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Transition review of anti-dumping measures

Case TD0011: Certain cold rolled flat steel products exported from the People's Republic of China and the Russian Federation

Period of Investigation:	1/04/2020-31/03/2021
Injury Period:	1/04/2017-31/03/2021
Deadline for response:	19/05/2021
Case Team Contact:	[]
Completed on behalf of:	The Ministry of Economic Development of the Russian Federation

Section A – Organisation's interest in the case

Please describe the role of your organisation with regards to the goods subject to review or the like goods:

The Ministry of Economic Development of the Russian Federation ('the Ministry') is the public authority. One of the key functions of the Ministry is to develop state policy and regulation in the field of foreign economic activity. To fulfill it the Ministry creates favorable conditions for Russian economic operators' foreign trade activities.

Please describe your interest in this case:

Goals of the Ministry include securing non-discriminatory and favourable conditions for Russian exporters on foreign markets and ensuring due compliance of all procedures in their respect with the rules of the World Trade Organization (WTO).

Section B – Additional information

A. Wrongful scope of the review

According to paragraph 98 of The Trade Remedies (Dumping and Subsidisation) (EU Exit) Regulations 2019 and the Notice of initiation the scope of the review includes:

1) whether the application of the anti-dumping amount is necessary or sufficient to offset dumping of the relevant goods in the UK market; and

2) whether injury to the UK industry in the relevant goods would occur if the anti-dumping amount were no longer applied to those goods.

We would like to draw your attention to the fact that the examination of these two issues in the framework of this review is not exhaustive. The results of the review with such a narrow scope cannot determine if there are enough grounds to maintain the measure. Application of the measure, which was introduced in the EU to protect its industry, on the UK territory after the end of transition period can be justified only if

1) full comprehensive analysis during which all requirements of Article VI of General Agreement on Tariffs and Trade ('GATT') are met;

2) as a result of such analysis the UK Department for International Trade (hereinafter referred to as 'the Department') will establish

a) existence of dumping on the UK territory in accordance with Article 2 of the Agreement on implementation of Article VI of GATT (hereinafter referred to as 'AD Agreement');

b) presence of material injury or a threat of such injury to the UK CRFS industry in accordance with Article 3 of the AD Agreement;

c) the causal link between the abovementioned dumping and injury (or a threat of injury) in accordance with Article 3 of the AD Agreement.

Such a thorough analysis of the situation in the UK CRFS market has not been conducted yet. The measure was originally introduced after investigation of dumping and its effects on the whole EU CRFS industry.

The determinations and conclusions made during the EU anti-dumping procedures cannot be used for the purposes of current procedure. First of all, because the situation in the UK has not been specifically analyzed during the original investigation by the EU. Secondly, because the investigation of the EU authorities was not conducted in an objective and unbiased manner and was full of misconducts. The Ministry strongly believes that the European Commission made a number of violations of the WTO during the original procedure (the Russian side will comment on them further).

In light of the aforesaid, that the review type chosen by the Department in order to determine if application of the measure necessary, does not release the UK from the obligation to assess all of the abovementioned factors in relation to the UK CRFS market. In other words, such a format does not let the Department avoid conduction of the analysis the scope of which is equivalent to the original investigation.

If such an analysis of dumping, injury and a causal link specific to the UK only is not done the decision to continue application of the measure in the UK territory will be fundamentally inconsistent with Articles 2 and 3 of the AD Agreement, as well as in Article VI of GATT.

B. Lack of reasons for current application of the measures

After the end of the transition period, the UK continues to apply the EU measures. However, obviously the UK no longer belongs to the EU Customs territory, and is now a completely independent market. Before its actual disintegration from the EU the UK has not conducted and finished any procedure enabling it to apply the anti-dumping measures on CRFS. Hence, the Ministry fails to see the grounds for current application by the UK of the anti-dumping measures of another WTO Member, i.e. the EU, and requests the Department to withdraw the measures immediately.

C. Procedural errors during initiation of the review

1. In the framework of that procedure, the UK producers of goods subject to EU trade remedy measures should have expressed their opinion whether they support, are neutral to, or oppose the continuation of those measures when the UK operates its independent trade remedies system. They were also asked for data about their production and sales during so-called Call of Evidence conducted by the Department "to identify anti-dumping and countervailing duties imposed by the EU that matter to UK industry".

Thus, the Department initiated the review without an application from the UK industry. However, before its initiation the Department collected data from the UK producers on their support for, or opposition to the current review.

After the initiation of the review, the Department has not provided the interested parties with the information acquired during the Call of evidence procedure, particularly, data on production and sales of CRFS in the UK and which companies provided this data.

In other words, for the purposes of the initiation of the review the Department has not demonstrated that the UK CRFS producers supporting the initiation are exactly the ones:

- who account for no less than 25 per cent of total production of the like product produced by the domestic industry, and
- whose collective output constitutes more than 50 per cent of the total production of the like product produced by that portion of the domestic industry expressing either support for or opposition to the initiation of the review.

Thus, the Department failed to demonstrate that the requirements of Article 5.4 of the AD Agreement have been adhered to, and the review was initiated unlawfully.

2. Article 5.6 of the AD Agreement provides that if the authorities concerned decide to initiate an investigation without having received a written application by or on behalf of a domestic industry for the initiation of such investigation, they shall proceed only if they have sufficient evidence of dumping, injury and a causal link, as described in Article 5.2 of the AD Agreement, to justify the initiation of an investigation.

The Russian side does not have the information that in the understanding of the Department constitutes "sufficient evidence" for initiation of this review.

First, in the Notice of initiation or elsewhere, the Department did not provide evidence substantiating the need to conduct the review for the purposes that were determined by the Department itself, namely to consider:

1) whether the application of the anti-dumping amount is necessary or sufficient to offset dumping of the relevant goods in the UK market; and

2) whether injury to the UK industry in the relevant goods would occur if the anti-dumping amount were no longer applied to those goods.

Therefore, the requirements of Article 5.6 of the AD Agreement have not been fulfilled even at the minimum level that was determined by the Department for itself.

Secondly, as it was previously mentioned and will be mentioned further, the Russian side does not agree that the abovementioned scope of the review is enough for due and valid determination of the necessity to apply the measure.

In our view, in order to initiate the review the Department should have sufficient "evidence of dumping, injury and a causal link in the sense of Article 5.2. The Department has not demonstrated that it actually has this evidence.
As a result, the Ministry believes that the Department did not fulfill its obligations in accordance with Article 5.6 of the AD Agreement at an appropriate level.

3. As we have no information on the support of the UK CRFS industry of the measure as well as on full and comprehensive evidence on existence of dumping, injury and a causal link, as it is provided in Article 5.2 of the AD Agreement, the Russian side's opportunity to comment on the issue is limited.
These comments are given only on the basis of information that the Russian side has at its disposal. However, having no other data the Russian side does not have an opportunity to provide exhaustive and comprehensive comments.
In other words, the Department has failed to comply with Article 6.2 of the AD Agreement that states "all interested parties shall have a full opportunity for the defense of their interests", and with Article 6.4 of the AD Agreement, according to which
"the authorities shall whenever practicable provide timely opportunities for all interested parties to see all information that is relevant to the presentation of their cases, that is not confidential as defined in paragraph 5, and that is used by the authorities in an anti-dumping investigation, and to prepare presentations on the basis of this information".

The Ministry fails to see what, if anything can make it "impracticable" to provide an opportunity to see the evidence described above.
Taking into account the abovementioned, the Russian side sees no grounds for initiating the review. Hence, the Russian side urges the Department to finish this review without extension of the measure.

D. WTO dispute over the original investigation of the EU
The Russian side draws the attention of the Department that the EU anti-dumping measures imposed as a result of the original investigation are currently challenged by the Russian Federation within the WTO dispute *European Union – Anti-dumping measures on certain cold-rolled flat steel products from Russia* (DS521). The Ministry reiterates its reasons to believe that the EU measures are inconsistent with the EU obligations under the GATT 1994 and the AD Agreement and refers the Department to Russia's request for the establishment of a panel (WTO document WT/DS521/2).
For the Department's convenience, the Ministry further provides explanations from Russia's panel request why the EU's measures are inconsistent with its obligations under the following provisions of the GATT and the AD Agreement:

1. Articles 2.1, 2.2, and 2.2.1.1 of the Anti-Dumping Agreement because the European Union failed to calculate the costs on the basis of the records kept by Public Joint Stock Company "Novolipetsk Steel" ("NLMK"), and by Public Joint Stock Company Severstal ("Severstal") (two Russian producers under investigation, the products of which are subject to the measures at issue), although these records were in accordance with the generally accepted accounting principles of the Russian Federation and reasonably reflected the costs associated with the production and sale of the product under consideration.

2. Articles 2.2, 2.2.1 and 2.2.1.1 of the Anti-Dumping Agreement because the European Union treated the majority of domestic sales of the like product of Severstal as not being in the ordinary course of trade due to upward adjustments which artificially inflated costs actually incurred, and this resulted in disregarding the majority of domestic sales of the like product in the ordinary course of trade for the purpose of determination of the normal value.

3. Articles 2.1, 2.2 and 2.2.1.1 of the Anti-Dumping Agreement because the European Union failed to determine the normal value for NLMK on the basis of the data provided by that producer on actual sales and prices for the like product in the ordinary course of trade when destined for consumption in the exporting country.

4. Articles 2.1, 2.2 and 2.2.1.1 of the Anti-Dumping Agreement because the European Union failed to determine the correct normal value for Severstal due to an upward adjustment to costs of production and selling, general and administrative ("SG&A") costs.

5. Articles 2.2 and 2.2.2 of the Anti-Dumping Agreement because the European Union failed to use a reasonable amount of SG&A costs for Severstal, and in particular:

- the European Union failed to determine SG&A costs for Severstal based on actual data pertaining to production and sales in the ordinary course of trade of the like product; and
- the European Union artificially inflated the SG&A costs for the amount of alleged difference in value resulting from the re-evaluation of long-term loans in foreign currency, reflected in the records of Severstal as provisions for financial losses in the statutory accounting currency (the Russian Rouble), and considering those provisions as part of the SG&A costs.

6. Articles 2.1 and 2.3 of the Anti-Dumping Agreement because the European Union failed to properly determine the export price for NLMK although the investigating authority of the European Union ("investigating authority") had all the necessary and reliable data on the actual export price of NLMK.

7. Articles 2.3 and 2.4 of the Anti-Dumping Agreement because the European Union failed to make a fair comparison between the export price and the normal value for Severstal. In particular, the European Union applied an excessive downward adjustment of the export price for reasonable SG&A costs and profit of a hypothetical unrelated importer to the price at which the intra-group trading company of Severstal located outside the European Union sold the product under consideration to unrelated customers in the European Union. This resulted in exaggerating the allowance for costs incurred between importation and resale, and for profits accruing, and led to an unfair comparison with normal value. These violations consequentially led to improper price comparison for NLMK, since the data used in the price comparison for Severstal were also used in relation to NLMK.

8. Articles 6.1, 6.8 and paragraphs 1, 2, 3, 5 and 6 of Annex II of the Anti-Dumping Agreement because the European Union failed to give NLMK and Severstal ample opportunity to present all evidence they considered relevant in respect of the investigation, and failed to establish properly any of the grounds allowed under these provisions in order to apply facts available to NLMK and Severstal when making its preliminary and final determinations. In doing so, the European Union:

(a) failed to take into account all the information which was verifiable, appropriately submitted and supplied in a timely fashion;
(b) improperly applied facts available with respect to NLMK and Severstal, among other shortcomings, due to:

- failure to give notice to NLMK and Severstal at an appropriate stage of the investigation of the information required by the investigating authority and of its evolving concerns with regard to the information provided;

- failure to inform NLMK of the manner in which the requested information was to be provided;
- failure to conduct unbiased and objective verifications at NLMK's and Severstal's premises in the Russian Federation;
- failure to inform NLMK forthwith of the reasons for not accepting submitted evidence after it was informed of new reasons for the application of Article 6.8 of the Anti-Dumping Agreement by way of the provisional disclosure;
- failure to properly assess Severstal's evidence;
- failure to provide NLMK and Severstal with an opportunity to provide further explanations within a reasonable period.

9. Articles 6.1, 6.8 and paragraph 7 of Annex II of the Anti-Dumping Agreement, because the European Union failed to base its findings with respect to normal value and export price for NLMK, and normal value for Severstal on information from a secondary source with special circumspection.

10. Articles 3.1 and 3.2 of the Anti-Dumping Agreement because in its determination of injury to the EU industry the European Union failed to make an objective examination based on positive evidence of the volume of the dumped imports, of the effect of those imports on prices in the domestic market for like products, and of the consequent impact of the dumped imports on EU producers of such products. With regard to the volume of the dumped imports, the European Union failed to properly consider whether there had been:
(a) significant increase in dumped imports; and
(b) significant price undercutting by the dumped imports as compared with the price of a like domestic product, or whether the effect of such imports was otherwise to depress prices to a significant degree or prevent price increases, which otherwise would have occurred, to a significant degree.
With regard to the effect of the dumped imports on prices and price undercutting, among other shortcomings, the European Union failed to conduct an objective examination, as it did not properly take into account in its analysis the free and captive market consumption, as well as aggregate market trends.

11. Articles 3.1 and 3.4 of the Anti-Dumping Agreement because in the course of its injury determination the European Union failed to make an objective examination, based on positive evidence, of the impact of the dumped imports on the EU industry, and failed to make a proper evaluation of all relevant economic factors and indices having a bearing on the state of the EU industry, in particular: market share, capacity and capacity utilisation. The European Union's findings regarding a three-way assessment of the free, captive and aggregate markets were not based on an objective examination of the evidence on the record. Among other shortcomings, the European Union failed to make a proper evaluation of the overall developments, the interaction among the injury factors and indices, and the state of the EU industry, taken together.

12. Articles 3.1 and 3.5 of the Anti-Dumping Agreement because the European Union's determination of a causal relationship between dumped imports and injury did not involve an objective examination based on positive evidence before the investigating authority, in particular the European Union:
(a) failed to examine properly all known factors other than the dumped imports causing injury to the domestic industry; and
(b) failed to meet the requirement that injury caused by other known factors should not be attributed to the dumped imports.

13. Article 5.2, 5.3 and 5.8 of the Anti-Dumping Agreement because the European Union failed to examine the accuracy and adequacy of the evidence provided in the application for initiation of the investigation which did not include sufficient evidence of dumping, injury or a causal relationship to justify the initiation of the investigation. Among other shortcomings, the European Union initiated the investigation without properly determining whether the request contained sufficient evidence to justify its initiation, and without having properly examined the accuracy and adequacy of the information provided in the application which is required under items (i) and (iv) of Article 5.2 of the Anti-Dumping Agreement.

14. Articles 9.2 and 9.3 of the Anti-Dumping Agreement, and Article VI:2 of the GATT 1994 because the European Union failed to impose and collect duties in the appropriate amounts in each case, and failed to assess them at an amount not exceeding the margin of dumping that should have been established in accordance with the requirements of Article 2 of the Anti-Dumping Agreement. The European Union failed to name all suppliers involved by failing to name NLMK, when this was not impracticable.

15. Articles 10.6 and 3.3 of the Anti-Dumping Agreement because the European Union's cumulative assessment of imports from the Russian Federation and the People's Republic of China for the purposes of imposing duties retroactively was inappropriate in light of the conditions of competition between the imported products and like domestic products.

16. Article 10.6 of the Anti-Dumping Agreement because the European Union levied anti-dumping duties on products which were entered for consumption not more than 90 days prior to the date of application of provisional measures, even though the conditions for levying definitive anti-dumping duties retroactively set out in Article 10.6 of the Anti-Dumping Agreement, including the condition in Article 10.6(i) of the Anti-Dumping Agreement were not met and/or not supported by sufficient evidence, either individually or taken together.

17. Article 6.5.1 of the Anti-Dumping Agreement because: a) the European Union failed to require the applicant to furnish non-confidential summaries of the information submitted in confidence; and b) where such summaries were provided, the European Union did not ensure that they were in sufficient detail to permit a reasonable understanding of the substance of the information submitted in confidence.

18. Article 6.2 of the Anti-Dumping Agreement because the European Union failed to grant NLMK and Severstal a full opportunity to defend their interests throughout the investigation, in particular, the European Union:
(a) failed to provide timely opportunities to NLMK and Severstal to examine the information that was relevant to the presentation of their cases, and denied their right to submit in time further information for the defence of their interests, including such that would be necessary for Severstal to defend against double-counting of certain costs of manufacturing;
(b) failed to disclose the initial reasons for the application of facts available to NLMK in full when the producer was still able to defend itself;
(c) made preliminary and final determinations and conducted the investigation in a way to disregard any new or additional information from NLMK and Severstal that could give them full opportunity to defend themselves;
(d) placed NLMK in a substantial procedural disadvantage vis-à-vis the opportunities granted to the complaining EU producers, when it denied NLMK an opportunity to hold a follow-up verification visit, and granted such follow-up visits to the parties with adverse interests.

19. Article 6.9 of the Anti-Dumping Agreement because the European Union failed to inform all interested parties of the essential facts under consideration which formed the basis for the decision to impose definitive anti-dumping measures in respect of NLMK; in particular, the essential facts underlying the determinations of the existence of dumping and the calculation of the margins of dumping, and those underlying the rejection of NLMK's data in the final determinations.

20. Article 6.13 of the Anti-Dumping Agreement because the European Union failed to take due account of difficulties experienced by NLMK and Severstal in supplying the information requested and to provide any practicable assistance prior to, during the on-spot verification visits and thereafter. Failure by the European Union to take due consideration of such difficulties had an adverse impact on the investigation and on the decision of the investigating authority to apply facts available to NLMK and Severstal.

21. Articles 12.2, 12.2.1 and 12.2.2 of the Anti-Dumping Agreement because the European Union failed to provide in sufficient detail the findings and conclusions reached on all issues of fact and law that the investigating authority considered material, as well as all relevant information on the matters of fact and law and reasons which have led to the imposition of provisional and definitive anti-dumping duties.

22. Articles 1 and 18.1 of the Anti-Dumping Agreement and Article VI of the GATT 1994 as a consequence of the above-mentioned inconsistencies with the Anti-Dumping Agreement and the GATT 1994.

The Ministry believes that due to those violations the EU had no basis for application of its anti-dumping measures. Thus, we also believe that the UK also has no right either for current application of anti-dumping measures on CRFS and conduction of the review, or for extension of the measures. Therefore, we urge the Department to lift the measures in the UK.

E. Negative effect of the measure on the UK FCRS consumers

The measure as well as other UK trade defense measures on steel products causes shortages and complicates economic recovery amid COVID-19 pandemic (see the following articles published in open sources

1. https://www.argusmedia.com/en/news/2122865-tata-steel-hikes-uk-coil-offer-by-50t,
2. https://www.mane.co.uk/news/another-steel-price-rise-hits-uk-construction-261271/,
3. https://www.parkersteel.co.uk/Blog/British-Steel-Announce-Price-Rise---Mar-2021,
4. https://www.theguardian.com/business/2021/may/15/building-crisis-looms-as-dwindling-supplies-bring-sites-grinding-to-a-halt,
5. https://www.constructionnews.co.uk/supply-chain/construction-materials-shortage-5-key-items-in-short-supply-17-05-2021/).

CRFS consumers continue to state that steel producers are benefiting from the current situation, while users have to pay the overprice (please see information on the prices of CRFS in Europe (see Annex).

We urge the Department to take into consideration interests of the UK users that have been already suffering from sharp increase of CRSP prices and shortages for a long time.

F. Lack of import from Russia into the UK during both the Period of Investigation and the Injury Period

According to UK Trade Info, Russia has not been exporting CRFS since 2017 (statistical data is available only for the period before March 2021, but the situation is unlikely to change).

According to Article 2.1 of the Anti-dumping Agreement
"a product is to be considered as being dumped, i.e. introduced into the commerce of another country at less than its normal value, if the export price of the product exported from one country to another is less than the comparable price, in the ordinary course of trade, for the like product when destined for consumption in the exporting country."

As a result, if the product is not exported from one country to another the fact of dumping cannot be established according to WTO rules.
We urge the Department to lift the measure in the UK since there cannot be any dumping and injury to the UK industry caused thereby during both the Period of Investigation and the Injury Period.

Section C – Certification

The undersigned certifies that the information supplied herein is correct and complete to the best of his/her knowledge and belief.

The undersigned certifies that he/she has the authority to supply the information contained herein on behalf of his/her organisation.

Signature (including e-signature):[]

Name: []

Position: []

Date: 18 May 2021