

**Safeguard measures on imports of certain  
steel products imposed by the United  
Kingdom**

**Reconsideration of an original decision in  
transition review No. TF0006**

**Submission by the Government of Korea**

**11 January 2022**

1. This submission is lodged on behalf of the Republic of Korea ("**Korean Government**"). It sets out the Korean Government's observations regarding the United Kingdom ("**UK**") Trade Remedies Authority ("**TRA**")'s reconsideration of its original recommendation to the UK Secretary of State in the transition review of the steel safeguard measures (TF0006).

2. As a preliminary point, the Korean Government understands that the UK steel producers justified their requests for the TRA to reconsider its recommendation to the UK Secretary of State partly on the grounds that the situation has changed due to the European Union ("**EU**")'s decision to extend the EU safeguard measures. The Korean Government does not see any ground for this reasoning as the extension of the EU safeguard measures should not change the situation with regards to the UK safeguard measures. Indeed, this would mean that if the EU had repealed its safeguard measures, there would no longer be any basis for the UK to maintain its safeguard measures.

3. With respect to substantive issues affecting the present reconsideration, the Korean Government submits that the TRA should recommend that:

- The UK steel safeguard measures be withdrawn forthwith;
- The liberalization pace of the measures be increased to at least 5%(if the UK won't withdraw the safeguard measures);
- A system of product exclusion be introduced to avoid that the crowding out of certain specific products required by UK downstream users;
- The tariff-rate quotas ("**TRQ**") be administered yearly rather than quarterly; and
- Country-specific TRQs be granted to countries meeting the relevant threshold after the exclusion of imports from the EU.

4. Furthermore, the Korean Government hereby submits the following with regard to specific product categories subject to the UK steel safeguard measures:

- Regarding product category 4, as there is no UK production of products falling under commodity codes 7225 91, these commodity codes should be excluded;
- Regarding product category 5, the production of PVC-SOL falling under commodity codes 7210 70 80 and 7210 40 80 is limited in the UK and, therefore, PVC-SOL should be excluded; and
- Regarding product categories 25(a) and 25(b), in light of the decreased imports towards the end of the period of investigation and the continued decrease in imports thereafter for product category 25, the UK steel safeguard measures should be withdrawn as regards that product category.

5. The Korean Government reserves the right to modify or supplement this written submission, and/or make a further submission or submissions as it deems appropriate, including in light of any subsequent developments.

## **1. GENERAL COMMENTS REGARDING THE UK STEEL SAFEGUARD MEASURES**

### **1.1 The UK steel safeguard measures should be withdrawn**

6. The Korean Government submits that the UK steel safeguard measures should be withdrawn forthwith for the following reasons.

7. The UK's decision to transition the EU steel safeguard measures does not abide to WTO rules as the UK assumed that it could transition these measures. The Korean Government notes that these measures are still attributable to the EU, which means that they cannot be, at the same time, attributed to the UK. The UK's departure from the EU does not allow the UK to claim that the EU steel safeguard measures could be continued by the UK separately and without conducting a safeguard investigation in accordance with the provisions of the WTO Agreement on Safeguards. Indeed, as explained by the Korean Government in its Comments on the Intended Preliminary Decision in the transition review of the steel safeguard measures (TF0006), the TRA's transition review did not constitute a *de novo* safeguard investigation and the transition of the EU steel safeguard measures therefore lacked a legal basis. The UK should thus follow WTO rules and, as a result, terminate the measures.

8. Assuming *arguendo* that the UK could maintain and extend the duration of the EU steel safeguard measures, such an extension by the UK Secretary of State in relation to the five additional product categories (namely, 6, 7, 12, 16 and 17), for which the TRA had recommended revocation, would nevertheless not conform to WTO rules.<sup>1</sup> Indeed, with regard to product categories 6 and 7, the TRA found a lack of significant increase in imports or of serious injury.<sup>2</sup> Similarly, with regard to product categories 12, 16 and 17 the TRA concluded that there had been no increase in imports in absolute terms that would justify maintaining the measures.<sup>3</sup> As such, contrary to Articles 2 and 4 of the WTO Agreement on Safeguards, the UK maintained the safeguard measures on these five product categories without demonstrating that the criteria to impose the safeguard measures were met with regards to the UK at the time of imposition of the EU steel safeguard measures by the European Commission. At the same time, the UK extended the duration of the safeguard measures for these product categories without demonstrating that these measures continue to be necessary to prevent or remedy serious injury to its domestic industry in disregard of Article 7 of the WTO Agreement on Safeguards.

9. In view of the above, the Korean Government suggests that the TRA recommend the forthwith withdrawal of the UK steel safeguard measures.

### **1.2 The liberalization rate should be increased(if the UK won't withdraw the safeguard measures)**

10. The Korean Government respectfully requests that the TRA recommend withdrawing its measures or increasing the pace of liberalization, at least by reinstating the 5% liberalization.

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<sup>1</sup> Trade remedies notice 2021 No. 2 safeguard measure: Tariff-rate quota on steel goods, 30 June 2021.

<sup>2</sup> TRA's Recommendation to the Secretary of State, Transition review TF0006 – Safeguard measure on certain steel products, 3 June 2021, Table 40.

<sup>3</sup> TRA's Recommendation to the Secretary of State, Transition review TF0006 – Safeguard measure on certain steel products, 3 June 2021, Tables 9 and 39.

11. As a starting point, the Korean Government emphasizes that the European Commission's decision to reduce the pace of liberalization to 3% failed to account for the WTO Members' obligation set out in Article 7.4 of the WTO Agreement on Safeguards. Pursuant to the second sentence of Article 7.4, a substantive provision that requires actual liberalization,<sup>4</sup> "the Member applying such a measure shall review the situation [...] and, if appropriate, *withdraw [the measure] or increase the pace of liberalization*" (emphasis added). Clearly, the plain language of this provision directs the Member to either withdraw the measure or increase the pace of its liberalization during a review, as appropriate.

12. Accordingly, Article 7.4 of the WTO Agreement on Safeguards envisages only two options within the framework of review: first, accelerate the pace of liberalization or, second, withdraw the measure if deemed unnecessary. Thus, the European Commission's decision to "decrease" the pace of liberalization clearly failed to take account of its obligation pursuant to Article 7.4 of the Agreement on Safeguards. As a result, the Korean Government respectfully requests the TRA to withdraw the measures or increase the pace of liberalization, at least, by reinstating the initial 5% rate of liberalization. In this regard, the Korean Government notes that this pace of liberalization would be more in line with the forecasted developments in steel-using industries.<sup>5</sup> Indeed, demand for steel is expected to rise worldwide by 12.2% in 2021 and by 4.3% in 2022.<sup>6</sup> As such, it is necessary to further liberalize the UK steel safeguard measures so that UK demand for steel products can be satisfactorily met.

13. In light of the above, the Korean Government respectfully requests that the TRA withdraw its measures or increase the pace of liberalization, at least by reinstating the 5% liberalization pace of the steel safeguard measures.

### **1.3 A product exclusion mechanism should be introduced**

14. The Korean Government notes that in its recommendations to the UK Secretary of State the TRA recommended that certain commodity codes be excluded from the scope of the transitioned safeguard measures due to a lack of UK production of these products.<sup>7</sup>

15. First of all, the Korean Government notes that an official mechanism of product exclusions targeted to specific products seems to be needed. Indeed, many different product types may fall under a single commodity code so that, while it may appear that there is overall production in the UK for that commodity code, not all product types falling thereunder may be produced in the UK. Thus, when there is no or limited production of certain specific products in the UK, but these products fall under commodity codes for which there is overall production in the UK, there should be a process in place to exclude these specific products from the scope of the measures.

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<sup>4</sup> Panel Report, *Ukraine – Passenger Cars*, para. 7.360.

<sup>5</sup> TRA's Recommendation to the Secretary of State, Transition review TF0006 – Safeguard measure on certain steel products, 3 June 2021, para. 183.

<sup>6</sup> World Steel Association, *Worldsteel Short Range Outlook October 2021*, 14 October 2021.

<sup>7</sup> TRA's Recommendation to the Secretary of State, Transition review TF0006 – Safeguard measure on certain steel products, 3 June 2021, paras. 23-28.

16. In this regard, Korean exporters have been facing difficulties in satisfying UK customers' demand for the aforementioned specific products that cannot be supplied by UK producers and are currently covered by the scope of the safeguard measures. This, in turn, causes difficulties for UK customers as they cannot source the products they need. Therefore, when there are supply shortages in the UK in terms of the quantity or quality of certain specific products, there should be a mechanism in place to exclude products from the scope of the measures when such an exclusion is warranted based on the UK's economic interest.

17. As a result, the Korean Government respectfully requests that the TRA set up a mechanism to grant individual product exclusions for specific products which are not produced by the UK industry, or which are not available in sufficient quantities or with the required technical specifications.

18. In addition, the Korean Government requests that the TRA recommend to the UK Secretary of State that the products discussed in Sections 2 below be excluded from the scope of the UK steel safeguard measures.

#### **1.4 The TRQs should be administered yearly**

19. The quarterly management of the TRQs was originally introduced by the European Commission in June 2020 in light of possible geographical asymmetries in the speed and timing of recovery from the COVID-19 pandemic and the concern that stronger exporters would "frontload sales" in order to "empty the market" to the detriment of other market participants.<sup>8</sup> This reasoning was adopted by the TRA in its recommendation to the UK Secretary of State to justify maintaining the quarterly administration of the TRQs in June 2021.<sup>9</sup>

20. The Korean Government notes that the current market reality is no longer the same as the above-mentioned situation described in June 2020 and 2021. While the COVID-19 pandemic has not yet fully abated, exporting countries' economies have all been reopening so that the possible concern of geographical asymmetries in economic recovery is no longer sufficient to justify the quarterly management of the TRQs.

21. Moreover, as the UK itself is moving beyond the COVID-19 pandemic, additional flexibility is needed in order to best facilitate the recovery of UK downstream industries. Indeed, annually managed TRQs benefit downstream industries in terms of supply chain security, particularly for projects that are concentrated in certain parts of the year, and they also reflect market realities, namely that demand for steel products is not linear throughout the year. Furthermore, a yearly administered TRQ is less susceptible to be suddenly exhausted due to other imports arriving in the UK between the time of shipment from the export market and customs clearance in the UK. As such, it also provides more security to importers in terms of timing of deliveries insofar as delays are less likely to lead to imports arriving once a quarterly TRQ has already been exhausted. In this regard, the quarterly management of the TRQs has had a disproportionately negative impact on exporting countries geographically further

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<sup>8</sup> Commission Implementing Regulation (EU) 2020/894 of 29 June 2020 amending Implementing Regulation (EU) 2019/159 imposing definitive safeguard measures against imports of certain steel products, 2020 O.J. (L 206) 27, at recitals 22-27.

<sup>9</sup> TRA's Recommendation to the Secretary of State, Transition review TF0006 – Safeguard measure on certain steel products, 3 June 2021, para. 177.

away from the UK, such as Korea, as their exporters must ship products many months ahead of the expected customs clearance date, unlike geographically closer suppliers which can better respond to a quarterly managed TRQ.

22. Based on the above, the Korean Government requests that the TRA recommend that the TRQs be managed annually, rather than quarterly.

### **1.5 Country-specific TRQs should be granted to countries meeting the relevant threshold after the exclusion of imports from the EU**

23. The Korean Government notes that country-specific TRQs under the UK steel safeguard measures were granted to WTO Members with a share of imports per product category superior to 5% of total imports, which was calculated as imports from third countries and the EU into the UK during that period.<sup>10</sup>

24. The Korean Government recalls that according to the principle of parallelism and in order to legally impose safeguard measures in accordance with the WTO Agreement on Safeguards, the imports considered for the purpose of the safeguard investigation and the products to which the measure is applied must be the same.<sup>11</sup>

25. The imports initially considered for the purpose of the safeguard investigation which led to the UK's imposition of the transitioned and extended TRQs were imports from third countries into the EU. As such, imports from the EU27 into the UK were not considered for the purpose of the safeguard investigation leading to the imposition of the transitioned and extended TRQs. It thus follows that the imposition of safeguard measures on imports from the EU into the UK may not be in line with the principle of parallelism.

26. In this regard, the Korean Government submits that this should not detrimentally affect other WTO Members. Hence, in order to limit the impact of the UK's decision on third countries, the share of imports per product category for the purpose of establishing the country-specific TRQs should be calculated based on the same imports as those considered for the purpose of the safeguard investigation, namely, imports from third countries into the UK without the inclusion of imports from the EU.<sup>12</sup> The adoption of such a methodology would also be in line with Article 5.2(a) of the WTO Agreement on Safeguards and Article XIII:2(d) of the GATT 1994. According to these provisions, a WTO Member allocating TRQs to countries having a substantial interest must take into account "any special factors which may have affected or may be affecting the trade in the product". As imports from the EU represent a large share of imports into the UK, the inclusion of EU imports in the denominator of the share calculations means that third countries are less likely to reach the 5% threshold in order to be granted a country-specific TRQ. This negatively affects their trade in the relevant product.

27. In this respect, the Korean Government requests the TRA take into account this special factor and recommend the granting of country-specific TRQs in relation to each product category to countries

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<sup>10</sup> TRA's Recommendation to the Secretary of State, Transition review TF0006 – Safeguard measure on certain steel products, 3 June 2021, para. 179.

<sup>11</sup> Panel Report, *Dominican Republic – Safeguard Measures*, para. 7.367.

<sup>12</sup> Commission Implementing Regulation (EU) 2019/159 of 31 January 2019 imposing definitive safeguard measures against imports of certain steel products, 2019 O.J. (L 31) 27, at recital 147.

with a share of imports for the relevant product category above 5% of total imports into the UK during the 2017-2019 period after excluding imports from the EU.<sup>13</sup> Based on the Korean Government's calculations, Korea should be granted country-specific TRQs for four additional product categories, namely product categories 1, 7, 12 and 17.

## **2. COMMENTS REGARDING SPECIFIC PRODUCT CATEGORIES**

### **2.1 Product category 4**

28. The Korean Government notes that there is no domestic production in the UK of products falling under commodity codes 7225 91, which are covered by product category 4.

29. The lack of domestic production of electrolytic galvanized iron falling under commodity code 7210 30 is confirmed in Table 44 of Annex 2 to the TRA's Recommendation to the UK Secretary of State. Similarly, with regard to electrolytic galvanized iron alloy steel falling under commodity code 7225 91, the Korean Government notes that, as this product is manufactured by adding aluminium and nickel to electrolytic galvanized iron, there should also be no production of this product in the UK. Despite the lack of domestic production, these commodity codes are currently covered by the UK steel safeguard measures, thereby injuring downstream steel users in the UK.

30. In light of the absence of domestic production in the UK of products falling under these two commodity codes, the Korean Government respectfully requests that the TRA recommend the exclusion of these commodity codes from the scope of the UK steel safeguard measures.

### **2.2 Product category 5**

31. The Korean Government notes that there is limited domestic production of PVC-SOL falling under commodity codes 7210 70 80 and 7210 40 80 in the UK, which is covered by product category 5.

32. PVC-SOL is a vinyl chloride resin painted steel that is used to manufacture building envelopes for warehouses, distribution centres and manufacturing units, among others. While there is some production of PVC-SOL in the UK, there is insufficient capacity to meet UK downstream demand. 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. 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.<sup>14</sup>

33. Based on the above, the Korean Government respectfully requests that the TRA recommend the exclusion of PVC-SOL from the scope of the UK steel safeguard measures.

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<sup>13</sup> The Government of Korea notes that since the extended TRQ for product category 4 was determined based on the initially transitioned TRQ during the period 1 January 2021 to 30 June 2021 (thereby, according to 2015-2017 import volumes), the UK should grant a country-specific TRQ for this product category to countries with a share of imports for this product category above 5% of total imports into the UK during the 2015-2017 period, after excluding imports from the EU. See, TRA's Recommendation to the Secretary of State, Transition review TF0006 – Safeguard measure on certain steel products, 3 June 2021, para. 176.

<sup>14</sup> See, Firth Steel Ltd, submission of 8 October 2020; Kingspan Limited, submission of 13 October 2020.

## 2.3 Product category 25

34. The Korean Government notes that, as indicated in Tables 11 and 12 of the TRA's Recommendation to the Secretary of State, imports of products falling under product category 25 into the UK have decreased towards the end of the period of investigation. Indeed, while imports of products falling under product category 25A increased in absolute terms by 125% from 2013 to 2015, they subsequently dropped 72% below their 2013 level in 2017. A similar trend can be observed in relative terms. In parallel, imports of products falling under product category 25B first tripled from 2013 to 2016 before dropping by one third in 2017 in absolute and relative terms. Despite these figures and downward trends, the TRA found that there had been a significant increase in imports during the period of investigation<sup>15</sup> and that it is likely that there would have been a recurrence of imports in increased quantities if the products were no longer subject to the steel safeguard measures.<sup>16</sup>

35. The Korean Government notes, however, that imports of product category 25 have continued to decrease significantly since the TRA's Recommendation to the UK Secretary of State. According to the most up-to-date UK import statistics<sup>17</sup>, monthly imports decreased from 857 tonnes in June 2021 (i.e., the date of the TRA's Recommendation to the UK Secretary of State) to 459 tonnes in October 2021. Furthermore, imports into the UK of product category 25 during the period June 2021 to October 2021 dropped by 88% as compared to the same period during the previous year (from 98,834 tonnes to 11,594 tonnes). In particular, imports of product category 25A into the UK during the same period fell by more than 98% (from 91,293 tonnes to 1,925 tonnes).

36. As such and in light of the decreased imports towards the end of the period of investigation and the continued fall in imports thereafter, the Korean Government respectfully suggests that the UK steel safeguard measures be withdrawn as regards product category 25.

## 3. CONCLUSION

37. In consideration of the foregoing, the Korean Government considers that the UK steel safeguard measures should be repealed. At the very least, these measures should be substantially liberalized through the adoption of an increased pace of liberalization and the introduction of a product exclusion mechanism. In addition, the TRQs should be administered yearly and country-specific TRQs should be granted to countries meeting the relevant threshold based on imports into the UK when imports from the EU are excluded.

38. The Korean Government further submits that certain specific products should be excluded from the scope of product categories 4 and 5 due to a lack of, or insufficient, production of these specific products in the UK. Finally, with regards to product category 25, the Korean Government notes that, since imports of products falling under that product category have continued to decrease significantly in recent months, the UK steel safeguard measures applicable to that product category should be withdrawn.

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<sup>15</sup> TRA's Recommendation to the Secretary of State, Transition review TF0006 – Safeguard measure on certain steel products, 3 June 2021, para. 60.

<sup>16</sup> TRA's Recommendation to the Secretary of State, Transition review TF0006 – Safeguard measure on certain steel products, 3 June 2021, para. 103.

<sup>17</sup> UK Trade Info - Overseas trade data.