

Comments of the Ministry of Economic Development of the Russian Federation regarding the Statement of Essential Facts of transition review of an anti-dumping measure applying to certain cold rolled flat steel products originating in the People's Republic of China and the Russian Federation

On March 31, 2022, the Trade Remedies Authority of the Department for International Trade of the Government of the United Kingdom (hereinafter – the Authority) issued the Statement of Essential Facts of transition review of anti-dumping measures on imports of cold rolled flat steel products (hereinafter – CRFS) exported from People's Republic of China, and the Russian Federation.

The review has been initiated under the Trade Remedies (Dumping and Subsidisation) (EU Exit) Regulations 2019 (hereinafter – Regulations).

The Ministry of Economic Development of the Russian Federation (hereinafter – the Ministry) would like to draw the Authority's attention to the following considerations.

1. The continuation of application of the measure is inconsistent to WTO rules

According to the Statement of Essential Facts the Authority recommends maintaining the form and levels of the original EU anti-dumping measure for the Russian CRFS. The Authority found that 1) Russian imports of CRFS would occur if the measure were no longer applied, 2) injury to the UK industry would occur from importation of the Russian CRFS if the measure were no longer applied, 3) the application of this measure meets the economic interest test (EIT).

The Ministry would like to reiterate the position of the Russian side submitted in Contributor Registration Form on May 19, 2021 that continuation of application of the EU measure in the UK territory will be not in line with the requirements set out by the Articles 2 and 3 of the Agreement on Implementation of Article VI of GATT 1994 (hereinafter – ADA). The WTO rules envisage that an anti-dumping measure shall be applied only under

circumstances provided for in Article VI of GATT 1994 and pursuant to investigations initiated and conducted in accordance with the provisions of the ADA.

However, the analysis within the review cannot be equivalent to the one within an original investigation. As an exemplifying illustration we draw the attention of the Authority to numerous reservations regarding its inability to recalculate the anti-dumping duty or its consideration that it is inappropriate to do so.¹

As for this illustration, it should be noted that recalculation is one of the things the Authority must have done, and thereby it must have duly observed the United Kingdom's WTO obligations. Lack of imports to the United Kingdom due to the EU's anti-dumping measure is not an excuse to fail to do so. Article 2 of the Anti-Dumping Agreement includes instruments enabling to calculate the margin in multiple situations, and the necessary ones could have been found by the Authority.

2. Dumping likelihood assessment

Although the Authority numerously stated that it could not recalculate the anti-dumping duty, or that it was inappropriate to do so, it nevertheless had made some calculations for the purposes of determination of likelihood of recurrence of dumping. In particular, the Authority calculated the estimated UK landed (CIF) price for Russian producers in order to compare it with the UK average sales price of domestically produced and imported like products.²

In its calculations the Authority made adjustments for natural gas and rail-freight costs, having deemed them to be "distorted" because of an alleged "particular market situation". The adjustments of natural gas costs were made with the use of the USA's Energy and Information Administration for the costs of natural gas to industrial users.³ The Authority applied adjustment of up to 2,1 % on ex-works sales prices. As for rail freight cost, the Authority used

¹ See e.g. paras. 18, 25, 71, 125 (dumping and injury), 149, 196 and 351 of the Statement of Essential Facts.

² The Statement of Essential Facts, para. 152.

³ Ibid., para. 128.

the price from the USA Association of American Railroads and applied adjustment of up to 11,6 % on ex-works sales prices.⁴ As a result of the calculations including these adjustments the UK landed (CIF) price range was significantly above the UK sales prices for domestically produced like goods.⁵

As it was numerously noted by the WTO Appellate Body, "dumping" is "the result of the pricing behaviour of individual exporters or foreign producers" of the product under consideration.⁶ It should be noted that the factors for which the costs were adjusted are not the ones determined by the exporting producers, and thus cannot be an element of their pricing behavior.

Besides, it should be noted that the cost adjustments, such as the ones made by the Authority, were found to be inconsistent with WTO rules by WTO Panels and the Appellate Body rulings, namely in *European Union — Anti-Dumping Measures on Biodiesel from Argentina*⁷ and *Ukraine — Anti-Dumping Measures on Ammonium Nitrate*.⁸ In particular, such methodologies have been found to be inconsistent with Articles 2.2, 2.2.1 and 2.2.1.1 of the Anti-Dumping Agreement. In addition, in *European Union — Cost Adjustment Methodologies and Certain Anti-Dumping Measures on Imports from Russia — (Second complaint)* the panel found WTO-inconsistency of the cost adjustment methodology, whereby the EU authorities rejected the costs reflected in the exporting producers' records and replaced them with cost of production out of the country of origin. According to the panel, the methodology was inconsistent with Articles 2.2 and 2.2.1.1 of the Anti-Dumping Agreement.

⁴ Ibid., para. 129.

⁵ Ibid., para. 156.

⁶ Appellate Body Reports, *US — Zeroing (Japan)*, WT/DS322/AB/R, paras. 111 and 156; *US — Zeroing (EC)*, WT/DS294/AB/R, para. 129; *US — Stainless Steel (Mexico)*, WT/DS344/AB/R, para. 95 and fn. 208 to para. 94; *EU — Biodiesel (Argentina)*, WT/DS473/AB/R, fn. 130 to para. 6.25).

⁷ DS473: *European Union — Anti-Dumping Measures on Biodiesel from Argentina*. URL: https://www.wto.org/english/tratop_e/dispu_e/cases_e/ds473_e.htm

⁸ DS493: *Ukraine — Anti-Dumping Measures on Ammonium Nitrate*. URL: https://www.wto.org/english/tratop_e/dispu_e/cases_e/ds493_e.htm

In our view, the methodology applied by the Authority with adjustments for rail freight prices and natural gas prices in the Russian Federation is WTO-inconsistent. Besides, as we pointed out in the Comments of the Russian side on particular market situation allegations submitted on 3 November, 2021, it is inappropriate to replace costs of production in Russia. Such practice of the Authority runs afoul of the WTO obligations of the United Kingdom.

3. High prices of CRFS on the UK market ensure the absence of injury

The Authority concluded that Russian producers are unlikely to be able to compete with UK sales prices without dumping⁹ because UK landed (CIF) price for Russian CRFS (568 to 863 GBP/tonne) is significantly above UK sales prices for domestically produced like goods. We would like to note that this price range was estimated including illegal adjustments for natural gas and rail-freight costs.

According to the British analytical agency MEPS International Ltd *“European steel prices continued to increase, in the second half of March. By the start of April, this upward trend had largely ceased. European steel producers experienced spiralling costs and disrupted supply lines. The majority proposed only limited sales volumes before intermittently withdrawing from the market. Prices increased with each new tranche of offers. A few remained active but endeavoured to restrict order intake by proposing very high prices.*

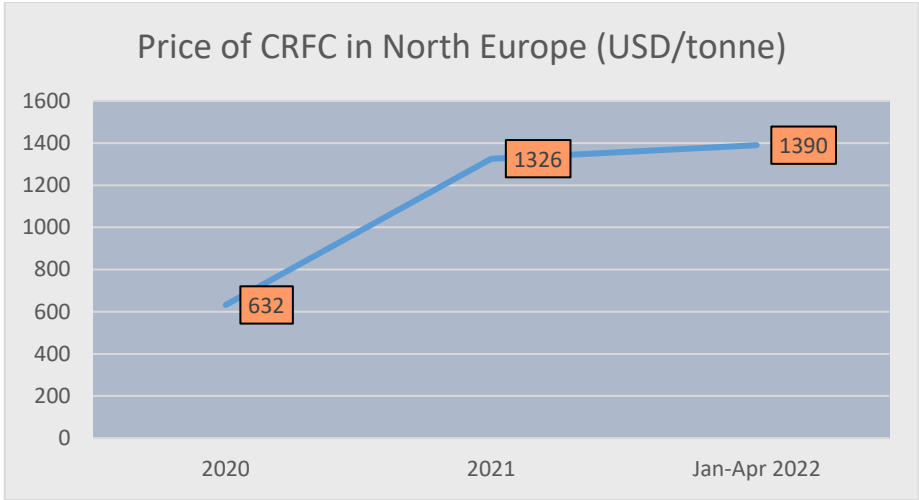
*The UK steel market followed the same pricing pattern as the EU. Increasingly, buyers there are relying on domestic supply. Quota restrictions, high transport costs, delays in Channel crossings and congestion at east coast ports diminish the attraction of the market for EU steel mills.”*¹⁰

The unprecedented rise in the price of steel in the EU is confirmed by Kallanish commodities in Table 1.

⁹ The Statement of Essential Facts, para 157, page 35

¹⁰ <https://mepsinternational.com/gb/en/news/buying-panic-subsides-in-european-steel-market>

Table 1



Source: Kallanish Commodities

This line also indicates that the average prices of CRFS show upward trend and nowadays prices are at historic highs. Currently prices of CRFS in EU just as in UK are much higher than can be expected. In our view the dramatic rise of prices of CRFS on the EU and UK markets protect the UK producers from alleged injury since they can sell their goods with high level of profit.

4. Injury likelihood assessment

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

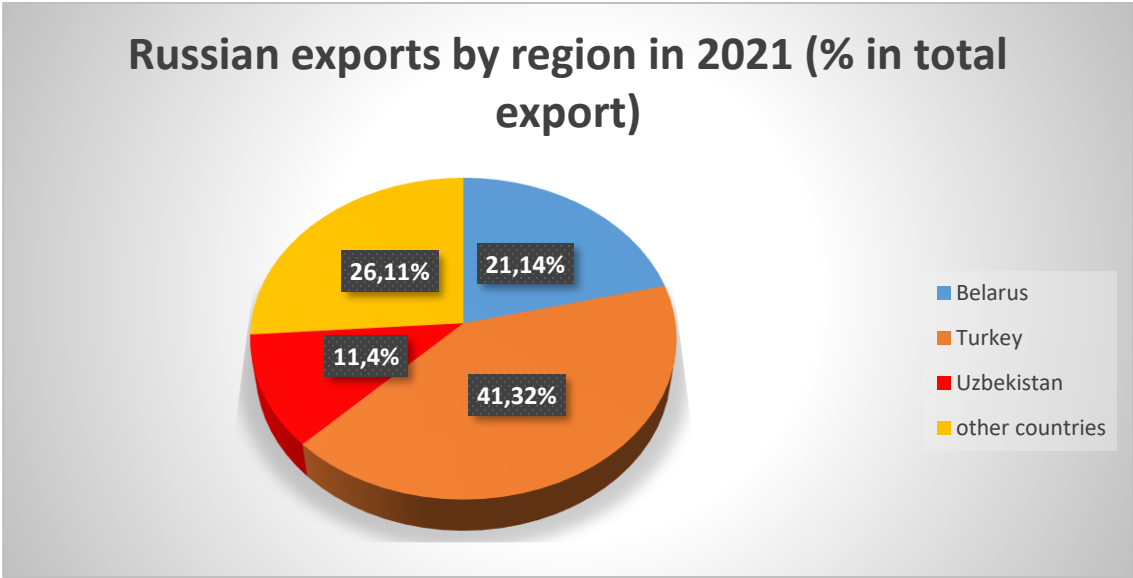
The Ministry would like to emphasize that Russian imports into UK is absent since 2016 and does not have an opportunity to renew for an unpredictable period of time due to the ban and other restrictions imposed by the UK on imports of Russian products, including CRFS.

Thus, we can conclude that there are no grounds for establishment of likelihood continuation or recurrence of dumping and of injury to the British industry from Russian imports.

5. Russian export capabilities

The Ministry draws the attention of the authority to the fact that the United Kingdom is not among the main export markets for Russian producers of CRFS. Please see Table 2 on the core export markets below:

Table 2



Source: Trademap

According to the Trademap statistics, most part of exports of Russian CRFS is directed to Turkey, Belarus and Uzbekistan. Nothing suggests that these markets may cease to be perspective, and that the UK market is going to replace them.

Moreover, the Russian side would like to note that there are several structural constraints for Russian producers on export. The inability to supply small batches of goods (cargo volume shipment only), exchange rate changes, increased freight costs lead the UK market less attractive. Therefore, UK is of less interest to the Russian producers than other more important export markets.

The development of Russian steel industry is focused on increasing domestic demand, such as production of pipes and tubes for booming expansion of oil and gas sector and

construction after lifting lockdown and other pandemic restrictions in the Russian economy. As a result, significant demand for Russian products exists in the domestic market and in markets other than the UK.

In 2020 the pandemic changes trade policies of the Russian companies. Products are always made only when they are ordered and never produced for stock, thus Russian producers have no stockpiles. In accordance with this approach, the Russian producers reduced their activity when demand slumped due to the recent worldwide lockdown. Stockpiles of products have not been accumulated in the face of weaker demand.

These developments decreased the sale of CRFS in order to increase the production of high value-added products. Consequently, the ability of the Russian steel companies to produce CRFS for sale and export including UK was reduced significantly.

Conclusions.

The Ministry is of the view that, as evidenced the facts referred to above, Russian imports at dumped prices will not resume if the measure is withdrawn. Moreover, the price shocks on steel (including CRFS) proved absence of any injury for the UK industry.

Thus, the transition review should be terminated without continued application of the measure.