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Non-Confidential

The reply to the letter from Trade Remedies Authority regarding the transition review of the anti-dumping measures on high fatigue performance steel concrete reinforcement bars originating in China

Submission of the GOC

The UK Trade Remedies Authority (TRA) wrote a letter to the Ministry of Commerce of the People's Republic of China (GOC) which request the GOC to comment or provide further information in response to the allegations regarding a particular market situation (PMS) about the Chinese economy submitted by the interested parties in the transition review of the anti-dumping measures on high fatigue performance steel concrete reinforcement bars (Rebar) originating in China (the Rebar measure). It is appreciated that TRA gives this opportunity to comment or provide further information on the statements. In order to promote the fair and just settlement of the transition review of the Rebar measure ("transition review" TD0010). The GOC would like to further submit the following comments on the basis of the comments submitted on September 10 by the GOC.

1. The position on maintenance or application of the EU trade remedy measures (the EU measures) and transition reviews

1.1 The maintenance or application of the EU trade remedy measures by the UK lacks legal and factual basis

The very act of exit from the EU by the UK released the UK from all its rights and obligations as a former member state. The maintenance or application of the EU measures by the UK lacks legal basis. The EU's Notice 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". There is no international law or WTO rules authorizing the UK to maintain or apply the EU measures. The maintenance or application of the EU measures by the UK also lacks factual basis. The continued application of the EU measures without WTO-compliant investigation is inconsistent with WTO rules.

1.2 The initiation and on-going "transition review" TD0010 are inconsistent with the WTO rules

the UK is not entitled to maintain and continue to apply the EU measures after Brexit. The "transition review" TD0010 is invalid from the beginning. The "transition review" is not an investigation procedure under the WTO rules. The Call for Evidence and the initiation of the "transition review" lacks transparency. TRA also failed to demonstrate the initiation of "transition review" meet the requirements of the domestic industry representativeness under Articles 5.4 the ADA.

The above comments are detailed in section1, 2 and 3 of the comments submitted by the GOC on September 10, 2021.

2. The comments on the statements about PMS with regards to the Chinese economy

The GOC is aware of the statements submitted by UK Steel and producers like CELSA Steel UK (the domestic interest parties) that there is a PMS because of the distortions in China's steel industry and the Rebar market (the statements). Without prejudice to the above position under section 1, the GOC would like to submit the following comments.

2.1 The legal basis of the judgment criteria of "market distortion", PMS and their relationship need to be clarified

Article 2.2 of the the Anti-Dumpling Agreement (ADA) and its negotiation history do not clearly define which situations belong to PMS, and the relevant concepts are vague. The Panel and the Appellate Body also did not explain the specific application of PMS. The UK's legislation does not clarify its the judgment criteria on "market distortion", nor does it stipulate that "market distortion" belongs to a PMS. Therefore, the statements that China's steel industry and Rebar market belong to PMS due to distortions is groundless in law. The investigation conducted by TRA on PMS due to distortions in China's steel industry and the Rebar market also has no basis of WTO rules and domestic laws. The GOC would like to request TRA to clarify the judgment criteria of "market distortion", and its relationship with PMS from the perspective of

rules and laws.

2.2 The statements cannot form the basis of "market distortion" in China's steel industry and the Rebar market

2.2.1 The statements lack factual basis

The statements are only allegations, without substantive data, facts and evidence support. The commentator has not fulfilled the burden of evidences at all. Pursuant to the provisions of ADA, the anti-dumping investigation and its conclusion should be based on positive evidences, that is, the facts and evidences obtained in the investigation, rather than the documents or reports distorted by external institutions. Even if the interested parties and investigating authorities use the facts available in accordance with Article 6.8 of ADA, they shall use objective facts rather than distorted information. From beginning to end, the Chinese government and enterprises believe that the EU Commission's report "On Significant Distortions in the Economy of the People's Republic of China for the purpose of Trade Defence Investigation" (the EU Commission Staff Working Document) has many serious problems, including not reflecting objective facts, and cannot form the basis for TRA's determination. See sector 2.2.6 for more detailed comments on the EU Commission Staff Working Document.

2.2.2 As a principle TRA shall fairly apply a standard.

If the investigation authority uses a judgment standard for exporters under investigation or their home country, it shall run through the whole investigation process and apply to all interested parties, including but not limited to the evaluation of the UK, and the evaluation of important determination or methods such as initiation, dumping determination, injury analysis, causal link, price comparison, and measures determination, Otherwise, it is suspected of violating the requirement of the fair procedure, the WTO principles such as national treatment, MFN treatment and relevant ADA provisions. The GOC urges TRA to apply it fairly. Any discriminatory and selective application is unacceptable.

2.2.3 Firmly oppose discrimination based on country and ownership.

Different countries have different economic systems and arrangements, and there is no unified or single market economy model. Each country in the world, including the UK, has enterprises with different ownership types or governance structures. It is unreasonable to determine that such enterprises will inevitably lead to serious market distortion in the relevant industries based on the difference of national economy system, enterprise ownership types or governance structures. It is discriminatory and

unacceptable to impose restrictive and punitive measures on this basis. Similarly, the existence of SOEs in China's iron and steel industry can not and should not be regarded as a direct presumption of serious distortions in China's steel industry and Rebar market.

2.2.4 China's SOEs are equal competitors in the market economy

Article 15 of China's constitution stipulates that China implements a socialist market economy. After years of efforts, China has established the market economy in which market force plays a decisive role in resource allocation. This achievement has been recognized by most countries in the world. After many years of reform, China's SOEs have become independent market entities, and they completely allocated resources and carried out business in accordance with price signals. Article 16 of China's Constitution clearly stipulates that SOEs have the right to operate independently within the scope prescribed by law. China's SOEs are self-supporting, self-supporting, self-sustaining, self-development , independent market entities. Like other China's ownership enterprises, SOEs fairly participate in market competition and do not enjoy special treatments. The total assets of listed enterprises controlled by Chinese central SOE account for 67% of the total assets of Chinese central SOEs. These listed enterprises have quarterly reports, semi annual reports and annual reports. These reports are transparent. From these reports it can be found easily that SOEs do not enjoy special treatments. Same with these listed enterprises, the SOEs in China's steel industry are the participants and competitors of market equality, and do not enjoy special treatments. Their existence have not led to and will not lead to serious distortions in China's steel industry and Rebar market. China's steel industry mainly meets domestic demands. China also imports relevant raw materials, iron and steel products from other countries, all of which operate in accordance with market-oriented principles and price signals.

2.2.5 The five-year plan is a guiding plan

UK Steel stated that the 13th and the 14th five-year plans of the GOC show that the government continues to play an important role in the governance of China's steel industry. The main purpose of the GOC's five-year plan is to provide a framework guidance for economic and social development during the plan period. The plans are not self-executing, but require each responsible agency to take action within its jurisdiction. Five-year Plans may be used by commercial enterprises to anticipate the direction of the economy and economic development so as to make informed investments according to the anticipated direction. Just as the white paper "*Industrial Strategy - Building a Britain fit for the future*" released by the UK government in November 2017, it is also an guiding plan. The GOC request TRA to determinate whether the white paper would cause market distortion and give equal treatment to

China's five-year plans and this UK white paper, rather than implement double standards.

2.2.6 The wrong conclusions of the third parties are neither facts nor evidence.

The GOC and relevant enterprises do not accept the European Commission Staff Working Document and the conclusions regarding China's steel market distortion conducted by other countries' investigation authorities. The GOC and relevant enterprises had submitted their defense comments to the above-mentioned institutions. For example, regarding the EU Commission Staff Working Document, the GOC stated that Article 2(6a) of the Basic Regulation is not consistent with Article 2.2 and 2.2.1.1 of the ADA and decisions of the Appellate Body and panel of the WTO dispute settlement mechanism on relevant issues. European Commission Staff Working Document issued against China does not represent the EU's official position. The content of the EU Commission Staff Working Document and the ways it is used have serious factual and legal flaws, the investigation based on this should be invalid from the beginning. Regarding the findings that the Chinese steel market was distorted conducted by other countries' investigation authorities, the GOC believes that it is unreasonable and discriminatory to determine that the market of relevant industries is seriously distorted only by the type of enterprises ownership, and it also seriously deviates from the objective facts, The GOC and relevant enterprises do not accept these findings.

TRA should maintain its independence. The report from the third party or the wrong conclusions of other investigation authority should not become the basic fact on which TRA's investigation conclusion is based. Under the Article 1 of ADA, an anti-dumping measures shall be applied only pursuant to investigations initiated and conducted in accordance with the provisions of this agreement. The above erroneous conclusion is the investigation conclusion or working document of other investigation authority, which is not an objective fact, nor can it be used as the basic evidence for the findings made by the investigation authority of another sovereign state. As an independent investigation authority, TRA shall make a decision based on the objective facts obtained from its own investigation and take relevant measures accordingly.

2.2.7 It is inconsistent with the WTO rules to use cost data other than the cost of production in the country of origin

ADA Article 2.2 requires to use "the cost of production in the country of origin" for determination of the normal value. ADA Article 2.2.1.1 requires that "costs shall normally be calculated on the basis of records kept by the exporter or producer under

investigation, provided that such records are in accordance with the generally accepted accounting principles of the exporting country and reasonably reflect the costs associated with the production and sale of the product under consideration". in EU-Biodiesel (Argentina), the EU investigation authority determined that the domestic prices for the main raw material to produce biodiesel (soybeans) were artificially lower than international prices due to a distortion created by the Argentinian export tax system, so that the costs of the main raw materials were not reasonably reflected in the records of the exporting producers, and therefore replaced those costs with reference prices published by the Argentinian authorities in order to establish the normal value. The WTO Appellate Body found the above practice of the EU investigation authority was inconsistent with Article 2.2.1.1 of ADA, and further clarified that the requirement that the records kept by the exporter or producer under investigation reasonably reflect the costs associated with the production and sale of the product under consideration under Article 2.2.1.1 of ADA "relates to whether the records of the exporter or producer suitably and sufficiently correspond to or reproduce the costs that have a genuine relationship with the production and sale of the specific product under consideration". Thus, the WTO Appellate Body did "not consider that there is an additional or abstract standard of 'reasonableness' that governs the meaning of 'costs' ", and ruled that Article 2.2.1.1 does not permit an investigation authority to enquire to whether the records of the producer reasonably reflect international prices. In view of the relevant provisions of ADA and the clear jurisprudence of the WTO Appellate Body, in this investigation, TRA should not use cost data other than the country of origin even if there is so-called "market distortion" in the inputs of the product under investigation, otherwise it will be inconsistent with Articles 2.2 and 2.2.1.1 of ADA. Moreover, there is no so-called "market distortion" in the inputs of the product under investigation and its own market.

3. It is inconsistent with WTO rules that the anti-dumping duty rates Chinese enterprises involved in the EU measures is applicable to the transition review

The GOC is aware that, in the statement of the essential fasts of transitional review of the anti-dumping duties on certain welded tubes and pipes of iron or non-alloy steel originating in China, Belarus and Russia (transition review TD0001), TRA stated that the dumping margins of Chinese enterprises under investigation are unable to be calculated because no Chinese enterprises cooperated with the investigation, so TRA decided to maintain same anti-dumping duty rates in the EU anti-dumping measures apply to certain welded tubes and pipes of iron or non-alloy steel originating in China, Belarus and Russia (the EU WTP measure). Without prejudice to the above position under section 1 and 2, the GOC would like to submit the following comments.

3.1 It is inconsistent with WTO rules that A WTO member's trade remedy

investigation directly uses the duty of another member's trade remedy measures

From the beginning the position of the GOC is that the UK and the European Union are independent members of the WTO respectively. It is inconsistent with WTO rules that the UK, as an independent WTO member after Brexit, rolls over or transitions another WTO member's trade remedy measures to its own measures and apply them continuously even the EU measures which are taken by the EU as a independent member of the WTO. The transition review related with the transitioned EU measures has been invalid from the beginning. The so called transition review should be conducted a new investigation and investigated in accordance with ADA to calculate the dumping margin, and decide whether to take measures. No matter what the reason is, It is obviously inconsistent with WTO rules that a investigation conducted by a WTO member uses the duty of another member's trade remedy measures when it is unable to calculate the dumping margin.

3.2 The the EU measures's duty applied to the Chinese enterprises should not be the facts obviously in the UK's transition review.

In the transition review TD0001, the applicant or the UK domestic industry has not claimed the dumping margin of Chinese imported products, and TRA also did not investigate and calculate the dumping margin of Chinese imported products. In the case of no Chinese enterprises cooperating with the investigation, TRA maintain the same anti-dumping duty rates applicable to Chinese enterprises in the EU WTP measure, which is essentially that TRA used the conclusions of the dumping margins, injuries and causal links in the EU WTP measure as facts available to conduct the investigation conclusions. But obviously, the data basis of the dumping margins, injuries and causal link of are the EU WTP measure significantly different from transition review TD0010. Regardless of the determination of normal value, the most obvious fast is that there are great differences between the data such as the quantity and price of China's products exported to the EU and the data of China's products exported to the UK. It obviously that the duty on the basis of the data of China's products exported to the EU used as the facts in the transition review whose conclusion should base on the data of China's products exported to the UK. So there are serious defects that TRA decided the anti-dumping duty rates applicable to Chinese enterprises in transition review TD0001 by using anti-dumping duty rates in the EU WTP measure as the facts, which is inconsistent with the provisions of ADA. Similarly, in transition review TD0010, it will be inconsistent with the provisions of ADA that TRA decided the anti-dumping duty rates applicable to Chinese enterprises by using anti-dumping duty rates in the EU Rebar measure.

4. The import volume from China was negligible and would not cause serious injury to the UK domestic industry

Without prejudice to the above position under section 1 and 2, what the GOC needs to point out is the volume of Chinese imports in transition review TD0010. According to the UK import data obtained from UK Trade Info[1], From 2017 to POI, the percentage of the import volumes from China and from world into the UK is significantly less than 3%, which shall be regarded as negligible. Except for 2017, the unit price of the imports under investigation from China is significantly higher than the average import unit price from world, so it is not likely that the imports from China is dumped. The negligible import volume cannot cause injury to the UK domestic industry. The data are detailed in the comments submitted by the GOC on September 10, 2021.

In the questionnaire submitted in 5 July 2021, CELSA Steel UK stated "in March 2020, the Chinese Ministry of Finance and State Administration of Taxation announced an increase in the rate of VAT rebate on exports of over 1,000 products (including rebar and other steel products) to 13%, which would encourage Chinese exports to foreign markets". It should be noted that the GOC released notice in April[2] and July[3] 2021 respectively to cancel the export VAT rebate of steel products including Rebar under investigation. The detailed contents and product lists could be found through the links under this page.

China's domestic demand for Rebar products under investigation is gradually rising. Chinese manufacturers have no interest motive to sale Rebar in overseas markets including the UK market at dumping prices. Due to the unique geographical location of the UK and the small demand scale of domestic Rebar market, Chinese exporters need to ship the Rebar by very large carriers to a big port near the UK, and then transfer them to the UK by small freighter. transportation cost is high so the export price has no advantage in the UK market, and exports to the UK don't have scale effects either. If the Rebar measure is revoked, the Rebar import from China will not increase significantly, nor will it cause injury to the UK domestic industry.

Especially during the survey period, for example in 2020, the top three import sources of UK Rebar were the EU (accounting for more than 66%), Belarus (accounting for 28%) and Turkey (accounting for 2.9%)[4]. Rebar import volume proportion from China only accounted for 1.6%. In the case that China's Rebar products had neither impact on the UK domestic industry nor export potential, it was unfair for TRA to select Chinese Rebar products to investigate and take measures. The investigation is also

[1] link:https://www.uktradeinfo.com/trade-data/ots-custom-table
[2] link:http://www.mof.gov.cn/jrttts/202104/t20210429_3695054.htm
[3] link:http://www.mof.gov.cn/jrttts/202107/t20210730_3741766.htm
[4] Data sources: Global Trade Flow

suspected of wasting valuable public resources and credit.

For above reasons, TRA should terminate the transition review TD0010 investigation and revoke the Rebar measures.

5. Conclusion

The maintenance or application of the EU measures by the UK lacks legal basis.The initiation and on-going "transition reviews" are inconsistent with the WTO rules. Neither WTO rules nor UK domestic legislation have specific provisions on the judgment criteria of "market distortion" and its relationship with PMS. TRA needs to clarify the legal basis for investigation. The statements fail to provide objective facts and evidence to prove that there is market distortion in China's steel industry. According to the provisions of ADA and the decision of WTO Appellate Body, TRA shall use the cost records of the exporter or producer in the country of origin to determine the cost of the product under investigation. In the case of no Chinese enterprises cooperating with the investigation, there are defects in the determination of anti-dumping rates applying to Chinese enterprises in transition review investigation. in transition review TD0010 the imports from China to the UK is negligible. If the Rebar measure is revoked, the Rebar import from China will not increase significantly, nor will it cause injury to the UK domestic industry.

The GOC urges the UK to seriously consider this comments, terminate the application of all the 26 EU measures including the Rebar measure in the UK and all the on-going "transition reviews", and refund the paying firms all duties collected on the basis of all 26 EU trade remedy measures involving products originating from China since 1 January 2021 when the Brexit transition period expired.