

UK Steel: Interested Party Additional Information Submission

TD0017: Hot-rolled Flat and Coil Products from the People's Republic of China

Notes:

1. These points reflect initial views as invited by section B of the Interested Party Registration Form. These are without prejudice to additional arguments or evidence that will be submitted on these points or indeed any additional points that may arise. All references to the 'dumping and subsidy regulations' refer to the Trade Remedies (Dumping and Subsidisation)(EU Exit) Regulations 2019.

Continued need for transition of measures:

2. It is of critical importance that the transitioned measures on Hot-rolled Flat and Coil Products are maintained by the UK for the following reasons:
 - Although imports from China are at low levels, there is a high likelihood that dumping would recur if the measures were to expire.
 - Exporters in China have significant spare capacity as well as potential capacity that could be used to increase production of the product for export to the UK.
 - The UK industry remains in a fragile situation due to global excess capacity and trade distortions in global steel markets, while also recovering from the economic effects of COVID-19. Expiry of this critical anti-dumping duty would create a high risk of likely recurrence of injury from dumped imports. This would threaten the viability of the remaining UK production of this product.
 - The European Commission will likely soon be initiating an expiry review of its own anti-dumping measures on these products, which is likely to lead to their extension. Should the UK allow its own measures to expire whilst the EU kept its in place, this would significantly increase the likelihood of dumping as the UK would become the only part of what is effectively still a single/regional European steel market without an anti-dumping measure in place on these products.

Particular Market Situation:

3. UK Steel submits that, as provided for in regulation 7 of the dumping and subsidy regulations, it is not appropriate to use 'comparable price' to determine normal value in this case due to the existence of a 'particular market situation' in China. An alternative methodology, as provided for by regulation 8 of the dumping and subsidy regulations, should instead be used.
4. Furthermore, UK Steel submits that where costs of production are used during the course of this review, adjustments should be made as provided for in regulation 13(1) of the dumping and subsidy regulations. As consistently found in other countries' anti-dumping investigations (e.g. Australia, Canada, US, European Union), Chinese steel markets are

affected by significant distortions. All prices and costs are not substantially determined by market forces and should not be used in the calculation of normal value. **This request is made without prejudice to the claim under regulation 14 made below.**

Claim for use of Regulation 14

5. It is requested that alternative methodologies are used to calculate normal value in this case. Normal value should be determined according to the possibilities in regulation 14(3).
6. UK Steel strongly argues that regulation 14(1)(b) still applies to China and requests that China is treated in accordance with this provision. It is clear that subparagraph 15(a)(ii) of the Chinese WTO accession protocol expired in December 2016. However, it is clear that paragraph 15 did not expire and remains in effect. For example, paragraph 15(a) authorises the use of other methodologies unless producers can show that there are market economy conditions. Leaked press reports on the confidential interim panel report in the case of *EU – Price Comparison Methodologies (DS516)* suggest that a WTO panel was going to confirm that the above argument is correct. China has prevented this from being published by its request to suspend the proceedings but the UK would certainly be within its rights to use regulation 14 (1)(b) of the UK dumping and subsidy regulations. This provides extra flexibility in addition to that provided by regulation 13(1)(particular market situation). The UK should reject all Chinese prices and costs unless any of the exporters can provide evidence that they operate in market economy conditions.
7. In light of developments in case DS516 (China has withdrawn the case in order to prevent the panel publishing its conclusions), it is now clearly implicit that the flexibility in normal value methodology provided in China’s WTO protocol of accession has not expired and remains valid. The UK should use this extra flexibility to reject all Chinese costs and prices where there is evidence of significant state distortions.
8. Regulation 14(1)(b) explicitly covers the situation where members of the WTO have specific provisions in their membership terms regarding the determinations of normal value. These provisions must have meaning in UK law and cannot just be ignored. UK Steel strongly argues that Regulation 14(1)(b) is applicable to China in this investigation and the TRA should determine that this provision applies and should calculate normal value accordingly.

Recalculation of Duty Levels:

9. Regulation 98(8) states that a transition review may include “*the consideration of whether...it is appropriate to recalculate the anti-dumping amount or countervailing amount*”. The TRA, therefore, has considerable discretion in considering the appropriateness of recalculation. It can be noted that there are two decisions to be taken here:
 - First, the TRA does not have to consider whether it is appropriate to recalculate the level of duty. The law states that the TRA may consider whether it is appropriate to recalculate. It is possible for the TRA to decide not to consider whether it is appropriate to recalculate.
 - Second, once TRA has decided to consider whether it is appropriate to recalculate, it must apply an appropriateness test.

10. The inclusion of the word ‘may’ must have meaning. If the law said that “the TRA should consider whether it is appropriate to recalculate”, only the second decision would apply above. It can also be noted that the word ‘may’ also applies to the possibility to reassess the dumping, subsidy or injury margins as set out in regulations 98(8)(b), (c), and (d). This applies a further level of discretion. The TRA could decide that it is appropriate to recalculate the level of duty but, even in this case, it is not obliged to reassess the relevant margins.
11. UK Steel submits that the TRA should only even consider recalculating dumping and injury margins if two conditions are met:
- a) There are sufficient imports of the product and there is full cooperation of interested parties so that critical updated data for calculations exists
 - b) There has been a clear change in circumstances

Imports, cooperation and data - Imports of the product in question from China have been reduced to extremely low levels (0.01% of imports in 2021 at 41 tonnes compared to total imports of 680,853 tonnes) due to the dumping measures in place. UK Steel would argue that this information clearly does not represent a sufficient evidence base on which to calculate injury or dumping margins reliable enough to be the basis of any revised duty level.

Even if sufficient data from actual transaction of the specific products in question can be provided, such small levels of imports (both in relative and absolute terms) means an accurate recalculation is not possible. This is precisely why WTO rules permit a ‘likelihood’ analysis. This analysis, by definition, is based on less precise information than is required to calculate a dumping/subsidy margin. Unit values from trade data can be used to indicate what the actual export price might be if exports to the UK were to restart following the lapsing of the measure. Use of such proxies for export prices to the UK may be adequate for the purpose of likelihood analysis but will never be sufficiently reliable to calculate an accurate level of dumping. Without actual transactions, there is a high risk of distortion in basing any calculation of dumping/injury margins on secondary information.

Change of circumstances – In practice, it will only be necessary to change the level of measures if there has been a change in circumstances. Unless interested parties provide sufficient evidence that there is a change of circumstances, it is unnecessary for the TRA to consider whether recalculation is necessary. Even if evidence to this end is provided by interested parties, the TRA should still make consideration of a) whether the changed circumstances make recalculation appropriate b) whether there is reliable and representative data from exporters in order to be able to recalculate.

12. In conclusion, UK Steel will submit that no recalculation is appropriate in this transition review and that, given the likely recurrence of dumping and injury if the measures are removed, the measures should be maintained at the current levels.

Likelihood Analysis:

13. In circumstances where it is not possible or appropriate to recalculate dumping margins the TRA’s guidance is clear on the approach that should be taken:

“If we do not have sufficient data to calculate dumping, countervailing and injury amounts, we will make a decision based on our assessment of whether the imports are likely to cause injury if the measure is removed.”

14. UK Steel submits that this is the appropriate course of action in this transition review, given the low level of imports during the investigation period.

Injury elimination level:

15. As argued above, UK Steel submits that the conditions to consider recalculation of dumping and injury margins do not exist. If TRA rejects this argument and does decide to recalculate, UK Steel would submit that the non-injurious rate of profit should be set at a level that will allow UK industry to successfully continue manufacturing the product in the UK taking into account investment needs and regulatory costs. This can be discussed during the investigation if there is to be an injury elimination calculation. However, UK Steel would submit that the absolute minimum non-injurious profit should be at least the 5% level used in the previous EU expiry review. This should be higher according to precise circumstances but this should be an absolute minimum.