

中华人民共和国商务部

MINISTRY OF COMMERCE OF THE PEOPLE'S REPUBLIC OF CHINA

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Non-Confidential

The Comments on the PMS investigation in TD0013

Submission of the GOC

The UK Trade Remedies Authority (TRA) wrote a letter to the Ministry of Commerce of the People's Republic of China (GOC) which request the GOC to comment or provide information on whether a particular market situation (PMS) exists in China's ARW (ARW) market in the investigation concerning the anti-dumping measure on ARW originating in China (the ARW measure). It is appreciated that TRA gives this opportunity to comment or provide information on the PMS. In order to promote the fair and just settlement of the transition review concerning the ARW measure (TD0013). The GOC would like to submit the following comments.

1. Investigations on PMS should be in accordance with the WTO rules.

1.1 Extensive interpretation of PMS does not comply with ADA.

In accordance with the Anti-Dumping Agreement (ADA), the scope of PMS investigation should be directed to its purpose, which PMS should have a direct impact on the domestic sales price of the relevant products, thus affecting the comparability of domestic sales prices with export prices. Different economies are at different development stages and have their own economic characteristics. If the anti-dumping measures are extended to the evaluation of national systems and policies, and attribute competitiveness arising from the macro-political conditions and development environment to enterprises, such an extended scope of investigation would neither directly support the finding of a PMS nor be consistent with ADA.

1.2 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. The basis of the multilateral system is to respect for national government economic management models and systems, and WTO rules are based on respect for national development models of each country. The

worldwide countries including the United Kingdom, have enterprises with different ownership and governance structures. It is unreasonable to determine there is serious market distortion in the country or relevant enterprises only based on the difference among national economy system, enterprise ownership types or governance structures. It is also discriminatory and unacceptable to impose restrictive and punitive measures on this basis.

Similarly, the existence of State-Owned Enterprises (SOEs) in China's ARW industry can not and should not be regarded as a direct presumption of serious distortions in China's ARW industry. China's ARW SOEs are equal participants and competitors in the market economy, all of which operate in accordance with market-oriented principles. Those enterprises do not enjoy special treatments and behave as independent market entities. In addition, the GOC has not specifically placed any subsidies or imposed any form of price controls in this market.

1.3 As a principle, TRA should fairly be applicable to relevant standards.

If the investigation authority applies a judgment standard to exporters under investigation or their original country, it should run through the whole investigation process and apply to all interested parties which includes but are not limited to the evaluation of industries in the UK and related third countries, 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 or selective application is unacceptable.

1.4 The Inversion of burden of proof.

Although the terms of PMS and situations of PMS are stipulated in the Trade Remedies (Dumping and Subsidisation) (EU Exit) Regulations 2019, in Transition Review TD0013, it has not been seen that the UK domestic industry or interested parties claim the existence of PMS in the China's ARW market and submit reliable evidence. According to Article 5 of ADA , Simple assertion, unsubstantiated by relevant evidence, can not be considered sufficient to meet the requirement of the application. If the UK domestic industry or interested parties claim that a PMS exists in the China's ARW market, they should provide relevant sufficient evidences. Instead of TRA asking the GOC to provide contrary evidence or information to prove that there is no PMS in China's ARW against their simple assertion. This is a typical inversion of the burden of proof, which is inconsistent with the relevant provisions of ADA.

2. No PMS exists in the China's ARW market.

The Article 7(4) of the Trade Remedies (Dumping and Subsidisation) (EU Exit) Regulations 2019 stipulates that a “particular market situation” includes situations where—(1) prices are artificially low; (2) there is significant barter trade; (3) prices reflect non-commercial factors. The GOC has assessed that the above situations do not exist in the Chinese ARW market.

2.1 All types of Chinese ARW enterprises are equal competitors in the market.

Article 15 of the Constitution of The People's Republic of China stipulates that China shall practice a socialist market economy. After years of efforts, China has established a market economy in which the market plays a decisive role in the allocation of resources, which is recognized by most countries in the world. All kinds of ARW manufacturers in China are established and operate in accordance with the relevant provisions of the Company Law of the Peoples Republic of China. They allocate resources fully accordance with price signals and participate fairly in market competition. The Company Law of the Peoples Republic of China does not interfere with the production, operation and pricing of these enterprises.

After years of reform, China's SOEs have become independent market participants, which allocates resources, sets sales prices and conducts business fully compliance with price signals. Article 16 of the Constitution of The People's Republic of China clearly stipulates that State-owned enterprises should, within the scope prescribed by law, have the right to operate autonomously. SOEs in China are market entities that operate independently, bear their own profits and losses, exercise self-restraint and self-developments. They participate in market competition equally with enterprises of other ownership, without special treatment. The total assets of listed companies controlled by SOEs account for 67% of that of central enterprises'. Listed companies have quarterly, half-yearly and annual reports, and their information are transparent. It can be seen that SOEs are independent market entities operating in accordance with the provisions of Chinese Constitution Law and do not enjoy special treatment. Like other types of enterprises, SOEs allocate resources, set prices for domestic sales and exports and conduct their business in full accordance with price signals.

2.2 Government plans are not equal to government intervention.

The primary purpose of China's five-year plan is to provide a framework guidance for economic and social development during the plan period. The plan is not self-executing and the government does not interfere with business operations and pricing practices accordingly, which should not be considered to be government intervention. Five-year Plan may be used by commercial enterprises to anticipate the direction of the economy and economic development so as to make informed investments according to the anticipated direction. The white paper "Industrial Strategy - Building a Britain fit for the future", released by the UK government in November 2017, s also regards as an guiding plan. The GOC request TRA to

determine whether the white paper demonstrates that the UK government intervenes or controls business and would cause a PMS. Also, GOC request TRA give equal treatment to China's five-year plan and this UK white paper rather than implement double standards.

2.3 The ARW market in China is fully competitive and prices are determined by the market force.

The market concentration of China's ARW industry is low, with the top three OEM ARW enterprises accounting for a combined market share of only 30%¹. In 2018, the apparent consumption of ARW enterprises in China reached 93.923 million pieces² while there were only three enterprises with production and sales volume of more than 10 million pieces of automobile wheels³. Chinese ARW producers are generally small and medium-sized enterprises. Therefore, there are no monopolies in Aluminum industry, and the Chinese ARW market is a fully competitive market.

The domestic sales prices and export prices of Chinese ARW are determined by market factors. The GOC does not intervene in or control the sales practices and sales prices of these products. The production and sales decisions of various types of enterprises are entirely determined by market factors. There is no evidence that the prices of Chinese ARW products are artificially low.

2.4 The prices of the main raw materials for ARW products are determined by the market.

The price of Chinese ARW products is greatly influenced by the price of its main raw material, namely aluminium alloys. The raw material cost of ARW in China accounts for 60%-70%⁴. Chinese ARW enterprises procure raw material aluminium alloys from both domestic and international markets, with specific procurement practices freely decided by the enterprises. The domestic procurement price of aluminium alloys by Chinese enterprises is mainly based on the Yangtze River spot price, and may also be based on the Shanghai Futures Exchange (SHFE), with the relevant prices being market prices.

2.4.1 Sources and prices of Aluminium Alloys sourced by Chinese producers are determined by the market.

China's ARW enterprises purchase Aluminium Alloys both from domestic and international suppliers at their own discretion depending on market conditions. Apart from domestic sourcing of aluminium alloys (see below for a detailed review), China's aluminium alloy imports amount to USD 3.68 billion, USD 1.88 billion and USD 2.58 billion from 2019 to 2021 respectively⁵. The GOC has neither introduced

¹ <http://www.magppc.com/mg/5248.html>.

² <https://baijiahao.baidu.com/s?id=1715292429029570689&wfr=spider&for=pc>.

³ <http://www.magppc.com/mg/5248.html>.

⁴ See "2015-2022 China Automotive ARW market Deep Analysis and Future Investment Prospect Forecast Report" by Industry Information Network.

⁵ Source: Global Trade Flow, HS Code: 76012000.

regulations nor interfered with the sourcing and purchasing prices of aluminium alloys as a raw material for enterprises.

2.4.2 Shanghai Futures Exchange aluminum alloy ingot price.

The Shanghai Futures Exchange (SHFE) is the second largest metal futures market in the world after the London Metal Exchange (LME), and SHFE aluminium alloy prices are closely linked to LME exchange aluminium alloy prices, basically showing the same rise and fall. In addition, SHFE prices are characterized by openness, with foreign companies (e.g. Swiss trader Trafigura) actively participating in SHFE trading through Chinese subsidiaries and domestic brokers. As reported by the Financial Times: The price difference, or spread between the SHFE and LME, is closely watched, allowing traders and investors with access to various exchanges to take advantage of arbitrage opportunities. The introduction of night trading to the SHFE in late 2013 allows trading at the same time as exchanges in the US and Europe, giving Chinese funds and traders greater ability to influence the global price⁶. The SHFE aluminium alloy price should therefore be considered undistorted.

In terms of specific prices comparisons, the difference between aluminium alloy prices from SHFE and LME was not significant from 2017 to 2021. From 2017 to mid-2018, LME aluminium alloy prices were slightly higher than SHFE aluminium alloy prices. While from late-2018 to 2021, SHFE aluminium alloy prices were basically higher than LME aluminium alloy prices. The above information shows that there was no artificially low prices in Chinese aluminium alloy market.

According to Metal Miner.com, China has become a net importer of aluminium after July 2020. LME aluminium prices continued to be lower than SHFE aluminium prices from July to September 2020⁷. According to the statistics from China Non-Ferrous Metals Industry Association, the 3-month closing price of aluminium alloy in LME at the end of 2020 was 1979.5 USD/ton⁸, which equals to be approximately 12,950 CNY/ton, lower than the price of the above products in SHFE at the same period (15,265 CNY/ton). It can be seen that aluminium alloy prices in SHFE were at similar levels to those in LME, and has continued to be higher than those in LME since 2018, with no market distortion in Chinese aluminium alloy prices.

⁶ <https://www.ft.com/content/7553f022-d6fd-11e4-93cb-00144feab7de>

<https://www.bloombergquint.com/markets/-mystery-chinese-trades-fuel-aluminum-s-biggest-gain-since-may>

⁷

<https://agmetalmminer.com/mmwp/2020/09/14/aluminum-mmi-shfe-lme-arbitrage-influenced-by-weaker-u-s-dollar/>

⁸ Converted at the December 2020 USD to RMB exchange rate.

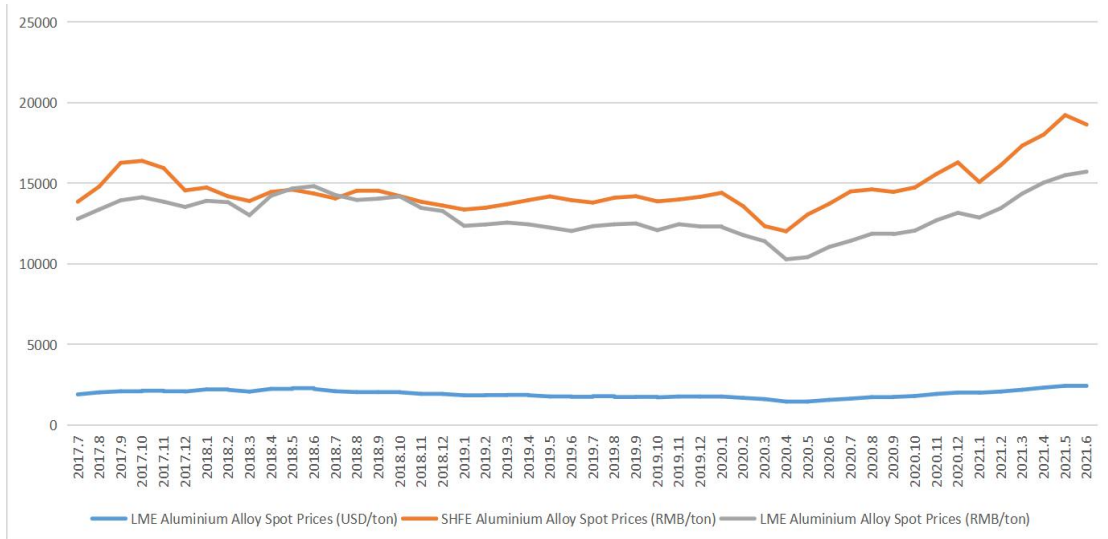


Figure 1: Comparison of monthly average spot aluminium ingot prices between SHFE and LME, July 2017 - June 2021⁹

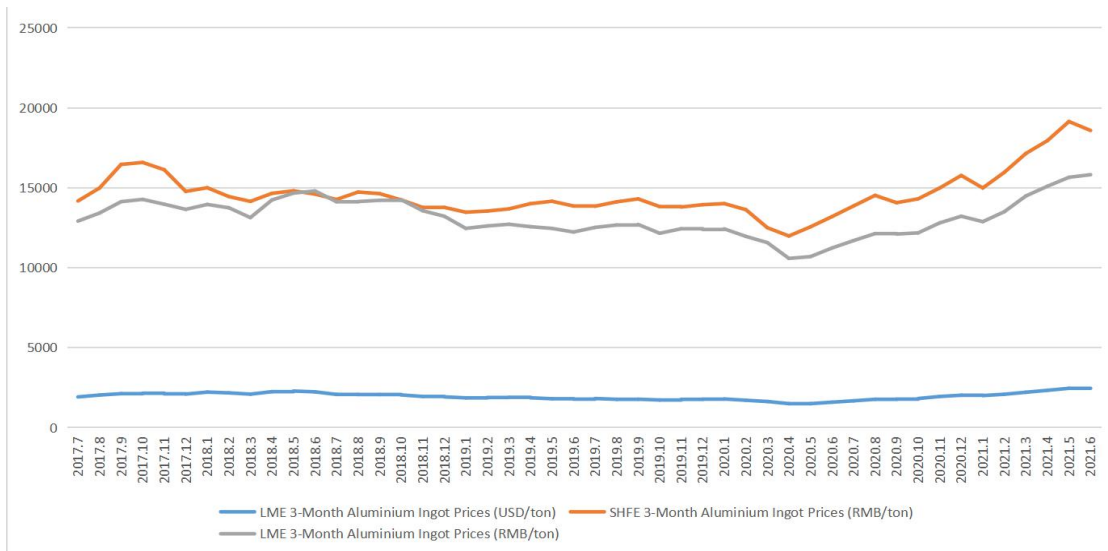


Figure 2: Comparison of 3-month aluminium ingot prices between SHFE and LME, July 2017 - June 2021¹⁰

⁹ Source: London Metal Exchange, Shanghai Futures Exchange. Exchange rates are based on data provided by INVESTING.com and are calculated on the basis of closing monthly average prices.

¹⁰ Source: London Metal Exchange, Shanghai Futures Exchange. Exchange rates are based on data provided by INVESTING.com and are calculated on the basis of closing monthly average prices.

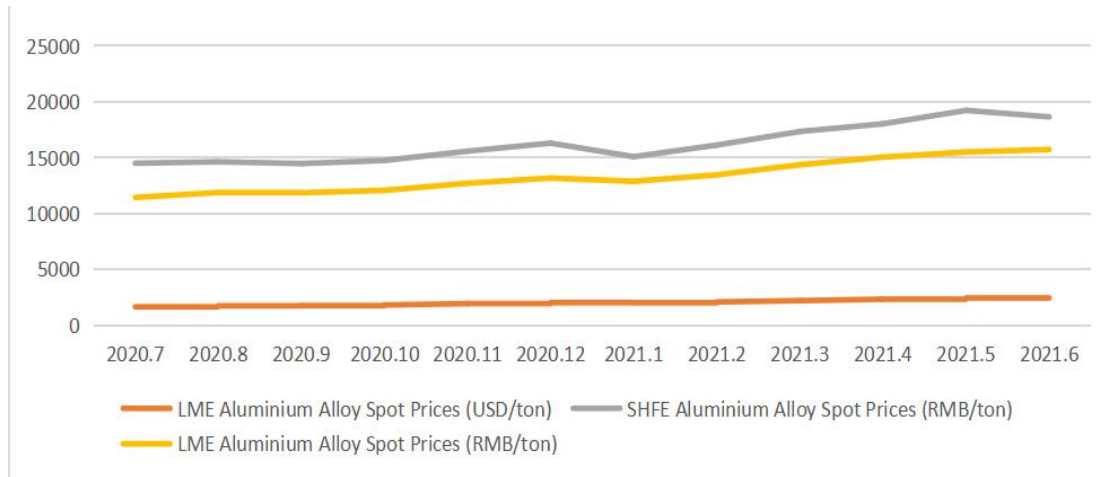


Figure 3: Comparison of monthly average spot aluminium ingot prices between SHFE and LME, July 2020 - June 2021¹¹

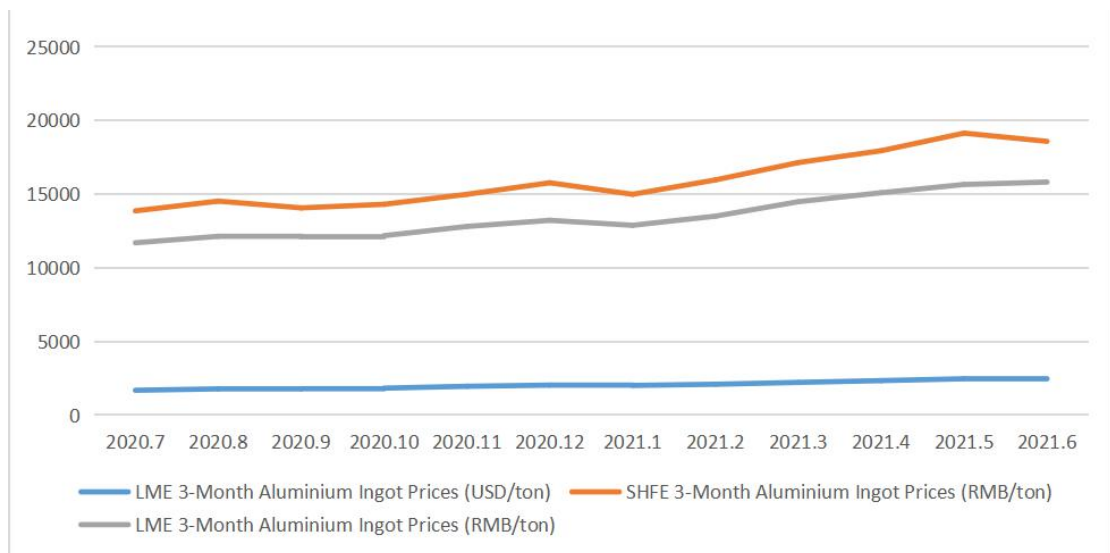


Figure 4: Comparison of 3-month aluminium ingot prices between SHFE and LME, July 2020 - June 2021¹²

2.4.3 Yangtze River spot aluminum ingot price.

In practice, Chinese companies also typically base their trading month purchase prices on the monthly average Yangtze spot A00 aluminum ingot price. For example, the Yangtze spot aluminum ingot in the Chinese domestic market is basically higher than the LME aluminum spot price of the said product from 2017 to 2021 (see Figure 5-6)¹³. This indicates that domestic aluminum prices in China are mainly influenced

¹¹ Source: London Metal Exchange, Shanghai Futures Exchange. Exchange rates are based on data provided by INVESTING.com and are calculated on the basis of closing monthly average prices.

¹² Source: London Metal Exchange, Shanghai Futures Exchange.

¹³ Exchange rates are based on data provided by INVESTING.com and are calculated on the basis of closing monthly average prices.

by supply and demand and there are no cases of artificially low prices.

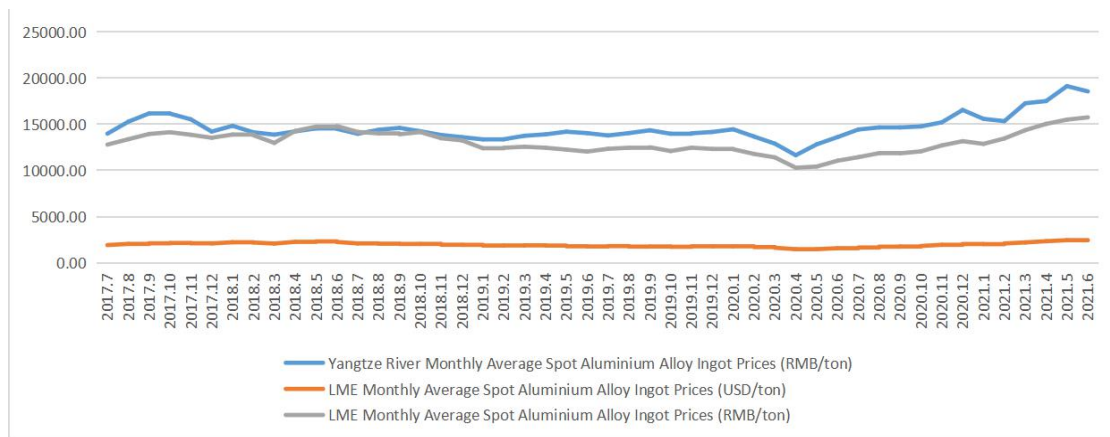


Figure 5: Comparison of monthly average spot aluminium ingot prices between the Yangtze River Nonferrous Metals Market and LME, July 2017 - June 2021¹⁴

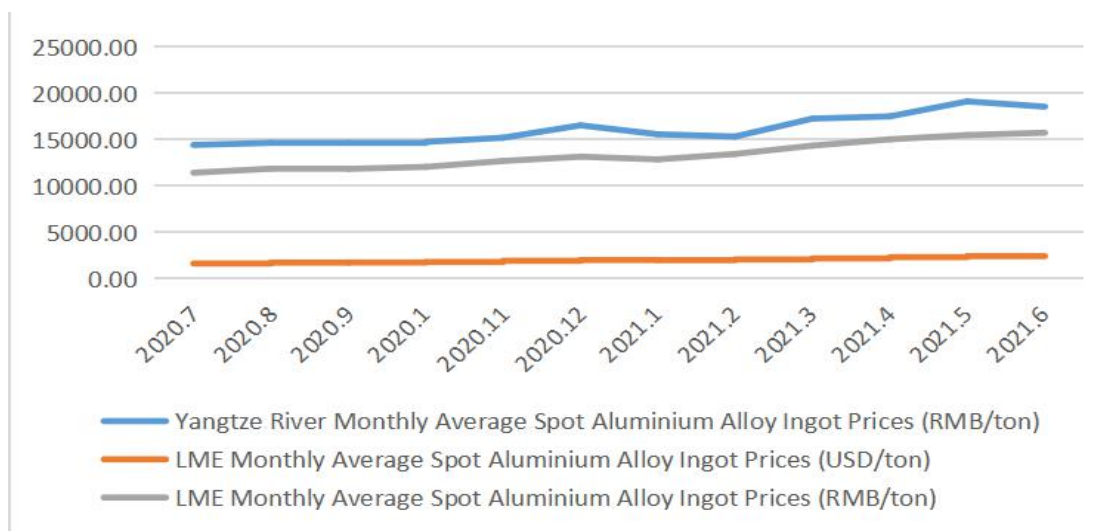


Figure 6: Comparison of monthly average spot aluminium ingot prices between the Yangtze River Nonferrous Metals Market and LME, July 2020 - June 2021¹⁵

2.5 No barter trade in China's ARW market.

The sales market of China's domestic ARW is not engaged in barter trade, according to the information of the main producers of the products involved. Domestic ARW products are traded all in the general trade, with enterprises pricing their products according to the market factors, which is a normal sales behavior in the trade process.

¹⁴ Source: London Metal Exchange, Yangtze River Non-Ferrous Spot Exchange.

¹⁵ Source: London Metal Exchange, Yangtze River Non-Ferrous Spot Exchange

3. No dumping motivation and demand for Chinese ARW enterprises.

China's automobile production and sales volume have remained the first in the world since 2009, and the booming domestic automobile market has formed a huge demand for ARW products. According to the statistics from HUAON Industry Research Institute, ARW in China are produced mainly to meet domestic demand, driven by various factors including trends in vehicle light-weighting, increased car ownership, growing penetration of ARW, and the steady promotion of the automobile modification market. In 2018, the demand of Chinese ARW is 93.923 million pieces, which rises to 119.25 million pieces in 2020. There is a sizeable domestic demand on the Chinese ARW products, and producers focused on meeting domestic needs without the motivation or demand to engage in export dumping at low prices. Even if the anti-dumping measure in force on the imports of certain ARW originating in China is revoked, it is unlikely that China's ARW enterprises dumped ARW products at a low price to the UK market.

4. Conclusion

It is inconsistent with WTO rules that TRA expands the scope of PMS investigation. China has established a market economy in which the market force plays a decisive role in resource allocation. All kinds of enterprises are equal subjects of market competition. The Chinese government opposes discrimination based on the ownership of Chinese enterprises. There are no the situations of PMS under the Trade Remedies (Dumping and Subsidisation) (EU Exit) Regulations 2019 in China's ARW market. All types of Chinese ARW enterprises operate independently according to the price signal. The Chinese government has not intervened in the production, operation and pricing of these enterprises, and the government planning does not belong to the government's intervention in enterprises. China's ARW market is fully competitive, and the price is determined by the market force. The price of the main raw material, aluminum ingot, is also determined by the market force. There is no barter trade in China's ARW market. China's ARW market demand is huge and growing, the output is mainly domestic sales, and the producers have no motivation to oversea export at dumping price. If the ARW measure is revoked, it is also unlikely that Chinese producers will dump ARW products to the UK market at a low price