

**NON-CONFIDENTIAL****TF006: Reconsideration of the Recommendation to the Secretary of State – Submission by Tata Steel UK Ltd****07 April 2022**

Dear case team,

Tata Steel UK Ltd (TSUK) is one of the applicants for the on-going reconsideration of the Recommendation to Secretary of State with regards to the UK transition review of the steel safeguard measures. TSUK appreciates the extensive and detailed efforts by the TRA in this matter so important to TSUK and the UK steel industry.

Following the initiation of the reconsideration process, a number of interested parties submitted their views on certain product categories specifically, as well as on several general aspects of the functioning of the safeguard measures. While TSUK explained its position in detail in the application for reconsideration, we feel obliged to provide additional written comments as a number of arguments and claims put forward by some interested parties are either misleading or counter-factual. In the present submission, TSUK will rebut such arguments and claims.

**1. Overarching arguments of certain interested parties have no legal or factual basis****1.1 As correctly determined by the TRA, the rate of liberalisation should be maintained at 3% per year**

Some interested parties have argued that the rate of liberalisation of the tariff rate quota should be increased from 3% to 5% per year on the basis that this is a requirement of Article 7.4 of the WTO Agreement on Safeguards and that the initial rate of liberalisation under the EU safeguard order was 5% per year.<sup>1</sup> There is no basis for this claim under domestic or WTO law.

On 1 January 2021, the EU safeguarding order, which the UK inherited and transitioned into its own law, liberalised the tariff rate quota at 3% per year.<sup>2</sup> Regulation 51(6) of the Trade Remedies (Increase in Imports Causing Serious Injury to UK Producers) (EU Exit) Regulations 2019 (the **Safeguard Regulations**) stipulates that where, after its transition review, the TRA finds that the tariff rate quota is to be varied/continued then *'the pace of liberalisation'*<sup>3</sup> should be *'maintained or increased'*. By keeping the liberalisation rate at

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<sup>1</sup> Government of Korea, Safeguard measures on imports of certain steel products imposed by the United Kingdom, Reconsideration of an original decision in transition review No.TF0006, 11 January 2022 at page 2

<sup>2</sup> Commission Implementing Regulation (EU) 2019/159 of 31 January 2019 imposing definitive safeguard measures against imports of certain steel products as amended by Commission Implementing Regulation (EU) 2019/1590 of 26 September 2019 at recital 156

<sup>3</sup> The *'pace of liberalisation'* means *'the process by which a... tariff rate quota becomes progressively smaller.... In accordance with 18(5) of Schedule 5 to the [Taxation (Cross Border)*

3% per year the TRA has maintained the pace of liberalisation (i.e. the increases in the quota), in relative terms, and arguably increased the pace of liberalisation in absolute terms (i.e. the increases in the quota are themselves increasing, as each year that 3% increase will represent more in absolute terms). Either way, the TRA has satisfied the requirements of domestic law.

The requirements of WTO law have also been satisfied. Where the duration of the measure exceeds one year, under Article 7.4 of the WTO Agreement on Safeguards ‘*the Member applying the measure shall progressively liberalize it at regular intervals during the period of application*’. There is no requirement that rate or pace of liberalisation should increase (indeed, so long as the quota keeps on going up, the relative and absolute increases could arguably *fall*). This was something recognised by the EU itself when it decreased the rate or pace of liberalisation from 5% to 3%: “*Although liberalizing a safeguard measures after its first year of application is a legal obligation under Union and WTO law, those rules do not establish any particular requirement as to the form or concrete pace of liberalisation, other than such liberalisation should occur progressively at regular intervals during the period of application*”.<sup>4</sup>

Article 7.4 of the WTO Agreement on Safeguards goes onto state that: “*If the duration of the measure exceeds three years, the Member applying such a measure shall review the situation not later than the mid-term of the measure and, if appropriate, withdraw it or increase the pace of liberalization*” (emphasis added). In other words, there is again no requirement to increase the pace of liberalisation – any increase that does happen is at the discretion of the trade authority and should only be done if ‘appropriate’. The TRA correctly judged that it was not appropriate to increase the pace or rate of liberalisation from 3% to 5%: “*The TRA determined that a liberalisation rate for the good subject to review of 3% should be maintained based on an analysis of the expected development in steel-using industries... After a contraction in demand in 2020, demand levels are below pre-pandemic volumes. Therefore, an increase of import volumes above a liberalisation rate of 3% is more likely to cause an over-supply on the UK market.*”<sup>5</sup> As such, there is no basis in WTO law to increase the pace or rate of liberalisation to 5%.

## **1.2 Country-specific import quotas should be calculated using imports from the EU**

Some interested parties have argued that country-specific TRQs (granted to countries with a share of imports above 5% of total imports to the UK) should be calculated after imports from the EU have been excluded. This is on the basis that the original EU safeguard only examined non-EU imports and, as such, it would breach the principle of parallelism for the UK to calculate the TRQs using EU imports.<sup>6</sup>

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*Trade] Act [2018]* (Regulation 2 of the Safeguard Regulations), that is ‘*by increases in the amount of the quota*’ (18(5) of Schedule 5 to the Taxation (Cross Border Trade] Act 2018).

<sup>4</sup> Commission Implementing Regulation (EU) 2019/1590 of 26 September 2019 at recital 137

<sup>5</sup> Trade Remedies Authority, Recommendation to the Secretary of State, Transition Review TF0006 – Safeguard Measure on Certain Steel Products, 3 June 2021, at paragraph 183

<sup>6</sup> Government of Korea, Safeguard measures on imports of certain steel products imposed by the United Kingdom, Reconsideration of an original decision in transition review No.TF0006, 11 January 2022 at page 8

There is no basis for this in WTO law. The principle of parallelism is that the geographic scope of the review should define the geographic scope of the remedy.<sup>7</sup> As the Appellate Body stated in *Argentina – Footwear (EC)*:

*“...we find that Argentina’s investigation, which evaluated whether serious injury or the threat thereof was caused by imports from all sources, could only lead to the imposition of safeguard measures on imports from all sources. Therefore, we conclude that Argentina’s investigation, in this case, cannot serve as a basis for excluding imports from other MERCOSUR member States from the application of the safeguard measure.”*<sup>8</sup>

In other words, if the TRA used import data from *all* sources, including the EU, to evaluate whether those imports increased and caused serious injury (which the TRA did), then its remedy must also apply to *all* sources (including, therefore, the calculation of the TRQ thresholds which must encompass imports from *all* sources). As such, the principle of parallelism requires the TRA to calculate the TRQ thresholds using import data from all sources (including the EU) – to do otherwise would be a breach of the principle.

Furthermore, neither Article 5.2(a) of the WTO Agreement on Safeguards nor Article XIII:2(d) of the GATT 1994 allow EU imports to be excluded as one interested party argues.<sup>9</sup> Both provisions allow a country to allot a quota to “*Members having a substantial interest in supplying the product shares based upon the proportions, supplied by such Members during a previous representative period, of the total quantity or value of imports of the product, due account being taken of any special factors which may have affected or may be affecting the trade in the product.*”<sup>10</sup> The fact that EU imports represent a large share of imports into the UK (and thereby makes it harder for other countries to reach the 5% threshold) is not a ‘special factor’ as similar reasoning could be applied to every safeguard when quotas are calculated. Ultimately every country has certain trading partners with which they trade more and, thus, excluding those partners would assist other countries in the allocation quotas or reaching country specific trading thresholds for quota purposes. It is thus not a ‘special factor’ but a factor in *all* safeguard cases where quotas must be allocated.

## **2. Product-specific arguments of certain interested parties are misleading or counter-factual**

TSUK notes that a number of interested parties requested the TRA to either exclude certain products from the scope of the safeguard measures or increase the current level

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<sup>7</sup> This was summed up by the panel decision cited by the Government of Korea: “As pointed out by the Appellate Body in *US – Steel Safeguards*, the principle of parallelism emerges from the parallel language used in Article 2.1 and 2.2 of the Agreement on Safeguards. This principle also covers the symmetry that must exist between Articles 2.1 and 4.2 of the Agreement. It implies that the imports considered for the purposes of the safeguards investigation (in the terms of Articles 2.1 and 4.2 of the Agreement on Safeguards) and the products to which the measure is applied (in the terms of Article 2.2 of the said Agreement) must be the same”, see Panel Report, *Dominican Republic – Safeguard Measures*, para 7.367

<sup>8</sup> Appellate Body Report, *Argentina – Footwear (EC)*, para. 113

<sup>9</sup> Government of Korea, *Safeguard measures on imports of certain steel products imposed by the United Kingdom, Reconsideration of an original decision in transition review No.TF0006*, 11 January 2022 at page 8

<sup>10</sup> Article 5.2(a) of the WTO Agreement on Safeguards; for XIII:2(d) of the GATT 1994: “...*the contracting party concerned shall allot to contracting parties having a substantial interest in supplying the product shares based upon the proportions, supplied by such contracting parties during a previous representative period, of the total quantity or value of imports of the product, due account being taken of any special factors which may have affected or may be affecting the trade in the product.*”

of TRQs for such products. They substantiated their requests with statements on the alleged insufficient production (or lack of production) of such products in the UK. With respect to some products, they stated that the domestic producers, including TSUK, are not able to meet UK customers' quality demands. TSUK rejects such allegations that are not supported by any evidence and in the following sub-sections will demonstrate that we are more than capable of meeting the domestic demand for such products, as well as any quality and technical requirements of the UK customers.

### **2.1. Product category C (Metallic coated sheet)**

POSCO, the Korea Iron and Steel Association (KISA) and the Government of Korea requested the TRA to exclude commodity code 72259100 used for alloy EGI Sheets from the scope of the measures as this product is not produced domestically in the UK. POSCO and KISA also argued that there is a rapidly growing demand for MCS products from, among others, the automotive sector, which forces them to source such products abroad. In view of this, POSCO also requested the TRA to add 5kt to the current South Korea's individual quota.

TSUK strongly opposes the above-mentioned claims. With respect to alloy EGI Sheets, we note that this product is perfectly interchangeable with other MCS products covered by product category C which are produced in the UK. The mere fact that there is no UK production for this specific commodity code does not in any way suggest that the safeguard measures should not apply to it. Indeed, excluding alloy EGI Sheets from the scope of the measures would create an obvious and simple circumvention route for imports that would directly compete and replace similar products available domestically. TSUK also wishes to emphasize that none of these interested parties provided any other arguments that would justify the exclusion of alloy EGI Sheets from the measures. This only further confirms that the specific product in question does not possess any quality or technical characteristics that would differentiate it from other MCS product available in the UK.

As to the alleged future increase in demand from the automotive sector quoted by POSCO, TSUK notes that it contradicts the most recent demand trends and forecasts (perhaps not quoted by POSCO as they are much less optimistic), as well as the recent developments in the automotive market. [CONFIDENTIAL – information from a source available on subscription. Non-confidential summary: a highly reputable market intelligence provider specialised in the automotive sector confirms that UK light vehicle production is only gradually recovering after the COVID-19 pandemic and will return to the lowest point of its pre-pandemic levels in 2024, i.e. when the safeguard measure are likely to expire. Moreover, it will remain flat until 2028, which indicates a significant decrease compared to the historical pre-pandemic levels of 2017-2019] Notably, the period of 2017-2019 was used to calculate the current TRQs, which suggests that the existing TRQs are much higher than required.

#### **Chart 1. UK light vehicle production, units.**

[CONFIDENTIAL]

Moreover, one of the major car manufacturers in the UK, Honda Group, completely ceased its production in the UK. [CONFIDENTIAL – information from a source available on subscription. Non-confidential summary: Honda Group accounted for a substantial share of UK light vehicle production], and it is practically impossible for the UK automotive industry to return to the production level of 2017-2018 in these circumstances.

#### **Table 1. UK light vehicle production per manufacturer, units.**

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Another interested party, Black Country Local Enterprise Partnership (BCLEP) also requested the TRA to significantly increase the TRQs for MCS products. As one of the reasons to do so, BCLEP refers to the level of EU imports:

*“Of the 300,000 tonne quota allocated to EU imports, 341,000 tonnes were in balance at the end of Quarter 4. This means that importing activity of Category 4 from the EU was so low that the overall balance has actually increased. Feedback from industry suggests this is a result of EU firms not exporting to the UK because of complicated post-EU Exit documentation requirements.”*

TSUK notes that this explanation is both wrong and misleading. The only reason why EU steelmakers are not exhausting their quotas for MCS is not due to Brexit, but because of aggressive third country imports which have flooded the UK market with low cost material leaving EU producers unable to compete. While it is unclear whether BCLEP has been intentionally misled by its sources or not, it must be noted that EU steel producers continue to be very active in the UK market. In particular, they tend to reach almost 90% of their TRQ for OCS products (product category D) and regularly exceed 40-50% utilisation for hot-rolled coils, hollow sections and gas pipes. They also continue to supply all other product categories, even if some are imported in lower volumes. Moreover, EU steel producers have all the necessary resources to deal with any Brexit-related formalities (that had been in fact addressed even before Brexit or shortly after it by most companies). In these circumstances, it is unreasonable to even suggest that EU imports are prevented from entering the UK market due to Brexit.

Finally, in addition to high MCS imports from Taiwan, Turkey, India and South Korea, which are subject to TRQs, Vietnam also has flooded the UK market with low cost MCS material which is uncapped as it is classed as a developing country, accounting for 19% of all MCS imports into the UK in 2021, the single largest import share of any country.

## **2.2. Product category D (Organic coated sheet)**

KISA and the Government of Korea requested the TRA to exclude PVC-SOL products as the UK industry (i.e. TSUK) does not have the sufficient capacity to satisfy domestic demand. The Government of Korea also states that PVC-SOL products from Korea have a superior quality compared to TSUK's products:

*“There are also quality differences between UK manufactured PVC-SOL and Korean products, such that UK producers cannot manufacture all the different product types needed by downstream users.”*

TSUK wishes to emphasize that both these claims are factually wrong and appear to be an effort to mislead the TRA in their analysis. It is not surprising that KISA and the Government of Korea failed to provide any details or evidence to substantiate their claims. While it appears unnecessary to rebut such claims, TSUK will provide a substantiated response to these allegations.

First, TSUK's production capacity for PVC-SOL is more than sufficient to satisfy domestic demand. Our production capacity is established at the level of [non-confidential range: 300-400kt] per annum, while the total domestic consumption for this product is in the range of [non-confidential range: 150-200kt] per annum. Moreover, TSUK is taking steps towards increasing our production capacity for



OCS. Since the UK domestic market is our priority, any claims concerning any potential shortages due to TSUK's insufficient capacity are counter-factual.

Second, the product range, quality and guarantees offered by UK domestic producers is directly comparable if not superior to that of import offers. In this respect, we note that TSUK (formerly Corus and British Steel) was the first producer in Europe to launch a PVC-coated OCS product back in the 1960's. This has been followed by decades of R&D to improve product quality and expand the PVC-based range which is ongoing to the present day. This has resulted in the UK-derived Colorcoat® brand being recognised as the most frequently specified OCS brand throughout the UK and Europe.

As a separate point, TSUK draws the TRA's attention to the statements made by the Government of Korea with respect to the alleged impact of the safeguard measures on OCS prices and downstream users:

*“The imposition of safeguard measures on PVC-SOL from Korea has thus resulted in increased costs for UK downstream producers, thereby also negatively affecting their competitiveness in export markets and, in particular, in the EU.”*

As with all other claims, the Government of Korea does not provide any details or analysis supporting this argument. In this respect, TSUK notes the following.

First, the imposition of the safeguard measures on OCS from third countries (and not just from South Korea) did not in any way trigger an unjustified change, whether upward or downward, in TSUK's domestic or export prices and therefore did not result in increased costs for UK downstream producers. [CONFIDENTIAL – information related to TSUK's costs and prices. Non-confidential summary: TSUK's prices are correlated with our costs for the key raw materials. This long-term correlation, which is confirmed by our internal data and independent sources, can be clearly traced to the period even before the safeguard measures came into force, and it remains evident to this day]

## **Chart 2. Correlation between OCS prices and IO+HCC prices**

[CONFIDENTIAL]

The above chart makes it clear that the argument put forward by the Government of Korea is completely unfounded and counter-factual. [CONFIDENTIAL – information related to TSUK's costs and prices. Non-confidential summary: TSUK's prices are correlated with our costs for the key raw materials. This long-term correlation, which is confirmed by our internal data and independent sources, can be clearly traced to the period even before the safeguard measures came into force, and it remains evident to this day. This phenomenon is not specific to the UK market] This stands to reason as we compete with EU-based producers, as well as third-country imports, in both UK and EU markets.

As to the claim of the Government of Korea that the alleged increase in OCS-associated costs makes UK downstream users less competitive, TSUK notes that OCS as a downstream input represents <10% of the total construction cost. For example, should a client / contractor be building a typical mid-size distribution warehouse, when factored in with all the other relevant physical construction costs (insulation, concrete, M&E, labour, etc.), the OCS coil alone represents <10% of the total build cost. Therefore, proportionally, the impact of OCS coil price movements on a total build cost and thus downstream customers' ability to compete is minimal.

### 2.3. Product category H (Hollow sections) and K (Other Welded Tubes)

Yücel Boru stated that the UK production of product categories H (Hollow sections) and K (Other welded tubes) is insufficient to satisfy domestic demand and that imports of these two product categories are not significant enough to cause injury to the domestic industry:

*“Yücel Boru wishes to underline the fact that the amounts of exports at the above-mentioned rates cannot be considered significant and sufficient enough to cause a “serious injury” to the UK domestic industry. Yücel Boru considers that the maintenance of safeguard measures on imports of product categories 21 and 26 into the UK would have a detrimental effect on the economic situation of UK users and importers.”*

*“Additionally, Yücel Boru wishes to draw the attention of the TRA to the fact that the UK production of products falling into product categories 21 and 26 is insufficient to meet the demand of UK users. Therefore, users must rely on imports from third countries.”*

While the arguments of Yücel Boru are very general and the exact request of this interested party remains unclear, TSUK will respond to the allegations related to insufficient production and inability of imports to cause injury to the domestic industry.

First of all, TSUK wishes to emphasize that whether the UK domestic industry can meet 100% of domestic demand is not in and of itself a reason to alter the TRA’s determination. However, as will be shown below, UK tube mills have the capacity to fully satisfy domestic demand.

With respect to hollow sections, TSUK notes that 86% of imports of this product in 2021 came into the UK under commodity code 73066199 (with other 2 commodity codes not produced by TSUK). That year, the total UK apparent demand for this product is estimated to have been [Non-confidential range: 300-400kt]. Of this, 167kt was imported (with 90% of imports coming from Turkey). The remainder was supplied by a combination of TSUK and other UK tube mills. TSUK’s exports that year amounted to [Non-confidential range: 100-150kt]. Therefore, at the current capacity utilization rate, even TSUK’s capacity alone was sufficient to satisfy at least [Non-confidential range: 80-90%] of UK demand. TSUK tube mills currently have unutilised capacity which would be more than sufficient to satisfy the remaining market demand and this does not take into account spare capacity of other UK producers.

As to the level and impact of imports of hollow section from Turkey, first TSUK notes that such imports accounted on average for 70% of total imports in the period from 2015 to 2021:

**Table 2. Imports of hollow section from Turkey and other third countries, tonnes**

Country	2015	2016	2017	2018	2019	2020	2021
Turkey	112,011	109,594	131,987	129,465	131,389	71,718	152,652
Other countries	46,758	45,414	40,502	43,619	67,057	52,995	37,468
Total	158,769	155,008	172,489	173,084	198,446	124,713	190,120

Source: HMRC

It is unclear to TSUK that imports from Turkey could be considered insignificant at such level that by far exceed the level of imports from all other sources combined. Moreover, as the TRQs are based on the recent historical import trends, the needs of users, as well as the interests of foreign exporters, are taken into account and secured by the existing TRQ system.

With respect to product category K (Other welded tubes), TSUK notes that based on the TRQ utilisation data, throughout 2021, the total TRQ for this product remained utilised by approximately 50% with only Turkey, China and Russia fully exhausting their individual TRQs. Therefore, UK downstream users of welded tubes covered by product category K have access to more than 100kt of import volume from other sources.

### **3. Conclusions**

In light of the foregoing, TSUK respectfully requests the TRA to consider the full and factually correct information and submits the following:

- The rate of liberalisation should be maintained at 3% per year (there is no requirement under domestic or WTO law to increase it) Country-specific import quotas should be calculated using imports from the EU (to do otherwise would breach the principle of parallelism)
- The current level of TRQs for product categories C, D, H and K is sufficient and corresponds to the traditional trade flows between the UK and other third countries. Moreover, domestic production and capacity for these products is more than sufficient to satisfy domestic demand.
- The above-mentioned product-specific exclusions requested by certain interested parties are unwarranted. The product scope of the safeguard measures should remain unchanged, and any exclusions would undermine the purpose and efficiency of the safeguard measures.

Yours faithfully,

**[CONFIDENTIAL]**