

TD0011 – Cold rolled flat steel products originating from China and Russia

Response of the China Chamber of International Commerce to the submissions of UK Steel

The comments are submitted by the China Chamber of International Commerce (CCOIC) in response to the paper submitted by UK Steel on November 23, 2021.

1. The threat of injury shall be based on facts and not merely on allegation, conjecture, or remote possibility.

In its paper, UK Steel claims that China's removal of export tax rebates will not lessen the threat of injury. The assertion appears to be based on the following observations:

- it does not guarantee that Chinese exporters will not dump;
- the 13% export tax rebate rate is lower than the 19.7-22.1% anti-dumping duty;
- there are precedents of Chinese exporters continuing to claim export tax rebates by misclassifying goods or adding minerals to classify them as alloy steels.

However, UK Steel fails to acknowledge that pursuant to Article 3.7 of the Anti-dumping Agreement (ADA), a determination of a threat of material injury shall be based on facts and not merely on allegation, conjecture or remote possibility.

In *Mexico — Corn Syrup (Article 21.5 — US)*, the Appellate Body reaffirmed that:

… Article 3.7 of the Anti-Dumping Agreement sets forth a number of requirements that must be respected in order to reach a valid determination of a threat of material injury. The third sentence of Article 3.7 explicitly recognizes that it is the investigating authorities who make a determination of threat of material injury, and that such determination — by the investigating authorities — “must be based on facts and not merely on allegation, conjecture or remote possibility” (emphasis added).¹

The question of whether Chinese exporters will dump, and the alleged fraudulent behaviour is, however, only speculation of UK Steel with no evidence been provided. Moreover, with regard to the difference between the export duty rebate rate and the anti-dumping duty, as emphasized by CCOIC, the current effective measures are the trade remedy measures imposed by the European Commission in the EU customs union, which was determined by taking into consideration the situation and statistics of the EU28, rather than that of the UK market only. Following Brexit, the market condition of the EU changes. The impacts of the changes in the EU's market include (1) the initial dumping margin determination may be inappropriate, and (2) the injury determination may be inaccurate. Therefore, the anti-dumping duty impose by EU authority shall not be an appropriate benchmark for comparison.

¹ WTO Appellate Body Report, *Mexico — Corn Syrup (Article 21.5 — US)*, para. 83.

Additionally, comparing the anti-dumping duty with the export tax rebate rate is not necessarily relevant to the determination of threat of injury. The cancellation of the rebate will significantly discourage Chinese companies from exporting the above steel products, it does not, however, secure the comparability of the rebate rate and the anti-dumping duty. This is because the export tax rebate that an exporter will eventually receive is not necessarily the export tax rebate rate.²

Furthermore, in the *US — Softwood Lumber VI (Article 21.5 — Canada)*, the Appellate Body holds that:

Article 3.7(i) of the Anti-Dumping Agreement and Article 15.7(ii) of the SCM Agreement ... lay emphasis on two aspects: first, that there is a “significant” rate of increase in imports; and secondly, that such a rate of increase reveals the likelihood of “substantially” increased importation in the near future. Taken together, they refer to the observed behaviour of the volume of imports (emphasis added).³

In this case, it is apparent that if the measures were removed, there would not be a significant increase in the volume of Chinese imports. The reasons are as follows:

Firstly, it is noted that iron ore prices have continued to fluctuate at historic highs recently. Compared to \$164.5/t at the beginning of this year, the price increase of Platts 62% iron ore index has reached 29.36%. In 2020, the average price of 62% of Platts' iron ore was only US \$108 / ton, and now it has nearly doubled.



Source: MarketWatch⁴

² As an exporting producer, a company is subject to the export tax system characterized by tax exemption, offsetting, and refund procedures. Under this system, export sales by the exporting producer are exempt from the value-added tax that is normally levied on sales of the same products on the domestic market. On this basis, the input VAT that has already been paid on raw materials used in the production of goods exported by the exporting producer can be used to offset against output VAT tax payable on goods sold on the domestic market. In the event that there remains excess VAT paid at the end of the period as a result of the offsetting procedures, the excess VAT paid will be compared with the tax rebate credit calculated based on the export tax rebate rates to determine the final tax refund.

³ WTO Appellate Body Report, *US — Softwood Lumber VI (Article 21.5 — Canada)*, paras. 146.

⁴ <https://www.marketwatch.com/story/iron-ore-prices-hit-record-high-with-appetite-for-steel-far-beyond-expectations->



Moreover, the downstream demand of the Chinese domestic steel industry has been released more than expected since the end of 2020. Although the demand has decreased this year, since 2021, with China entering the peak season of the traditional construction industry, the domestic demand has continued to grow. In contrast, the overseas market is not a priority.

Secondly, affected by the national coal shortage, high coal prices, coal and electricity price inversion, the majority of provinces in China are suffering from a power shortage.

As a result, on October 19, 2021, the National Development and Reform Commission organized a forum concerning coal, electricity, oil, gas, and transportation for key enterprises to ensure supply and price stability and put forward clear requirements for the next step at the same time. It is proposed to organize the implementation of orderly electricity consumption, limit the consumption of "highly polluting and energy-consuming industries", and resolutely restrict the use of electricity for high energy-consuming projects with outdated production capacity.⁵

Meanwhile, certain provinces have issued temporary energy consumption controls and power restriction measures.⁶ This has significantly pulled down output in the steel industry. As the production reduction policy continued to intensify, the follow-up supply will be declining.⁷

Furthermore, concerning UK Steel's allegation that the Chinese government's removal of import duties on raw materials such as pig iron and scrap could lead to more finished steel production and continued exports at lower prices.

However, such measures are only one aspect of the efforts to upgrade the steel industry and should be seen in conjunction with the overall picture of the Chinese government's efforts. The ultimate objective of adjustment for China's steel industry is to reduce the quantity and improve quality. The reduction of crude steel production capacity is just an important step in the implementation of China's goal of reaching peak carbon neutrality.

2. Injury caused by other factors must not be attributed to the dumped imports.

UK Steel contends in its paper that the existence of other factors causing injury does not negate the fact that dumped imports from China have not been a major cause of injury in the past, nor does it negate the existence of significant spare capacity in China and the risk of trade diversion.

However, as stipulated by Article 3.5 of the ADA, the authorities shall also examine any known factors other than the dumped imports which at the same time are injuring the domestic industry,

11620320569#:~:text=Iron%20ore%20logged%20its%20highest%20price%20on%20record,of%20%24202.65%20per%20dry%20metric%20ton%20on%20Thursday.

⁵ https://www.ndrc.gov.cn/fzggw/jgsj/yxj/sjdt/202110/t20211019_1300082.html?state=123&code=&state=123.

⁶ For instance, on August 31, Inner Mongolia issued a document stating that the power shortage is expected to continue until the end of the year. It is recommended that industrial enterprises use electricity in an orderly manner from August to December, available at <https://static.cnfeol.com/doc/pvip/21/0830/1630288908421-89fdb1b02f947a8be75fe7f89b1a0df.pdf>.

⁷ <https://news.metal.com/newscontent/101611192/mm-survey-the-impact-of-power-rationing-on-the-steel-industry-chain>.



and the injuries caused by these other factors must not be attributed to the dumped imports.

In the *US — Hot-Rolled Steel*, the Appellate Body further states that:

… In order that investigating authorities, applying Article 3.5, are able to ensure that the injurious effects of the other known factors are not “attributed” to dumped imports, they must appropriately assess the injurious effects of those other factors. Logically, such an assessment must involve separating and distinguishing the injurious effects of the other factors from the injurious effects of the dumped imports. If the injurious effects of the dumped imports are not appropriately separated and distinguished from the injurious effects of the other factors, the authorities will be unable to conclude that the injury they ascribe to dumped imports is actually caused by those imports, rather than by the other factors. Thus, in the absence of such separation and distinction of the different injurious effects, the investigating authorities would have no rational basis to conclude that the dumped imports are indeed causing the injury which, under the Anti-Dumping Agreement, justifies the imposition of anti-dumping duties (emphasis added).⁸

In this case, on the one hand, as can be clearly seen from the UK customs statistics, it is undisputed that the Chinese imports did not and cannot cause injury to the UK industry during the injury period. On the other, UK Steel acknowledges on its official website and in its paper that the UK steel industry has encountered a number of competitive challenges. Hence, as requested by the ADA and it is suggested that the Trade Remedies Authority (TRA) shall assess whether these challenges have caused injury to the domestic industry.

3. The dumping price is not prohibited without causing material injury to the domestic industry.

UK Steel argues that the safeguard measures differ from anti-dumping measures in that effective safeguard measures do not guarantee that imports are not at dumped prices.

However, it is common sense that dumping prices are not prohibited per se and that without a certain volume of exports, the dumped product is unlikely to cause material injury to the domestic industry under any circumstances.

In addition, it shall be noted that WTO law condemns but does not prohibit dumping. WTO law allows a WTO Member to impose anti-dumping duties on dumped goods to offset dumping only if dumping causes or threatens to cause material injury to the domestic industry of a WTO Member producing the like goods. Both the volume of dumping imports and dumping margins are critically important factors for the purposes of determining injury.

The fact was also recognized by the Appellate Body in the *US — Stainless Steel (Mexico)*:

⁸ WTO Appellate Body Report, *US — Hot-Rolled Steel*, para. 223.



... the purpose of an anti-dumping duty is to counteract “injurious dumping” and not “dumping” per se. It must be stressed that, under the Anti-Dumping Agreement, the concepts of “dumping”, “injury”, and “margin of dumping” are interlinked and that, therefore, these terms should be considered and interpreted in a coherent and consistent manner for all parts of the Anti-Dumping Agreement (emphasis added).⁹

This is also why the ADA stipulates an investigation shall be terminated immediately in the case that the volume of dumped imports is negligible.

4. The purpose of trade remedies shall not be protectionism.

UK Steel argues that its imports from China are negligible since 2016 demonstrating the effectiveness of anti-dumping measures.

However, trade remedy measures and anti-dumping measures, in this case, should not be used for trade protectionism purposes which restricted the foreign exporters from accessing the overseas market. Rather than illustrating the effectiveness of the measure, the negligible amount of imports discloses the overprotective nature of the measure and the need for appropriate adjustment.

CCOIC notes that in the definitive measures published by the EU in 2016, the EU, unfortunately, did not take into consideration of the dissenting opinion of several interested parties and imposed high anti-dumping duties on Chinese imports. The EU argued that traders are free to purchase from whichever source they choose, including the countries concerned. ¹⁰However, the truth is that it is nearly impossible for Chinese exporters to export the goods to the EU and/or the UK with high anti-dumping duties in place.¹¹The so-called “free” is not indeed free.

Furthermore, CCOIC submits that the overprotection will not necessarily promote the progress of domestic industries in the UK but will instead undermine the level playing field to some extent. For instance, protection may be granted to less efficient industries. However, does it mean that less efficient industries should also be protected? The answer is a resounding no. CCOIC notes that this obvious but indispensable rule is well acknowledged by the UK Competition and Markets Authority who indicates in its report that “*when a market is well-functioning, we would expect it to be possible for new more efficient firms to enter the market and displace older less efficient firms, which exit the market.*”¹²

5. It is not in the UK's economic interest to maintain the measure.

With regard to UK Steel's claim that the removal of measures could have a negative impact on supply chains, jobs, as well as downstream industries.

⁹ WTO Appellate Body Report, *US — Stainless Steel (Mexico)*, paras. 94–95.

¹⁰ COMMISSION IMPLEMENTING REGULATION (EU) 2016/1328 of 29 July 2016 imposing a definitive anti-dumping duty and collecting definitively the provisional duty imposed on imports of certain cold rolled flat steel products originating in the People's Republic of China and the Russian Federation, recital 150.

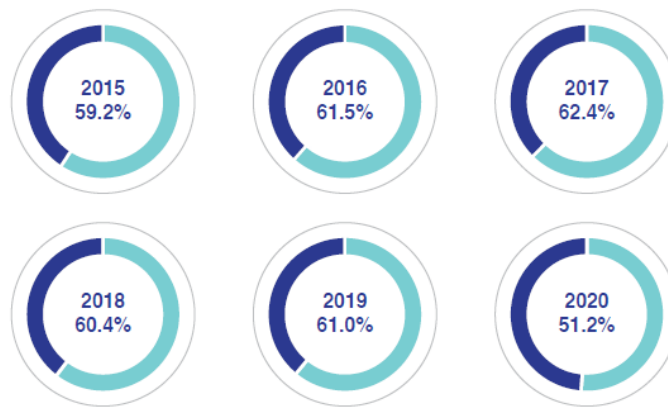
¹¹ As provided by the CCOIC in its registration form, during the injury investigation period, the Chinese producers hardly exported the goods subject to the review to the UK.

¹² The State of UK Competition, page 31, paragraph 2.56, available at: <https://www.gov.uk/government/publications/state-of-uk-competition-report-2020>.

CCOIC submits that this view is contrary to the UK’s long tradition of promoting free trade between nations. As a former EU member state, CCOIC notes that the UK has always advocated a free and open trade policy. For instance, the UK had explicitly opposed the EU's changes to the application of the lesser duty rules in its trade remedy law.¹³

Moreover, the UK, as an island country, its dependence on imported steel is natural. It shall be pointed out that the UK domestic industry does not have the capacity to meet domestic demand. As provided by the final report of TF0006, the total known average consumption of non-alloy and other alloy cold rolled sheets during 2017-2019 in UK is 634 kilotonnes. However, the average annual import of UK is 389 kilotonnes, i.e., more than 60% of the non-alloy and other alloy cold rolled sheets have to be met by imports.¹⁴

Share of UK demand met through imports



Source: UK Steel¹⁵

Additionally, even if the UK has sufficient capacity to meet domestic demand in the future, which CCOIC strong doubts, relying on local supplies for all goods subject to review will exert a negative effect on the competitiveness of downstream industries to some extent. From the perspective of the competition law, an open and fair market with a reasonable level of competition for all players is more conducive to the healthy development of the UK domestic industry, and also with more abundant and appropriately priced products available to the downstream users.

Furthermore, the UK manufacturers are experiencing the worst supply shortages since the 1970s due to the lack of key materials and rising energy costs caused by COVID and Brexit, and it is not in the overall interest of UK producers to continue imposing trade defense measures.

For instance, with regard to the recent power price spikes, the Director-General of UK Steel, Gareth

¹³ UK Parliament, available at: <https://publications.parliament.uk/pa/cm201719/cmselect/cmeuleg/301-xxi/30110.htm#footnote-021>.

¹⁴ TRA’s Recommendation to the Secretary of State, Transition review TF0006 – Safeguard measure on certain steel products, page 82, available at: <https://www.trade-remedies.service.gov.uk/public/case/TF0006/submission/187acc2-e0e6-40b7-8d2f-fdc9b10d536d/>.

¹⁵ UK Steel Key Stats Guide 2021, available at: <https://www.makeuk.org/insights/publications/uk-steel-key-statistics-guide-2021>.



Stace commented that *“these extortionate prices are forcing some UK steelmakers to suspend their operations during periods when the cost of energy is quoted in the thousands per megawatt hour; last year, prices were roughly £50 per megawatt hour. Even with the global steel market as buoyant as it is, these eye-watering prices are making it impossible to profitably make steel at certain times of the day and night.”*¹⁶

¹⁶ <https://www.makeuk.org/news-and-events/news/news-from-uk-steel---recent-power-price-spikes>.