

Trade Remedies Authority
North Gate House
21-23 Valpy Street
Reading
RG1 1AF

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VIA ELECTRONIC FILING

NON-CONFIDENTIAL SUMMARY

Dear sir/madam

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 (**Tata**), we submit comments 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.*" This submission sets forth why the anti-dumping amount presently applied to the relevant goods is necessary or sufficient to offset the dumping of those goods in accordance with regulation 99A(1)(a)(i) of the Trade Remedies (Dumping and Subsidisation) (EU Exit) Regulations 2019 (the **Dumping Regulations**). The submission on injury will be provided separately.

Please note that this submission concerns Russia and we reserve the right to make further submissions with respect to China.

I. If the anti-dumping amount is 'sufficient' to offset dumping, then the TRA need not (and should not) consider whether that measure is 'necessary' to offset dumping and can proceed straight to its assessment of injury

The legal test, in a transition review, to assess whether dumping has occurred is contained in Regulation 99A(1)(a)(i) of the Dumping Regulations which states: "*In a transition review, the TRA must consider whether the application of the anti-dumping amount... is necessary or sufficient to offset the dumping of the relevant goods.*"

A measure that is ‘sufficient’ to offset dumping is one that eliminates (or nearly eliminates) dumping. A measure is ‘necessary’ to offset dumping if it is a prerequisite to eliminate (or nearly eliminate dumping), but may, on its own, not be sufficient do so (as it requires additional measures such as a higher duty rate). It is of critical importance to note the guidance states unequivocally that an assessment of whether dumping is likely to re-occur if the measure were removed **forms part of this ‘necessity’ test** (i.e. whether the measure is a prerequisite to eliminate or nearly eliminate dumping).

Under Regulation 99A(1)(a)(i) of the Dumping Regulations, Trade Remedies Authority (the **TRA**) ‘*must*’ only consider whether the application of the anti-dumping amount is “*necessary or sufficient*” (emphasis added) to offset dumping, not whether the anti-dumping amount is necessary **and** sufficient.

In other words, under regulation 99A(1), if the TRA can demonstrate that the anti-dumping amount was ‘sufficient’ to offset dumping, then it must move on to assess injury (and is not required to assess formally necessity). Conversely, if the TRA can establish that the measure was ‘necessary’ to offset dumping (which includes an assessment of the likelihood of the recurrence of dumping) then the TRA must move on to examine injury (and is not required formally to assess sufficiency).

This interpretation flows from the most natural and logical reading regulation 99A(1)(a)(i) of the Dumping Regulations. The regulation explicitly states that the TRA ‘*must*’ consider whether the measure was ‘*necessary or sufficient*’ to offset dumping. This is a lower threshold than necessary and sufficient. It explicitly gives the TRA a choice as to how fulfil the condition contained in regulation 99A(1)(a)(i). The TRA ‘*must*’ establish that the dumping amount was ‘*sufficient*’ to offset dumping ‘*or*’ it ‘*must*’ establish the dumping amount was ‘*necessary*’ to offset the dumping amount, but **not both**. If either route is established then the TRA must move on to consider injury.

In these circumstances, once the sufficiency of the measure is established as long as injury is demonstrated and the economic interest test is satisfied, then the TRA must maintain the measure in its current form up to a maximum of five years (given the absence of reliable data on how the measure could be adjusted). It does not need to consider the ‘necessity’ of the measure which, as the guidance states, includes assessing the likelihood that dumping would re-occur if the measures were removed (whether this be done under regulation 70(6)(a) or otherwise).

The TRA, in the transition review for Welded Tubes and Pipes¹ (**WTP**), examined whether the measure was sufficient to offset dumping **and** whether it was necessary (by examining the likelihood that removal of the measure would lead to future dumping) thereby imposing a higher threshold than that required by regulation 99A(1)(a)(i).² With respect, this position is wrong in law and should not be repeated in this review.

¹ Trade Remedies Authority, Recommendation to the Secretary of State, Case TD:0001, Transition Review of antidumping measures applying to certain welded tubes and pipes or iron or non-alloy steel originating in the PRC and the Russian Federation, <https://www.trade-remedies.service.gov.uk/public/case/TD0001/submission/7e7ff292-60da-4793-aa51-4012265bb7b8/>

² Paragraph 7.136 of WTP.

II. The transitioned measure is sufficient to offset dumping for Cold Rolled Steel (CRS)

A measure that is ‘sufficient’ to offset dumping is one that partially or wholly eliminates dumping. A definition of this kind was adopted by the TRA in WTP: “*The lack of imports demonstrates that the current measure is sufficient to offset dumping from Russia.*”³

Imports into the UK during the period of investigation from Russia for the like goods were non-existent. The data from UK Trade Info shows that Russia exported no goods falling within the relevant CN codes subject to review during the period of investigation.⁴ As such, the dumping measures were sufficient to offset dumping.

Given this, in CRS the TRA should move on to consider injury and, determine whether injury to the UK industry would occur if the antidumping amount were no longer applied. If injury is established (and the economic interest test is satisfied) the TRA should maintain that measure up to a maximum of five years (given the absence of import data). The TRA should not consider whether the dumping amount was necessary.

III. In any case, the transitioned measure is necessary to offset dumping for CRS

Even if the TRA rejects the legal test in regulation 99A(1) as set forth above, and believes that the necessity of the measures should also be examined (which Tata strongly contends is wrong in law), it nevertheless remains that the measures are also necessary to offset dumping. In this submission, Tata provides a dumping calculation that demonstrates that dumping would take place should the measure be terminated.

Under the Dumping Regulations, the TRA may apply “*Parts 2,3, 4, and 6 to the extent that the TRA consider relevant for the purposes of a transition review*” (Regulation 99C). Part 2 contains the rules on calculating a dumping margin. Ordinarily, the TRA must use the comparable price (“the price in the ordinary course of trade, destined for consumption in the exporting country or territory”) to determine normal value unless it is not appropriate (regulations 7(1) and 2). One of the reasons why it is not appropriate to use normal value is that because of “*a particular market situation... such sales do not permit a proper comparison between the like goods destined for consumption in the exporting country or territory and the goods concerned*” (regulation 7(2)). Particular market situation is, in turn, defined as including situations where “*prices are artificially low, there is significant barter trade and prices reflect non-commercial factors*” (regulation 7(4)).

In such cases where it is not appropriate to use the comparable price (because, for example, there is a ‘particular market situation’), the TRA may determine the normal value of the like goods by “*determining the costs of production plus a reasonable amount for administrative, selling and general costs and for profits*” (regulation 8). However, where those costs are “*unrepresentative because they do not reasonably reflect the overseas exporter’s production, administrative, selling or general costs or profits in a market if those costs and profits were substantially determined by market forces*” then surrogate values may be used (regulation 13(3)). Note that domestic costs, prices and profits are “*substantially determined by market forces*” where they are substantially

³ Paragraph 7.133 of WTP.

⁴ <https://www.uktradeinfo.com/trade-data/ots-custom-table/>

determined by free market forces and the costs or prices in the domestic market are not artificially low as a result of factors including substantial government intervention (regulation 13(6)).

One source of a surrogate value is the corresponding costs of production, administrative, selling, general costs and profits in an appropriate representative third country or territory which must be selected on the basis that the information in the country is reliable and that country has a similar level of economic development to the exporting country (regulation 13(4)).

A ‘particular market situation’ operates in Russia with respect to the steel industry. This is because prices are artificially low and reflect non-commercial factors.

Tata has already discussed in a previous submission dated 28 July 2021 on costs that much of the Russian steel industry is vertically integrated and hence the cost inputs from coal to iron ore and even energy are transfer prices which are non-determined by commercial factors but by policies internal to the company.

Further, Tata has discussed this precise issue in a previous submission dated 28 July 2021 in which Tata details that much of the Russian steel industry is supported by intervention of the Russian government to reduce the costs of inputs so that they are artificially low and/or reflect non-commercial factors. Much of this is covered in the European Commission report on “significant distortions in the economy of the Russian Federation for the purposes of trade defence investigations” (the **Commission Report**).⁵ The Strategy has different policies of state support with respect to export sales and domestic sales. Such a differential approach will render comparison between the two prices difficult or impermissible – as the export and domestic prices have been distorted in different ways owing to the different policies. As **one** example, an important part of the Strategy is preferential treatment of *domestic* steel producers in any procurement.⁶

Finally – costs of inputs in Russia are “*unrepresentative because they do not reasonably reflect the overseas exporter’s production, administrative, selling or general costs or profits in a market if those costs and profits were substantially determined by market forces*”. Please see Tata’s submission dated 28 July for a full explanation on why costs inputs in Russian steel firms would not be substantially determined by market forces.

Due to the existence of a particular market situation, normal value has been constructed using cost inputs. Similarly, because the value of cost inputs in Russia are not representative as they are not substantially determined by market forces, Tata used a surrogate country to establish those costs. In this regard Tata has chosen Turkey as the surrogate country because it is categorised as an ‘upper middle income country’ according to the categories of development as devised by the World Bank (which band countries according to their GNI per capita). Turkey also is particularly useful as it has reliable information in relation to costs.

For an export price, the dumping calculation uses the most recent price of Russian exports to the UK (2012 to 2014) for the relevant goods (but updated to take into account the effect of inflation).

⁵ 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

⁶ <http://www.garant.ru/products/ipo/prime/doc/70595824/>

The TRA is permitted to use any reasonable basis to construct an export price if the relevant goods are not resold to an independent buyer in the United Kingdom or are not resold in the condition imported. This must manifestly be the case when there are no exports from Russia during the period of investigation.

When normal value is compared to the export price, Tata found that a dumping margin As explained in Exhibit 1-1, Tata took a very conservative approach in the calculation so it is almost certain the dumping margin is in fact much higher than presented herein. Further, for the reasons explained below (in Section IV), substantial spare capacity, stagnant demand in the Russian CRS market and so on, the dumping margin is again almost certainly much higher than the estimate as all these factors will encourage the Russian CRS export price to the UK to decline were the UK dumping measures to be lifted.

IV. It is also likely that dumping would re-occur if the measures were lifted

Should TRA reject the interpretation set forth above of the legal test in regulation 99A(1) and decide that it should also consider the ‘likelihood’ that dumping would re-occur if the measures were lifted (which Tata respectfully contends is wrong in law), the evidence establishes that there is a strong likelihood that dumping would re-occur if the measures were lifted.

A. Production capacity.

Russia had substantial spare capacity according to data from Metal Expert on capacity utilization for cold strip mills during the period of investigation. Substantial spare capacity indicates that Russian producers would be able to continue or resume dumping if measures were removed as that capacity would make its way towards the UK as an unprotected and relatively proximate market.

B. Production levels

Russia had high production levels of cold rolled steel products during the period of investigation according to data from Metal Expert. The history of high production levels strongly suggest that it will continue into the foreseeable future. High production levels indicate that the exporter (Russian producers) would be able to continue or resume dumping if measures were removed.

C. Conditions in the exporter’s home market

It is widely recognized that the Russian domestic market is currently saturated and demand is now stagnant, so domestic producers will need to export to increase their sales. Furthermore, what stagnant demand there exists in Russia in the cold rolled steel market is being eaten up by foreign imports. Stagnant domestic demand and declining prices implies the only logical conclusion is that it is likely that dumping would resume were the measures to be lifted.

It must be emphasised that Russia’s claimed infrastructure plans are not enough to absorb the excess capacity that exists in the domestic market for the goods subject to review.

First, cold rolled flat steel tends to get used for vehicle construction, white goods, furniture and so on – not normally those things which form part of infrastructure projects (buildings, railway lines,

roads, electric grid). Hence, an increase in infrastructure spending will not significantly raise demand for cold rolled flat steel products.

Second, even if TRA thinks that cold rolled steel will be used extensively in infrastructure projects, these projects are far from certain and are unlikely to either begin or, even if they do begin, will be on a more limited scale than planned. This is because Russia has a history of announcing ambitious infrastructure projects only for those projects never to materialise.

The third reason why the National Projects plan (or Russian infrastructure and investment spending more generally) is unlikely to soak up spare capacity in the Russian CRS market is that such spending does not lift investment growth in Russia above what it has been historically. In the national accounts, investment includes land improvements (fences, ditches, drains, and so on); plant, machinery, and equipment purchases; and the construction of roads, railways, and the like, including schools, offices, hospitals, private residential dwellings, and commercial and industrial buildings.⁷ It is thus a good measure of infrastructure spending (albeit broader than infrastructure). The two premier economic institutions, the World Bank and International Monetary Fund (the IMF), forecast that the rate of growth of investment will be *lower* over the next few years than its historic average of 5.6% per year.⁸ The World Bank predicts that between 2021 and 2023, the average rate of growth of investment will be just 3.2%.⁹ The IMF predicts that between 2021 and 2026 investment growth will be 3.2% on average, tapering down to just 1.8% by 2026.¹⁰ Increases in investment which are lower than the historical average would not soak up excess capacity in the Russian CRS market.

D. Exports to third markets

Cold rolled steel from Russia currently is subject to an anti-dumping order from the European Union.¹¹ Cold rolled steel from Russia is also the subject of an anti-dumping order from Pakistan, instituted in 2020.¹² This, in and of itself, is a sign as the guidance states that dumping is likely to re-occur should the measures be lifted in the UK.

⁷ <https://databank.worldbank.org/metadataglossary/world-development-indicators/series/NE.GDI.TOTL.CD>

⁸ World Bank, Data Tool, <https://data.worldbank.org/indicator/NE.GDI.FTOT.KD.ZG?locations=RU>;

⁹ World Bank, Russian Economic Report, May 2021, Table 4:

<https://openknowledge.worldbank.org/bitstream/handle/10986/35653/Russia-Economic-Report-Russia-s-Economic-Recovery-Gathers-Pace-Special-Focus-on-Cost-Effective-Safety-Nets.pdf?sequence=7> ;

¹⁰ IMF, Article IV Report – Russia, February 2021, Table 2,

<https://www.imf.org/en/Publications/CR/Issues/2021/02/08/Russian-Federation-2020-Article-IV-Consultation-Press-Release-Staff-Report-50068>

¹¹ EU, 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 <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32016R1328&from=EN>

¹² Government of Pakistan, Notice of Final Determination and Imposition of Definitive Antidumping Duty on Dumped Imports of Cold Rolled Coils/Sheets/Strips into Pakistan Originating in and/ or Exported from Canada and the Russian Federation, <https://ntc.gov.pk/wp-content/uploads/2020/03/Notice-CRC-FD-55.pdf>

However, cold rolled steel from Russia is, in addition, currently subject to safeguard measures in the EU (category 2, Non Alloy and Other Alloy Cold Rolled Sheets)¹³, as well as section 232 measures in the US.

As such, the overcapacity which exists in Russia neither has an easy outlet at home or abroad, with barriers to entry for two of the biggest steel markets in the world, along with smaller economies.

This is why the revenue from selling cold rolled steel has been steadily declining for major Russian producers of cold rolled steel (including two producers who have registered to this review).

E. Inventories

Analysis from Metal Expert suggests that there has been a build-up of inventories in the Russian Cold Rolled Steel Market which has contributed to falling prices in the market. A high inventory levels indicate that exporters would be able to continue or resume dumping if measures were removed.

F. Russia Export Tax

On the 1 August this year, Russia instituted a temporary export duty (due to expire on 31 December 2021 but could be extended) on a range of non-ferrous metals and steel products, including cold rolled steel. The imposition of this tax raises the likelihood that dumping would re-occur if the dumping amount were removed.¹⁴

First, there is likely to be build-up of inventories during this period, especially because, as we have discussed, the Russian market for steel and cold rolled products is already saturated. The need to divest themselves of the excess inventory will cause those inventories to be dumped on the rest of the world. If the UK removes its anti-dumping duties, it will be a prime target for those dumped goods.

Second, during the life of the export duty (up to 31 December 2021 or longer should the measure be extended), Russia will need to drop its export price if it wishes to remain competitive abroad. By dropping the export price of cold-rolled steel, Russia will raise the likelihood that export price will be lower than its domestic price (or its constructed cost price).

Third, if the problems that caused the export duty arise again, and Russia re-imposes it, there will not only be dumping before its re-imposition (as companies in Russia seek to sell as much cold rolled steel before the onset of tax), but the problems we have just discussed will also re-appear.

V. CONCLUSION

¹³ <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32021R1029&from=EN>

¹⁴ 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>

In sum, the law on dumping only requires that the TRA consider and determine whether the transitioned anti-dumping measure is sufficient **or** necessary to offset dumping of cold roll steel, **not both**.

The transitioned measure is sufficient to prevent dumping as there were no imports from Russia during the period of investigation. As such, the TRA is entitled to consider the question of injury (without having to consider the question of whether those measures were necessary). If injury is established and the economic interest test is satisfied, then the TRA can maintain the measure in its current form up to a maximum of five years (given the absence of reliable data on how the measure could be adjusted).

Even if the TRA decides that it must consider the question of necessity (which is wrong in law), then Tata submits that the measure also is necessary. This is because our dumping calculation demonstrates a considerable dumping margin. This is almost certainly an underestimate given that it is a very conservative calculation and the factors on likelihood of dumping, discussed above, such as spare capacity and stagnant consumption, mean that the Russian export price to the UK will be even lower in the future.

Further, the measure is necessary because it is likely that dumping would re-occur were the measure to be lifted. This is because there is substantial overcapacity in the Russian steel market, with already high production. Domestic demand is stagnant and prices are falling meaning there is no outlet for this capacity in Russia. Nor is there an outlet for this capacity abroad given the presence of anti-dumping orders against Russia for cold rolled steel in the EU and elsewhere along with safeguard orders and section 232 measures. Hence, if the UK's transitioned order were to be lifted that spare capacity for cold rolled steel would likely head to the UK. This is exacerbated by the presence of Russia's export duty on steel (including cold rolled steel) which, when it ends, will lead to a flood of dumped products on the market.

For these reasons we submit the order should be maintained at the current rate against Russia for a further five years should injury and the economic interest test be established.

We reserve the right to make further submissions.

Respectfully submitted,