

Comments in the UK Transition Review of Anti-dumping Duties on Certain Cold Rolled Flat Steel Products originating in, *inter alia*, the People's Republic of China (TD0011)

Submission of the China Iron and Steel Association (CISA)

13 October 2021

A) INTRODUCTION

On 29 April 2021, a notice of initiation of a transition review of the anti-dumping duties on certain cold rolled flat steel products originating in, *inter alia*, the People's Republic of China was published by the UK Department for International Trade (DIT).

The UK transition review is related to the existing anti-dumping measures adopted in the European Union (EU). Subsequent to the UK's withdrawal from the EU, the UK Secretary of State periodically publishes determination notices, authorizing the UK Trade Remedies Authority (TRA) to conduct transition reviews to determine if the existing EU trade remedy measures should be maintained, varied or revoked in the UK. A UK transition review considers whether the application of the EU anti-dumping amount is necessary or sufficient to offset dumping of the relevant goods in the UK market, and whether injury to the UK industry in the relevant goods would occur if the anti-dumping amount were no longer applied to those goods.

This submission is made by the China Iron and Steel Association ("CISA") and its members. CISA is an association of exporting producers of steel products in China. Its members export various steel products (including cold rolled flat steel products) to the UK market. CISA already registered as a contributor in this proceeding, and submitted its response to the contributor questionnaire in due course.

CISA hereby reserves the right to present further evidence and arguments throughout any of the later stages of this proceeding. This includes hearings, which CISA may request in the due course of the proceeding, as well as post-hearing briefs. CISA also reserves its right to submit comments on the future Statement of Essential Facts (SEF) once it becomes available.

B) LAWFULNESS AND VALIDITY OF MEASURES AND TRANSITION REVIEWS

As set forth in the WTO Anti-dumping Agreement (the WTO ADA), an anti-dumping measure shall be applied only under the circumstances provided for the ADA. As such, Article 3.1 of the ADA clearly stipulates that: "*A determination of injury for purposes of Article VI of GATT 1994 shall be based on positive evidence and involve an objective examination of both (a) the volume of the dumped imports and the effect of the dumped imports on prices in the domestic market for like products, and (b) the consequent impact of these imports on domestic producers of such products.*"

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In the case at hand, it is clear that the UK has not applied measures on the basis of a domestic investigation. Instead, the currently applicable measures in the UK are applied on the basis of an (old) investigation conducted by the European Commission, which was based on the EU basic Anti-dumping Regulation.

CISA also points out that the existing anti-dumping measure was not only imposed by the European Commission, but it was also based on the EU concept such as the “Union industry” composed of 28 Member States at that time. This obviously means that a determination of dumping, injury, causality and public interest was made by looking at the impact of imports on the entire EU market.

Following the Brexit, the UK has decided to continue the application of certain EU trade remedy measures in its domestic legal order by way of national laws. CISA questions the legality of this rollover mechanism under international law. As the UK has withdrawn from the EU legal order, there cannot be a situation of legal continuation, in other words the UK cannot be regarded as a legal successor to the EU, acquiring its rights and obligations or legal status under any international agreement. Therefore, in CISA’s view, the UK was not entitled to continue applying EU measures in its domestic legal order following the Brexit.

It follows that the currently applicable UK anti-dumping measures on cold rolled flat steel products are unlawful, as they are based on the findings of a separate investigating authority (the European Commission) which the UK itself does not belong to anymore. This is all the more strengthened by the fact that these findings were drawn on the basis of an investigation covering the EU industry and market, rather than the UK ones. By merely rolling over these measures, the UK is currently applying trade remedy measures beyond the UK domestic industry and market. As such, the imposition of these measures by the UK is not in line with the requirements set out by the WTO ADA.

In CISA’s view, not only are the currently applied measures in the UK invalid, as they have been taken over from existing EU measures rather than based on an independent UK assessment, but also, the unlawfulness further extends to the initiated transition review itself. This is because the UK transition review cannot be considered as a permissible review under Article 11.2 of the WTO ADA (“interim review”). The reviewing authority (UK TRA) is different from the investigation authority which has assessed the need for the imposition of the original measures (the European Commission). Moreover, the UK transition reviews are not covered by Article 11.3 of the WTO ADA, which is concerning the concept of “expiry review” or “sunset review”. As a matter of fact, UK transition reviews cannot be supported by any provision in the WTO ADA. Therefore, CISA maintains that such reviews are invalid under the WTO ADA.

CISA respectfully requests the UK TRA to regularize this unlawful situation by terminating the currently applicable measures, as well as the transition review.

C) SUBSTANTIVE COMMENTS IN RELATION TO THE TRANSITION REVIEW

Comments on injury and threat thereof

Pursuant to Regulation 99A of the Regulations, the objective of the transition review is to identify whether (i) the application of the anti-dumping amount is necessary or sufficient to offset the dumping of the relevant goods in the UK market; and (ii) injury to the UK industry in the relevant goods would occur if the anti-dumping amount were no longer applied to those goods.

In this respect, it should be kept in mind that the initial investigation was conducted by the European Commission in view of the Union industry and the EU-28 market, not the UK one. Accordingly, the EU determination cannot automatically be applied to the UK market. Indeed, any conclusion of the initial investigation applied only the Union industry and EU market.

In addition, CISA notes that UK cold rolled flat steel producers already benefit from the protection of measures imposed under the UK safeguard measures on certain steel products. Indeed, on 30 June 2021, the Department for International Trade published a trade remedies notice. According to this notice,¹ safeguard measures (in the form of tariff-rate quota), with effect from 1 July 2021, will be applied to certain steel product categories in the UK for the next three years. Of the 11 categories for which TRA recommends maintaining the safeguard measures, one consists of the cold rolled flat steel products, which partially overlaps with the product under consideration in this case.

Accordingly, CISA respectfully requests TRA to take into account the fact that UK cold rolled flat steel producers will already be protected under the safeguard measures. Since the safeguard measures are in the form of tariff-rate quota, there is a ceiling of the total volume of imports. Thus, even if the anti-dumping duties are no longer applied to imports from China, total volume of imports would not increase and therefore it is unlikely that any injury to the UK industry would occur.

This analysis is further strengthened by the fact that the Chinese Ministry of Finance made two announcements, on 26 April² and 28 July 2021³, respectively, that as of 1 May and 1 August 2021, certain steel products, including cold rolled flat products, would no longer be eligible from VAT export rebates. As such, CISA maintains that the expected impact will be a significant decrease of exports of cold rolled flat products from China, since Chinese steel

¹ <https://www.gov.uk/government/publications/trade-remedies-notice-safeguard-measures-on-certain-steel-products-application-of-tariff-rate-quotas/trade-remedies-notice-2021-no-1-safeguard-measure-tariff-rate-quota-on-steel-goods-web-version>. This notice was further updated on 1 October 2021.

² http://www.gov.cn/zhengce/zhengceku/2021-04/28/content_5603588.htm, in Chinese language only.

³ http://www.gov.cn/zhengce/zhengceku/2021-07/29/content_5628266.htm, in Chinese language only.

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producers will be more interested to sell the cold rolled steel products onto the domestic market.⁴

Given that the UK domestic industry is already under the protection by the safeguard measures for the next three years, and in view of the abolition of VAT rebate incentives in China, CISA considers that there cannot be any situation of the UK domestic industry suffering from injury or a threat thereof.

UK Economic Interest Test

CISA requests that TRA take into account the interests of UK importers and users of the goods. It is clear that imposing anti-dumping measures may lead to restriction of the source of supply, which will disadvantage the purchasing power of UK consumers, and also jeopardize the competitiveness of UK downstream companies, which use cold rolled flat products in their production processes. There are more jobs in the downstream industries than in the cold rolled production industry, which demonstrated the potential impact on employment arising out of the imposition of measures following the transition review.

D) CONCLUSION

In this submission, CISA sets out its views on the legality of measures and the transition review, which it considers unlawful. CISA has shown that due to the parallel applicability of UK steel safeguard measures and the abolition of VAT export rebates in China, there is in fact no demonstrable existence of injury to the UK domestic industry or threat thereof. CISA has also shown that continuing the anti-dumping measures would not at all be in the UK's broader economic interest.

CISA believes that the revocation of the anti-dumping measures imposed on cold rolled flat steel products from, *inter alia*, China is warranted.

⁴ This can be confirmed by well recognized steel magazine such as Metal Bulletin, at <https://www.metalbulletin.com/Article/4000714/NEWSBREAK-China-to-cancel-more-steel-export-rebates-from-Aug-1.html>