate and independent investigation, these conditions have not been met.

applied on the basis of an (old) investigation conducted by the European Commission, which was based on the EU basic Anti-dumping Regulation.

[9] CISA also points out that the existing anti-dumping measure was not only imposed by the European Commission, it was also based on the EU concept such as the "Union industry" composed of 28 Member States. This obviously means that a determination of dumping, injury, causality and public interest was made by looking at the impact of imports on the entire EU market.

[10] Following the Brexit, the UK has decided to continue the application of certain EU trade remedy measures in its domestic legal order by way of national laws.[6] CISA questions the legality of this rollover mechanism under international law. As the UK has withdrawn from the EU legal order, there cannot be a situation of legal continuation, in other words the UK cannot be regarded as a legal successor to the EU, acquiring its rights and obligations or legal status under any international agreement.

[11] The point above can be best illustrated by pointing to the agreement that the UK itself had to enter into its trade arrangements with the EU. As per the EU-UK Trade and Cooperation Agreement of 30 April 2021, the UK had to enter into a new international agreement with the EU to govern trade aspects of its relationship with the EU following the Brexit. If the UK itself had to enter into a new agreement in relation to its trade policy vis-à-vis the EU, it is incomprehensible how its trade policy vis-à-vis third countries can continue to be governed on the basis of EU policy which were simply taken over by the UK following the Brexit.

[12] In CISA's view, the UK was not entitled to continue applying EU measures in its domestic legal order following the Brexit. This is acknowledged in the EU's own publication of 18 January 2021, where it stated 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."*[7]

[13] The fact that an alternative route, which seems more appropriate under UK and international law, is in fact possible stemming from a more recent investigation by the TRA. On 21 June 2021, the first UK anti-dumping investigation was

[6] See the European Union (Withdrawal) Act 2018, European Union (Withdrawal) Act 2019, as well as the Trade Remedies (Dumping and Subsidisation) (EU Exit) Regulations 2019 (the "Regulations").
[7] Notice of 18 January 2021 regarding the application of anti-dumping and anti-subsidy measures in force in the Union following the withdrawal of the United Kingdom and the possibility of a review (OJ C18, 18.1.2021, 41).

initiated concerning imports of aluminium extrusions from Chin.[8] As opposed to other proceedings, this is not a follow-on investigation of measures adopted at EU level, despite the fact that the EU launched its investigation and adopted provisional measures prior to the Brexit.[9] CISA kindly requests the TRA to consider that, if such approach is possible and already used in another proceeding, it would also be possible for the current investigation to be conducted under the applicable UK legal regime and launch a new investigation with the parameters set out therein.

[14] It logically follows that the currently applicable UK anti-dumping measures on rebar are unlawful, as they are based on the findings of a separate investigating authority (the European Commission) which the UK itself does not belong to anymore. This is all the more strengthened by the fact that these findings were drawn on the basis of an investigation covering the EU industry and market, rather than the UK ones. By merely taking over these measures, the UK is currently applying trade defence instruments, the permissibility of which were assessed by investigating imports' impact on the EU, not the UK domestic industry and market. As such, the imposition of these measures by the UK is not in line with the requirements set out by the WTO ADA.

2.2. The UK transitional review is invalid under the WTO ADA

[15] In CISA's view, not only are the currently applied measures in the UK invalid, as they have been taken over from existing EU measures rather than based on an independent assessment taking into account the UK domestic industry and market, but also, the unlawfulness further extends to the initiated transition review.

[16] As set out in Article 11.2 of the WTO ADA:

> *"The authorities shall review the need for the continued imposition of the duty, where warranted, on their own initiative or, provided that a reasonable period of time has elapsed since the imposition of the definitive anti-dumping duty, upon request by any interested party which submits positive information substantiating the need for a review […]"*[10]

[8] See the notice of "*TRA opens first case in response to application from UK industry, the TRA will investigate whether aluminium extrusions are being dumped in the UK by businesses in the People's Republic of China*, at https://www.gov.uk/government/news/tra-opens-first-case-in-response-to-application-from-uk-industry.
[9] More specifically on 12 October 2020, see Commission Implementing Regulation (EU) 2020/1428 of 12 October 2020 imposing a provisional anti-dumping duty on imports of aluminium extrusions originating in the People's Republic of China (OJ L. 336, 13.10.2020, p. 8).
[10] See Article 11.2 of the WTO ADA.

[17] In CISA's view, the UK transition review cannot be considered as a permissible review under Article 11.2 of the WTO ADA. This is because the reviewing authority (UK TRA) is different from the investigation authority which has assessed the need for the imposition of the original measures (the European Commission). Moreover, the UK transition reviews are not covered by Article 11.3 of the WTO ADA, which is concerning the concept of "expiry review". As a matter of fact, UK transition reviews cannot be supported by any provision in the WTO ADA. Therefore, CISA maintains that such reviews are invalid under the WTO ADA.

2.3. Conclusion on the validity of UK measures and transition review

[18] In view of the above, i.e. the conclusion that both the continued imposition of EU measures in the UK following Brexit, and the attempt to legalize this situation by conducting a UK transition review of these measures are unlawful under the WTO ADA, CISA is of the view that the UK can only remedy the situation by immediate revocation of the measures.

[19] As a WTO member, the UK is entitled to launch its own investigation into the impact of any imports onto its domestic industry and market. It has the right, as every other WTO member, to protect the domestic market under the conditions set out in the WTO ADA. However, this does not entitle the UK to impose measures on the basis of an investigation which was not conducted vis-à-vis the UK domestic industry or market, or on the basis of a review of such measures applied to the UK domestic industry or market.

[20] CISA respectfully requests the TRA to regularize this unlawful situation by terminating the currently applicable measures, as well as the transition review.

3. SUBSTANTIVE COMMENTS IN RELATION TO THE TRANSITION REVIEW

3.1. Comments on injury and threat thereof

[21] Pursuant to Regulation 99A of the Regulations, the objective of the transition review is to identify whether (i) the application of the anti-dumping amount is necessary or sufficient to offset the dumping of the relevant goods in the UK market; and (ii) injury to the UK industry in the relevant goods would occur if the anti-dumping amount were no longer applied to those goods.

[22] In this section, CISA will provide comments as to why it considers that these requirements are not met substantively. It should be noted that these comments should not in any way be interpreted as any implication on CISA's side in relation to the unlawfulness of the measures. In other words, whereas CISA remains convinced of the unlawfulness of the measures, it still will provide its view as to why, even if the measures were to be considered lawful, their continuation should still be rejected on substantive grounds.

[23] In this respect, it should be kept in mind that the initial investigation was conducted by the European Commission in view of the Union industry and the EU-28 market, not the UK one. Accordingly, the EU determination cannot automatically be applied to the the UK market. Indeed, any conclusion of the initial investigation applied only the Union industry and EU market.

[24] In addition, CISA notes that UK rebar producers at this very moment already benefit from the protection of measures imposed under the UK safeguard measures on certain steel products.[11] Indeed, on 3 June 2021, TRA provided its recommendations to the Secretary of State in the transition review related to steel safeguard products.[12] Subsequently, on 30 June 2021, the Department for International Trade published a trade remedies notice,[13] in relation to the decision made by the Secretary of State following the recommendation made by the TRA. According to this notice, safeguard measures (in the form of tariff-rate quota) will be applied to certain steel product categories in the UK for the next three years. Of the 11 categories for which TRA recommends maintaining the safeguard measures, one consists of the rebar category, which partially overlaps with the product under consideration in this case.[14]

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[11] See for relevant information in relation to this case (TF0006): https://www.trade-remedies.service.gov.uk/public/case/TF0006/. In brief, safeguard measures imposed at the EU level were taken over in to the UK legal order. These safeguard measures apply to 28 categories of steel products. This submission does not address the legality of such measures, however, in CISA's view, the comments made in Section 2 of this submission apply *mutatis mutandis* to the steel safeguard measures applicable in the UK.

[12] See the TRA's Recommendation to the Secretary of State, Transition Review TF0006 – Safeguard measure on certain steel products, 3 June 2021.

[13] See Trade remedies notice 2021 No. 1 safeguard measure: Tariff-rate quota on steel goods (web version), 30 June 2021, at https://www.gov.uk/government/publications/trade-remedies-notice-safeguard-measures-on-certain-steel-products-application-of-tariff-rate-quotas/trade-remedies-notice-2021-no-1-safeguard-measure-tariff-rate-quota-on-steel-goods-web-version. There is a separate notice applicable to 5 additional product categories, valid for 1 year only. See: Trade remedies notice 2021 No. 2 safeguard measure: Tariff-rate quota on steel goods (web version), 30 June 2021, at https://www.gov.uk/government/publications/trade-remedies-notice-safeguard-measures-on-certain-steel-products-application-of-tariff-rate-quotas/trade-remedies-notice-2021-no-2-safeguard-measure-tariff-rate-quota-on-steel-goods-web-version.

[14] As set out in page 6 of the TRA's Recommendation, Rebar are defined as any product falling within commodity codes 7214 20 00 and 7214 99 10, which overlap with the definition of the product under consideration, which include commodity codes 7214 20 00 10 defined as "High fatigue performance concrete reinforcing bars and rods".

[25] Accordingly, CISA respectfully requests TRA to take into account the fact that UK rebar producers will already be protected under the safeguard measures. Since the safeguard measures are in the form of tariff-rate quota, there is a ceiling of the total volume of imports. Thus, even if the anti-dumping duties are no longer applied to rebar from China, total imports would not increase and therefore it is unlikely that any injury to the UK industry would occur.

[26] This analysis is further strengthened further by the fact that the Chinese Ministry of Finance announced that as of 1 May 2021 certain steel products, including rebar, would no longer be eligible from VAT export rebates.[15] As such, CISA maintains that the expected impact will be a significant decrease of exports of rebar from China, as the measure was intended to curb exports and redirect domestic steel production to its own industry.[16]

[27] Given that the UK domestic industry is already under the protection by the safeguard measures for the next three years, and in view of the abolition of VAT rebate incentives in China, CISA considers that there cannot be any situation of the UK domestic industry suffering from injury or a threat thereof.

3.2. UK Economic Interest Test

[28] Pursuant to Regulation 100A(2) of the Regulations, anti-dumping measures may only be applied if the UK economic interest test is met.

[29] CISA requests that TRA take into account the interests of UK importers and users of the goods. CISA recalls that in the original EU investigation the level of cooperation from UK users were high. They expressed their serious concerns that the domestic production capacity was already far below the consumption, and imposition of anti-dumping measures may further restrict source of supply and therefore put the jobs in the downstream industry at risk.

[30] CISA endorses the users' arguments in the initial EU investigation. It is clear that imposing anti-dumping measures may lead to restriction of the source of supply, which will disadvantage the purchasing power of UK consumers, and also jeopardize the competitiveness of UK downstream companies, which use rebar in their production processes.

[15].see http://www.gov.cn/zhengce/zhengceku/2021-04/28/content_5603588.htm, in Chinese language only.

[16] See "China cancels export rebates for most steel products", 28 April 2021, Kallanish Commodities, available at https://www.kallanish.com/en/steel-news/market-reports/article-details/china-cancels-export-tax-rebates-for-some-steel-products/, last consulted on 20 June 2021.

[31] Finally, the impact of decreased competition on lead-time supply availability is well known. The result of increased trade barriers such as anti-dumping duties has been highlighted, which would negatively impact the overall UK economy.

[32] The above impact on the UK economy is also apparent from the comments made by an association of UK users in the framework of the EU investigation. As set out therein, in addition to the three downstream operations related to the sole UK rebar manufacturer (Celsa UK), there are also numerous independent fabricators. It is crucial for them to rely on a diversified and price-competitive supply of rebar products. Moreover, there are more jobs in the downstream industries than in the rebar production industry, which demonstrated the potential impact on employment arising out of the imposition of measures following the transition review.

4. CONCLUSION

[33] In this submission, CISA has first set out its views on the legality of measures and the transition review, which it considers manifestly unlawful. The only possible way for the UK to remedy this situation is to abandon the measures which have originated at the EU level and start over with its own investigation.

[34] Additionally and separate from the issue of legality, CISA has shown that due to the parallel applicability of UK steel safeguard measures and the abolition of VAT export rebates in China, there is in fact no demonstrable existence of injury to the UK domestic industry or threat thereof.

[35] Finally, CISA has shown that continuing the anti-dumping measures would not at all be in the UK's broader economic interest.

[36] For all the reasons set out above in this submission, CISA believes that the revocation of the anti-dumping measures imposed on rebar from China is warranted. CISA reserves its legal right to make further comments at a later stage of this proceeding.

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