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Non-Confidential

**Comments regarding the “transition review” of the anti-dumping measures on
certain cold rolled flat steel products originating in China and Russia (TD0011)**

Submission of the GOC

The Government of the People's Republic of China (GOC) would like to extend its compliments to the UK Trade Remedies Authority (TRA).

On April 29, 2021, the Trade Remedies Investigations Directorate (TRID, hereafter TRA) initiated the “transition review” of the anti-dumping measures on certain cold rolled flat steel products originating in China and Russia (the CRF measure). The GOC has the honor to submit the following comments.

**1. The maintenance or application of the EU trade remedy measures (the EU
measures) by the UK lacks legal basis.**

**1.1 The Brexit provides no international law basis for the UK to maintain or
continue to apply the EU measures.**

The Brexit is that the UK withdrew from the EU, rather than the EU was split into different entities or replaced by a succeeding entity. 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 of the institution so the UK can not inherit the EU's rights and obligations in terms of treaties or the EU measures. That is to say, there is no relationship between the UK and the EU measures post Brexit, and the UK is not entitled to be the party of implementing or reviewing the EU measures.

It had been proved by the facts and laws after the Brexit transition period that all treaties concluded by EU with third parties have ceased to apply to the UK, and the

UK can not maintain and transit these treaties, which means that the UK must negotiate with the parties who wish to conclude the treaties with UK, just as what the UK is doing now to negotiate and conclude new trade treaties with many trading partners. The trade remedy measures are not even considered as a matter suitable for inheritance or continued application in the international law, and can not be maintained or transited by the UK.

1.2 The EU stated that all its trade measures measures in force no longer applied to the UK after the Brexit transition period.

The EU measures are taken by EU as a member of WTO. 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 The UK is no longer a member state of the EU, which means that the existing EU measures including the CRF measure no longer apply to imports into the UK. The UK can not and is not entitled to continue to apply the EU measures which are apply only to imports into the twenty-seven Member States of the EU from 1 January 2021.

1.3 There are no laws to authorise the UK to maintain or continue to apply the EU measures which had no longer applied to the UK.

After the end of the transition period, the UK no longer belongs to the EU Customs Union, and is a completely independent WTO member. There are no laws or WTO rules to authorise the UK to maintain or apply other WTO member's trade remedy measures like the EU measures without WTO-compliant investigation. In order to roll over the EU measure to the UK measures, the UK created an investigation procedure outside the WTO rules, the so-called "transition review", in an attempt to make the application of the EU measures appear to be WTO-compliant. However, the unilateral act or legislation does not grant the UK the right to apply the other WTO member's trade remedy measures such as the EU measures without WTO-compliant proceedings or ratify such right and can not complete the transformation from the EU measures to the UK measures. The UK shall should initiate a new investigation and and do it in accordance with WTO rules. The UK relative legislation does not rule out the possibility of conduct the transition review as *ab initio* WTO-compliant investigations, but provides a basis.

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\(05\)](https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:52021XC0118(05)).

2. The continued application of the EU measures by the UK without WTO-compliant investigation after the Brexit transition period is inconsistent with the Anti-dumping Agreement (ADA).

2.1 The application of the EU measures without WTO-compliant investigation is inconsistent with the WTO rules.

At present the UK is applying the EU measures even after the Brexit transition period. It is clear that an anti-dumping measures shall be applied only pursuant to investigations initiated and conducted in accordance with Article 1 of the ADA. Under Article 10 of the Agreement on Subsidy and Countervailing Measures (ASCM), the "countervailing duties may only be imposed pursuant to investigations initiated and conducted in accordance with the provisions of this Agreement and the Agreement on Agriculture". The UK government has neither initiated nor conducted any investigations, and the direct application of the EU measures is obviously inconsistent with Article 1 of ADA and Article 10 of ASCM.

2.2 The on-going application of the EU measures to the imports to the UK lacks factual basis and is inconsistent with Articles 2, 3, 4 and 6 of the ADA.

The EU existing measures are imposed based on the EU's trade remedy legislation as well as information and data regarding domestic industry, like products, dumping margin, injury margin, causation, and public interest from the 28 countries rather than that of the UK market only. For the UK to introduce such measures, all the above need to be examined in the UK context. No review other than *ab initio* investigation can fulfil such a task.

However, after the end of the transition period, The UK no longer belongs to the EU Customs Union, but a completely independent market. That means, the cornerstone of the original EU measures has been substantially changed. The continuous application of the EU measures lacks the support of relevant UK information or factual basis, and is inconsistent with Articles 2, 3, 4 and 6 of ADA and the relevant provisions of ASCM.

The UK terminated most of the EU measures after Brexit which proved that the core elements of the EU measures are huge different from that of the UK. In fact the UK was aware of the flaws so the UK has set forth a transition review chapter in its relevant legislation, and initiated the Call for Evidence in 2017 to collect the information and evidences, and then initiated the transition review on each maintained

EU measure. all the relevant legislation and practices are in an attempt to make the transition from the EU measures to the UK measures appear to be WTO-compliant. However, the above unilateral act or legislation does not grant the UK the right to maintain or continue to apply the EU measures without WTO-compliant proceedings, nor does it grant the UK government to carry out "transition review" or ratify such right.

2.3 The same duty amount as the EU measures applied to the imports into the

UK is inconsistent with the WTO rules.

After the end of the transition period, the UK continues to apply the EU measures and the same amount as the EU anti-dumping duty applies to the same goods imported to the UK. But obviously the UK no longer belongs to the EU Customs Union, and is a completely independent market. The dumping margin of the same goods imported to the UK, if there is, is high likely different from the dumping margin at the EU measures. So application of the same duty amount as the EU measures to the imports to the UK is inconsistent with the Article 9.1 and 9.3 of the ADA which clearly envisages that the amount of the anti-dumping duty to be imposed shall be the full of dumping or less.

3. The initiation and on-going "transition review" on the CRF measure are inconsistent with the ADA.

The UK decided to maintain and continue to apply some EU measures, including the CRF measure, through Call for Evidence. On April 29, 2021, the "transition review" on the CRF measure was initiated. Without prejudice to the positions of the GOC under section 1 and 2, the GOC submits the comments regarding "transition review" on the CRF measure as follows:

3.1 The "transition review" on the CRF measure is invalid from the beginning

Based on the above reasons, the UK is not entitled to maintain and continue to apply the EU measures including the CRF measure after Brexit. The initiation of the "transition review" regarding the CRF measure which the UK is not entitled to apply is inconsistent with the WTO rules and invalid from the beginning. This "transition review" should be revoked. The so-called "transition review" should be a new investigation, which has nothing to do with the EU measures.

3.2 The "transition review" is not an investigation procedure under the ADA

In order to roll over the EU measures to the UK measures, *the Trade Remedies*

(Dumping and Subsidisation) (EU Exit) Regulations 2019 has set forth a so-called "transition review" chapter, the relevant legislation is in an attempt to make the "transition review" appear to be WTO-compliant. However, the unilateral act or legislation does not grant the UK the right to initiate the "transition review" in case of non-compliance with WTO rules and procedures. Regarding the procedure and content, the so-called "transition review" is an investigation procedure created by the UK but outside the WTO rules, it does not belong to the investigation procedure under the ADA and ASCM, so the "transition review" is inconsistent with the WTO rules.

3.3 The Call for Evidence and the initiation of the “transition review” on the CRF measure lacks transparency.

The UK decided to maintain some EU measures pursuant to the information and evidences collected by Call for Evidence, but failed to disclose any collected information in an appropriate manner, only released the decision, which have obviously deprived the rights and opportunity that the interest parties to defend their interests.

In this regard, it is remarkable that in several WTO cases, the Appellate Body has emphasized the significance to respect the “fundamental due process rights”², “full opportunity for the defense of [its] interests”³

The on-going “transition review” regarding the CRF measure was initiated on the basis of the information and evidences collected by Call for Evidence, but 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 clearly envisages that the disclosure of the application in the anti-dumping investigation is needed. After the initiation, the full text of the written application is not provided to the competent authorities of exporting country and known exporters in an appropriate manner, which also obviously deprives the rights and opportunities for interested parties to defend their interests.

Therefore, in Call for Evidence and the initiation of "transition review" on the CRF measure procedure, TRA did not reasonably disclose the relevant information and failed to fulfill the transparency obligations under the WTO rules, which obviously deprives the rights and opportunities for interested parties to defend their interests and does not satisfy the requirements of the ADA.

² WTO Appellate Body Report, *EC — Fasteners (China)*, para. 609.

³ 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

3.4 TRA failed to demonstrate the initiation of "transition review" on the CRF measure complied with Article 5.4 of the ADA.

In the framework of Call of Evidence an application to maintain the EU measures is needed to meet the requirement that the application has been made by or on behalf of the domestic industry. But after the decision was released TRA did not disclose the fact that the application has been made by or on behalf of the domestic industry or not. Similarly, after the initiation of "transition review" on the CRF measure TRA did not disclose the information on the production, sales and the applicant including the supporters in the UK. Whether the application has been made by or on behalf of the domestic industry is in doubt. TRA failed to demonstrate that the initiation meet the requirements of the domestic industry representativeness under Articles 5.4 the ADA.

4. During POI the imports from China showed a downward trend and was negligible

According to the UK import data obtained from UK Trade Info, the UK import data of the products under investigation from China and the world from 2017 to the POI are shown in the table below. Accordingly, without prejudice to the position of the GOC under section 1 and 2, the GOC's comments are as follows:

	2017	2018	2019	2020	POI
volume from China (MT)	5506.1	55.6	87.7	143.9	119.4
volume from world (MT)	416,167.2	408,659.6	302,234.7	244,785.3	249,169.7
Chinese Proportion	1.3%	0.0%	0.0%	0.1%	0.0%
Value from China (Thousand pounds)	227.0	6.2	28.2	14.6	12.6
Value from world (Thousand pounds)	256,169	259,519	195,961	146,606	149,347
Chinese Proportion	0.9%	0.0%	0.1%	0.1%	0.1%
Unit price from China (GBP/MT)	412.2	1106.6	3,209.5	1015.8	1053.3
Unit price from world (GBP/MT)	615.5	635.0	648.4	598.9	599.4
Unit price comparison	67%	174%	495%	170%	176%

Source: UK Trade info,

link:<https://www.uktradeinfo.com/trade-data/ots-custom-table>

4.1 The import volume from China shall be regarded as negligible

From 2017 to POI, regarding percentage of the import volumes from China and world into the UK , the highest is 1.3% in 2017, the others are all below 0.1%. According to the Article 5.8 of ADA, the volume of the dumped imports shall normally be regarded as negligible if the volume of the dumped imports from a particular country is found to account for less than 3% of imports of the like product in the importing Member. From 2017 to POI, the volume of imports from China to the UK accounted for significantly less than 3% of the total volume of imports from world by the UK, which shall be

regarded as negligible. Therefore TRA shall terminate the on-gonging “transition review” and revoke the CRF measure.

4.2 Considering the comparison results of import unit prices there is no possibility that the imports from China is dumped.

Except for 2017, the unit price of the imports under investigation from China is significantly higher than the average import unit price from world. From 2018 to POI, the import unit price from China is more than 170% the average import unit price from world. Therefore, it is not likely that the imports from China is dumped. If the higher unit price imports from China into the UK is dumped, the dumping margin of other lower unit price imports from outside China of the world into the UK is obviously much higher than that of imports from China. TRA should not selectively conduct an investigation or take anti-dumping measures against negligible import volume and imports without dumping, unless has otherwise purpose.

4.3 The negligible import volume cannot cause injury to the UK domestic industry.

From 2017 to POI, the volume of the imports under investigation from China into the UK accounted for a low proportion and should be regarded as negligible. According to the Article 3.2 of ADA the investigating authority shall consider the absolute and relative volume of the imports. With regard to the effect of the dumped imports on prices, the import volume factor should also be considered. The volume of imports under investigation from China is less than 3%, which is regarded as negligible in the ADA. Such a small import volume will not and cannot cause injury to the UK domestic industry.

5. The statements that there are distortions in Chinese steel market lacks legal and factual basis.

The GOC is aware of that UK Steel stated in a submitted document that distortions in the Chinese market affected cold rolled flat steel production and prices. UK Steel also referred to the other countries’ findings on China market distortions affecting the steel industry and EU findings on cold rolled flat steel cost inputs. Without prejudice to the position of the GOC under section 1 and 2, GOC would like to submit the following comments on these statements.

5.1 Investigation on market distortions conducted by TRA has no legal basis.

There is no legal standard of "market distortion" in the UK anti-dumping laws and

other domestic laws, and also there is no relevant provisions to authorize TRA to investigate whether there is market distortion in the original country of the imported products under investigation. The statements submitted by the interested party regarding that the price of cold rolled flat steel is affected by the distortion of labor and energy markets, and the distortion in China's market only refers to the so-called conclusion of the third party, which has no legal basis, nor does it provide facts or evidence.

5.2 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.

5.3 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 distortion in China's iron and steel market and import product market.

5.4 China's SOEs are equal competitors in the market economy.

China has established the market economy which market force plays a decisive role in resource allocation and which has been recognized by most countries in the world. After many years of reform, China's SOEs have become independent market entities, and they have allocated resources and carried out business in accordance with price signals. They have independently operated, self-supporting, self-supporting, self-sustaining, self-development, and participated in market competition with other ownership enterprises equally. Therefore, the SOEs in China's steel industry are the participants and competitors of market equality, and their existence have not led to and will not lead to serious distortion of the steel market and the import product market.

Chinese steel industry mainly meets domestic needs. It 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.

5.5 The GOC's five-year plan is a guiding plan.

The interest party states state control is also evident in the Chinese Government's five-year plan and during which the Chinese Government made efforts to increase the size of SOEs and encourage improvement in the steel industry through incentives and subsidies. 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 and 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 is also an guiding plan, which will not cause market distortion. Therefore, TRA shall give equal treatment to China's five-year plan and similar UK white paper, rather than implementing double standards.

5.6 The wrong conclusions of the third party are neither facts nor evidence.

The GOC and relevant enterprises do not accept the European Commission Staff Working Document and the conclusions regarding Chinese 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 European 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 European 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 the 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.

6. 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. During POI the imports from China is very small and shall be regarded as negligible. The import unit prices from China is significant higher than the average unit prices from world, there is no possibility that the imports from China is dumped. The negligible import volume did not and can not cause serious injury to the UK domestic industry. There is no distortion in Chinese iron and steel market, TRA SHALL stop or at least fairly apply the standard of “market distortion”. The report from the third party or the wrong conclusions of other investigation authority is not facts and should not become the basic evidence of the investigation determination.

The global economy is still recovering from the serious impact of COVID-19. The UK government attaches importance to and develops free trade. In this key period, the use of trade remedy measures should be more cautious, restrained and moderate, so as to better maintain the stability of the global supply chain and the steady recovery of the global economy. The GOC urges the UK to seriously consider this comments, terminate the application of all the 26 EU measures including the CRF measure in the UK and all the on-going “transition reviews”, and refund the paying firms all duties collected since 1 January 2021 when the Brexit transition period expired based on all 26 EU trade remedy measures involving products originating from China.