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VIA ELECTRONIC FILING

Dear sir/madam

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

We are writing with respect to the transition review of anti-dumping measures in "Case TD0011: Certain cold rolled flat steel products exported from the People's Republic of China and the Russian Federation" on behalf of Tata Steel UK Ltd. In this letter we set out why the cost data for both Russia and China is unreliable (specifically too low) and thus should be adjusted.

I. The law on costs in dumping calculations

Costs of production (along with administrative, selling and general costs and profits (**SGA and Profits**)) are critical in any dumping calculation. They are used to work out whether sales of the like goods in the domestic market were made in the ordinary course of trade and, as such, whether domestic sales prices can be used as the normal value in any dumping calculation.[1] They are also used when constructing normal value (should domestic sales prices be rejected).[2]

The rules surrounding the valuation of costs of production are contained in regulation 11 of the Trade Remedies (Dumping and Subsidisation) (EU Exit) Regulations 2019 (the **Dumping Regulations**). The comparable rules on SGA and Profits are contained in regulation 12.

Under regulation 11 costs of production must normally be calculated on the basis of records kept by the overseas exporter. However, there are a number of exceptions to this. The first is where the

[1] See regulation 9 of the Dumping Regulations
[2] See regulation 8 of the Dumping Regulations

records are not kept in accordance with generally accepted accounting principles of the exporting country (regulation 11(3)(a)). The second is that the costs do not reasonably reflect the costs associated with the production and sale of the goods in the exporting country (regulation 11(3)(b)). Where costs fail either criteria they can be calculated on any reasonable basis. Finally, adjustments to costs can be made, under regulation 13, if costs "*do not reasonably reflect the overseas exporter's production, administrative, selling and general costs or profits in a market if those costs and profits were substantially determined by market forces*" (which includes, but is not limited to, factors like substantial government intervention).[3]

Similar rules apply to SGA and Profits. Normally, the TRA must determine reasonable amounts for the administrative, selling and general costs and profits on the basis of actual data pertaining to production and sales by the overseas exporter of the like goods in the ordinary course of trade. Where such amounts cannot be determined, other methods to determine SGA and Profits are permitted. Similarly, adjustments to SGA and Profits can be made if the values were not substantially determined by market forces (under regulation 13).

In a highly vertically integrated company, the records kept will not reasonably reflect the costs of production (under regulation 11(3)(b)) as those cost will be internal costs (or transfer prices) rather than the costs which would ordinarily be payable by a non-vertically integrated company. A similar point can be made about SGA and Profits. Thus, the TRA should not use the costs recorded in the accounting records of vertically integrated companies. Further, and in any case, those production costs along with SGA and Profits have not been substantially determinedly market forces, as per regulation 13, because they are internal costs. Here again is another reason to treat the accounting data on costs of a highly vertically integrated company with caution and why an upward adjustment to those costs will be necessary.

II. NMLK

In its Annual Report, NMLK describes itself as "*a vertically integrated group with a well-balanced value chain controlling every stage of steel production, from the mining of raw materials through to finished high-tech product sales to end-users*". NMLK reports that it is 64% self-sufficient in energy, 64% self-sufficient in scrap, 100% self-sufficient in coke along with iron ore concentrate (as well as 95% self-sufficient in pellets).[4]

In terms of upstream production, JSC "Stoilensky (Mining and Beneficiation Plant)", part of the NMLK group, is one of the leading mining companies in Russia and produces 100% of the group's iron ore concentrate.[5] The NMLK Group companies Altai-Koks and Lipetsk produce 100% of the group's coke requirements. Energy is also generated by the group through the recovery of by-product gases from coke and blast furnace operations.[6]

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[3] See regulation 13(3) of the Dumping Regulations
[4] NMLK, Annual Report 2020, page 10, https://nlmk.com/upload/iblock/906/NLMK_about.pdf1
[5] https://sgok.nlmk.com/en/about/key-factors/
[6] https://nlmk.com/en/about/business-model/raw-materials/

In terms of midstream and downstream production, this too is vertically integrated. The Annual Report states that: "*Finished products are made locally in the Company's strategic markets of Russia, the EU, and the USA, in close proximity to consumers… NLMK can process as much as 80% of captive crude steel at its own rolling facilities*".[7]

Because of the vertically integrated nature of production, as the Annual Report states, "*[t]he Company has achieved the status of one of the most cost-efficient steelmakers in the world through a world-class resource base*".[8] The report goes onto to say that: "*NLMK is among global leaders in cost. NLMK Group enjoys sustainable cost leadership through its high utilization rates, efficient vertical integration…*".[9]

Hence, the records kept by the company will not reasonably reflect the costs of production for cold rolled flat steel (under regulation 11(3)(b)) as the vertically integrated nature of the production process mean that those costs would be far too low and are not properly reflective of what would ordinarily be paid in the market. The TRA should therefore treat the accounting data of NMLK with caution and is entitled to discard such data and use another basis to make its cost estimate. Similarly, adjustment can also be made to those costs as they were not substantially determined by market forces (as per regulation 13).

Similar arguments can also be made with respect to SGA and Profit for cold rolled flat steel. This is because they will not be 'reasonable'. Costs are internal prices in a vertically integrated company (and can be set at a lower value than normal). Here again, SGA and Profit should be treated with caution. What is more, because such costs (and profits) result from internal costs, and are thus not substantially determined by, market forces, adjustments to such costs are also merited under regulation 13.

III. Severstal

In its Annual Report Severstal describes itself as: "*…a vertically integrated steel and steel-related mining business with its major assets located in Russia and some investments in other countries*".[10]

The company has substantial mining assets which "*are a fundamental part of the Company's vertically integrated business model*".[11] It produces (more than) 100% of the iron ore, 80% of the hard coking coal and about 80% of the electricity.[12]

The company also has control of midstream and downstream production: "*The Company's core asset is the Cherepovets Steel mill, one of the lowest cost steel mills in the world, strategically located near to the Company's mining operations… [it] has a broad product portfolio, comprising*

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[7] NMLK, Annual Report 2020, page 12, https://nlmk.com/upload/iblock/906/NLMK_about.pdf1
[8] Ibid., page 10
[9] Ibid., page 12
[10] Severstal, Annual Report 2020, page 8, https://www.severstal.com/files/55798/Annual_Report_2020_ENG_final_light.pdf
[11] Ibid., page 8
[12] Ibid., page 15

a majority of high value added flat steel products and increasing volumes of long products for construction and downstream sales ".[13]

The vertical integration not only covers production but distribution too: "*Severstal Distribution consists of sales representations and more than 30 warehouses of various scale, located in European Russia and 12 countries in the European Union. The sales volume of this distribution network exceeds 2.5m tonnes of steel products a year. Severstal Distribution offers steel processing and distribution services including multimodal schemes by water/rail/road and containers, and also maintenance and financial solutions*".[14]

As a consequence of the vertically integrated structure, Severstal has "…*one of the lowest cost profiles among steel producers globally*."[15] Severstal explicitly makes the connection between its vertically integrated model and its unusually low costs in its Annual Report 2020: "*Severstal's efficient, vertically integrated structure means it is largely self-sufficient in primary steel-related raw materials, which enables the Company to maximise efficiencies and reduce production costs*."[16]

Given this, as with NMLK, the records kept by the company will not reasonably reflect the costs of production of cold rolled flat steel (under regulation 11(3)(b)) as the vertically integrated nature of the production process mean that those costs would be far too low and are not properly reflective of what would ordinarily be paid in the market. The TRA should therefore also treat the accounting data of Severstal with caution and is entitled to discard such data and use another basis to make its cost estimate. Similarly, adjustment can also be made to those costs as they were not substantially determined by market forces (as per regulation 13).

Much the same can be said of SGA and Profit. It is simply not reasonable to take at face value the profit as recorded in its accounts because of vertical integration..

IV. Costs in Russia more generally

On 22 October 2020, the European Commission published a document on the "significant distortions in the economy of the Russian Federation for the purposes of trade defence investigations" (the **Commission Report**).[17] The document was produced for the purpose of assisting the Commission in its assessment of 'significant distortions' under Article 2(6a) of Regulation (EU) 2016/1036 (the parallel provision to Article 13 of the Dumping Regulation) where 'significant distortion' is defined as those distortions which occur because the price or cost of something is '*not the result of free market forces because they are affected by substantial government intervention*'.

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[13] Ibid., page 8
[14] Ibid., page 42
[15] Ibid., page 13
[16] Ibid., page 17
[17] Commission Staff Working Document on significant distortions in the economy of the Russian Federation for the purposes of trade defence investigations, October 2020, https://trade.ec.europa.eu/doclib/docs/2020/october/tradoc_158997.pdf

The Commission Report found significant distortions across inputs which would affect all industries, including the steel industry, as well as distortions specific to the steel industry itself. All this should give the TRA reason to question the reliability of cost figures both under regulations 11(3)(b) and 13 of the Dumping Regulation.

Its energy market is distorted. Most famously its natural gas market is dominated by state owned companies. The Commission Report states that: "*domestic wholesale prices [of natural gas] in Russia have been consistently below export process… Timing and size of some of the most recent adjustments of regulated gas prices do not appear to be related strongly with domestic economic indicators but rather to political situation and international process development, preventing convergence towards export prices.*"[18] As such, Russia's natural domestic gas prices are not substantially determined by market forces and, thus the accounting records would not reasonably reflect the true cost of natural gas and energy. The government also highly regulates the electricity sector so that electricity prices are not substantially determined by market forces.[19] But it is not just the energy market which is distorted, the transport sector is also not substantially determined by market forces. In terms of rail, the intervention of the government seems to go beyond the regulation that is necessary because of the status of RZD as a natural monopoly according the Commission Report: "*There is subsidisation to compensate the losses from regulated freight tariffs but also other non-market parameters (such as the below inflation cap) influence the determination of railways tariffs."* Some companies, including NMLK get even greater preferential treatment: "*… some big companies such as Novatek, NMLK or PhosAgro were also benefitting from cheaper [freight] rates*".[20] As such, transport costs do not reflect market rates for the steel industry and, in particular, for certain steel supplier such as NMLK, Labour costs are also distorted. This is because labour regulations are not strictly enforced which potentially gives Russia an unfair advantage in comparison with market economies in Europe and elsewhere.[21]

The Commission Report has a specific section on the Russian steel industry which lays out some of the targets and support provided by the state which affects the competitiveness of the industry. Russia's plans for the steel industry are laid out in the Development Strategy of the Steel Industry 2014-2010 and for the Perspective until 2030 and the Draft Strategy for the Development of the Metallurgical Industry for Russia for the Period till 2030 – with a key part of the strategy being to maintain Russian producers' position in foreign markets.[22] In 2016, state support for ferrous metallurgy amounted to RUB 249 million. There is also an export tax on metal waste and scrap under Government Decree No. 754 of 30 August 2013. Alongside this the steel industry benefits from lower than market prices in energy and pricing, as discussed. The Commission Report concludes that: "*certain elements of the country's electricity, natural gas and rail transport pricing policies, as well as export restrictions on scrap, may be contributing to lower costs of production and domestic and international delivery of Russian steel products*."[23] Here again adjustments are required under regulation 11(3)(b) and 13. Furthermore, Russia is instituting an export tax on a

[18] Ibid., page 293
[19] Ibid., pages 288 to 291
[20] Ibid., page 305
[21] Ibid., page 366
[22] Ibid., page 378 to 380
[23] Ibid., page 392

range of metal products from 1 August 2021, which includes steel products. This constitutes a further market distortion of costs and prices.[24]

V. Costs in China more generally

We cannot locate any co-operating Chinse exporters on the public file. However, it is evident that costs in China are not substantially the result of market forces, especially for steel and cold rolled flat steel (and that the accounting records of Chinese exporters of cold-rolled flat steel would not reasonably reflect the true costs of production).

The TRA has previously correctly concluded as such in its Statement of Essential Facts (Case TD0001) for the transition review of anti-dumping measures applying to certain welded tubes and pipes or iron or non-alloy steel originating in the Republic of Belarus, the People's Republic of China and the Russian Federation (the **WTP SEF**). At paragraphs 7.72 to7.74 of the WTP SEF, the TRA states that the European Commission working paper 'Commission Staff Working Document on Significant Distortions in the Economy of the People's Republic of China for the Purposes of Trade Defence Investigations' "… *was published in 2017... We [the TRA] have not identified any further evidence from the CCOIC or secondary sources to indicate that there have been any substantive changes since the publication of this report… The Commission Staff Working Document concluded that there were distortions caused by Chinese state control... We [the TRA] have assessed that there is evidence of market distortions… we [the TRA] have determined that WTP prices would probably be higher in the absence of market distortion. This is due to evidence… of state control affecting the prices of key inputs to WTP, such as labour, energy and HRC.*"

We respectfully request that the same conclusion should be reached here – the cost of inputs for steel, including, cold rolled flat steel, are distorted and that the price of cold rolled flat steel is also distorted (not substantially the result of market forces) and are too low.

We reserve the right to make further submissions on prices and costs in Russia and China.

Respectfully submitted,

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[24] Metal Bulletin, 'Russia sets export duties on 340 metal products', 25 June 2021, https://www.metalbulletin.com/Article/3996007/Russia-sets-export-duties-on-340-metal-products-%5bCORRECTED%5d.html