

# SAFEGUARD MEASURES ON THE IMPORT OF CERTAIN STEEL PRODUCTS FROM THE UAE.

## Memorandum prepared for Brisko Scaffolding Limited

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*This memorandum had been prepared by our professional advisors , for submission by Brisko to the Transition Review being carried out by the Trade Remedies Investigation Directorate into “Safeguard measures on certain steel products”, case TF0006.*

### Executive summary

We have assessed the available import and export data on the relevant products in category 20 and 21 imported from all non-exempt countries globally and the United Arab Emirates (“UAE”) in particular in light of the tests which Trade Remedies Investigation Directorate (“TRID”)<sup>1</sup> must apply in determining whether to continue, vary, replace or revoke the safeguards at the end of the Transition Review under the UK Safeguards Regulations.<sup>2</sup> In particular, we have explored whether the imports of the relevant products meet the increased quantities test. We also consider the impact on domestic industry test, and whether there would be serious injury to UK producers of the like goods in the absence of the safeguards. Overall, we find that:

- There was no material, sustained or significant increase in quantities imported of the relevant products between 2013-2017.
- Imports from the UAE fell under the 3% threshold between 2013-2017, meaning that the UAE meets the requirement of the developing country exception during the POI.
- Imports of these products appear unlikely to have caused serious injury, or threaten to cause such injury, to UK producers of like steel products. This is particularly true for imports from the UAE, specifically due to their de minimis nature.
- The imposition of safeguards on these products imported from the UAE is not warranted based on data from the designated period of investigation. The imposition would not be warranted even if more recent data were used.
- The safeguards applying to should be revoked as a consequence of the relevant tests in the Safeguards Regulations not being met.

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<sup>1</sup> TRID will become the Trade Remedies Authority on the entry into force of the relevant clauses of the Trade Bill.

<sup>2</sup> The Trade Remedies (Increase in Imports Causing Serious Injury to UK Producers) (EU Exit) Regulations 2019 (the Safeguard Regulations), 2019/449, as amended.

## Tests to be met under the Transition Review

There are a number of tests which TRID must apply in determining whether to continue, vary, replace or revoke the TRQs on category 20 and 21 steel products imported from the UAE, as contained in the Safeguards Regulations.

### Increased quantities test

The Transition Review is intended, in part: *“to consider whether goods belonging to each specified category of steel products were, during the same investigation period considered by the European Commission in connection with the EU tariff rate quotas, imported into the United Kingdom in increased quantities.”*<sup>3</sup>

This is the first test to be applied by TRID in deciding whether to maintain the TRQs at the end of the review. TRID must conclude that the goods in question were imported into the UK in increased quantities during the EU’s period of investigation (“POI”): 2013-2017.

If TRID determines that the products were not imported in increased quantities into the UK during the POI, the TRQs must be revoked.<sup>4</sup>

TRID must apply a two-step process in this determination – whether there are increased quantities of imports; and whether the increased quantities are significant.<sup>5</sup> The first step is a threshold – if the test is not met at the first step, TRID should not go on to consider the second step.

#### Step 1 – Are the imports in increased quantities?

Goods are imported into the UK in increased quantities during the POI if:

- there has been “an absolute increase in the volume” of the category 20 and 21 products being imported into the UK; or
- there has been “a relative increase in volume [...] compared with the total domestic production in the UK of the like goods and directly competitive goods.”<sup>6</sup>

TRID may take into account “any information it considers relevant” in making the above determination.<sup>7</sup>

#### Step 2 – Are the increased quantities significant?

Only if TRID determines that there has been an increase in the volume of imports of the goods concerned into the UK during the POI should they then determine whether that increase is "significant". In determining whether the increased quantities are "significant", TRID must consider:

- the rate and volume of imports of the goods concerned into the UK;
- whether the importation of goods in increased quantities was "foreseeable" and

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<sup>3</sup> Regulation 49(4) of the Safeguard Regulations

<sup>4</sup> Regulation 50(2)

<sup>5</sup> Paragraph 1 of Schedule 5 to the Taxation (Cross-Border Trade) Act 2018 and Part 2 of the Safeguard Regulations.

<sup>6</sup> Regulation 4 of the Safeguard Regulations

<sup>7</sup> As above.

- any other factors it considers relevant.<sup>8</sup>

The importation of the goods in increased quantities into the UK will not be foreseeable where TRID “considers that the increase is a result of unforeseen developments. In determining whether the increase was unforeseen, TRID may consider:

- changes in patterns of demand for the goods concerned, like goods and directly competitive goods;
- global overcapacity or increases in production capacity of the goods concerned;
- economic or political crises; and
- any other factors it considers relevant.”<sup>9</sup>

If TRID determines that an increase in the importation of the goods concerned was foreseeable, that increase will not be “significant”, and step 2 is not met.

### Impact on domestic industry test

Only if TRID determines that category 20 and 21 products were imported into the UK in increased quantities during the POI – which is to say, both steps 1 and 2 above are met - should it then go on to consider the impact of the imports on domestic industry. If, conversely, TRID determines the relevant products were not imported in increased quantities during the POI, the TRQs should be revoked.<sup>10</sup>

If the goods were imported in increased quantities, TRID has to take the following four criteria into account when determining whether to continue, vary, replace or revoke the TRQs:

- whether the importation of those goods in increased quantities would be likely to recur if they were no longer subject to a tariff rate quota;
- whether there would be serious injury to UK producers of the like goods and directly competitive goods if goods belonging to categories 20 and 21 were no longer subject to a tariff rate quota;
- whether the continuation of a tariff rate quota is necessary to facilitate the adjustment of the UK producers of the like goods and directly competitive goods to the importation of goods belonging to categories 20 and 21; and
- whether an alternative tariff rate quota or the application of a safeguarding amount to goods belonging to categories 20 and 21 would better meet the aim of preventing [...] serious injury to the UK producers of the like goods and directly competitive goods.”<sup>11</sup>

The above four criteria are drafted so as to be cumulative – each has to be met.

In order to determine whether category 20 and 21 products are causing serious injury to UK producers, TRID “must assess all relevant economic factors having a bearing on UK producers including—

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<sup>8</sup> Regulation 5 of the Safeguard Regulations

<sup>9</sup> Regulation 6 of the Safeguard Regulations

<sup>10</sup> Regulation 50(2) of the Safeguard Regulations

<sup>11</sup> Regulation 49(4) of the Safeguard Regulations.

- the rate and volume of increase of the importation of the goods concerned into the United Kingdom, in absolute or relative terms;
- the export capacity of the goods concerned in foreign countries or territories and the likelihood that the capacity will be exported to the United Kingdom;
- the share of the domestic market in the United Kingdom taken by the importation of the goods concerned in increased quantities;
- changes in the UK producers' level of—
  - sales;
  - productivity;
  - production;
  - capacity utilisation;
  - profits and losses; and
  - employment.”<sup>12</sup>

### No domestic industry to protect test

Where TRID considers that goods belonging to a specified category of steel products subject to TRQs “were not being produced by UK producers” during the POI, it must revoke the TRQs.<sup>13</sup>

### Economic interest test

If TRID concludes that the TRQs against category 20 and 21 imports from UAE should continue unvaried, it must be satisfied that the TRQs meet the economic interest test (EIT). If it is not satisfied that the EIT is met, it must revoke the TRQs.<sup>14</sup>

## The Applicability of WTO Agreements and Jurisprudence in the UK

The UK is a founding member of the WTO, and was a member in its own right even when it was a member state of the European Union. Consequently, the provisions of WTO agreements have continued to apply to it after it left the EU in the same manner as they had done before. Practices that deviate from WTO rules are thus challengeable by other WTO members (as indeed they were when the UK was an EU Member State, as demonstrated for example in the claims brought against subsidies granted by the UK and others to airbus). The UK thus has a clear reason respect its obligations under WTO rules.

Furthermore, The United Kingdom has demonstrated its commitment to the WTO and its agreements in a Communication to WTO members (WT/GC/226), dated 1 February 2020. This provides further information on some of the implications of the end of the transition period for the United Kingdom at the WTO. In particular, in the communication, the UK has stated: “*with respect to its future trade regime, the United Kingdom is committed to meeting its obligations to other Members...*”<sup>15</sup>

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<sup>12</sup> Regulation 8 of the Safeguard Regulations

<sup>13</sup> Regulation 50(2) of the Safeguard Regulations

<sup>14</sup> Regulation 50(5) of the Safeguard Regulations

<sup>15</sup> UK communication to the WTO, WT/GC/206, dated 1 February 2020.

The UK has further demonstrated its commitment to the WTO agreements and jurisprudence in the UK-EU Trade and Cooperation Agreement (TCA). This is significant, given that Brexit was the trigger for transitioning the EU TRQs on certain steel products into UK domestic legislation in the first place. In particular, the TCA reaffirms the UK's intention to conduct its obligations under the TCA in a manner that is consistent with the WTO Agreements.<sup>16</sup> Moreover, the TCA explicitly states the intention of the UK (and the EU) in interpreting provisions in the TCA to *"take into account relevant interpretations in reports of WTO panels and of the Appellate Body adopted by the Dispute Settlement Body of the WTO as well as in arbitration awards under the Dispute Settlement Understanding."*<sup>17</sup> The provisions of the TCA are given effect in UK domestic legislation under the European Union (Future Relationship) Act 2020.

The importance of the UK's commitment to the WTO is further exemplified in the Department of International Trade Guidance, entitled *"How we carry out a safeguards investigation"*.<sup>18</sup> The Guidance states: *"The General Agreement on Tariffs and Trade (GATT) provides further guidance on the use of safeguard measures in Article XIX (Emergency Action on Imports of Particular Products) and the Agreement on Safeguards. We must keep in mind international arrangements which the UK is a party to and this includes WTO rules."*

Consequently, in interpreting and applying the UK Safeguards Regulations and conducting the Transition Review, TRID must also have regard to its obligations under the WTO Safeguards Agreement and its interpretation in relevant WTO jurisprudence.

## Imports of the relevant goods did not increase materially during the period of investigation

### The relevant tests

As set out in the UK Safeguard Regulations, the first test to be applied by TRID in deciding whether to continue or revoke the TRQs is the increased quantities test. In particular, it is necessary for TRID to establish whether:

1. The category 20 and 21 products were imported into the UK in increased quantities, in terms of absolute or relative volumes, during the EU's POI of 2013-2017; and
2. Whether any increase in quantity imported is significant during the POI.<sup>19</sup>

The UK Safeguard Regulation does not provide a precise definition of what constitutes a "significant" increase in the imports of goods, beyond that TRID should pay regard to the rates and volume of the imports and foreseeability.<sup>20</sup>

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<sup>16</sup> Article OTH.4, Heading 6, UK-EU The Trade and Cooperation Agreement

<sup>17</sup> Article OTH.4a, Heading 6, UK-EU The Trade and Cooperation Agreement

<sup>18</sup> Department of International Trade Guidance, *"How we carry out a safeguards investigation"*, found here: <https://www.gov.uk/government/publications/the-uk-trade-remedies-investigations-process/how-we-carry-out-a-safeguards-investigation>

<sup>19</sup> Paragraph 1 of Schedule 5 to the Taxation (Cross-Border Trade) Act 2018 and Part 2 of the Safeguard Regulations.

<sup>20</sup> Regulation 5 of the Safeguard Regulations

Accordingly, in undertaking this analysis TRID should be guided by the wording of Article 4.2 of the WTO Safeguards Agreement, which states in relevant part: “*the competent authorities shall evaluate all relevant factors of an objective and quantifiable nature (...) in particular, the rate and amount of the increase in imports of the product concerned in absolute and relative terms, the share of the domestic market taken by increased imports ...*”<sup>21</sup>

TRID should also be guided by the jurisprudence concerning the interpretation of the terms “rate and amount of increase in imports”. In particular, the panel in *Argentina – Footwear* stated that:

*“[W]e recall Article 4.2(a)’s requirement that ‘the rate and amount of the increase in imports’ be evaluated. In our view this constitutes a requirement that the intervening trends of imports over the period of investigation be analysed. We note that the term ‘rate’ connotes both speed and direction, and thus intervening trends (up or down) must be fully taken into consideration. Where these trends are mixed over a period of investigation, this may be decisive in determining whether an increase in imports in the sense of Article 2.1 has occurred. In practical terms, we consider that the best way to assess the significance of any such mixed trends in imports is by evaluating whether any downturn in imports is simply temporary, or instead reflects a longer-term change.”* (emphases added).<sup>22</sup>

The view of the panel was upheld by the Appellate Body. It stated notably, that , “we do not dispute the Panel’s view and ultimate conclusion that **the competent authorities are required to consider the trends in imports over the period of investigation (rather than just comparing the end points)** under Article 4.2(a).” (emphasis added).<sup>23</sup>

In terms of practical economic analysis, these statements highlight the importance of measuring the trend of imports over the period of investigation, and verifying whether changes reflect temporary fluctuations or are indicative of a longer-term change.

### Findings against the increased quantities test

To evaluate this, we have analysed the Eurostat import data for category 20 and 21 products that was reviewed by DIT when deciding to continue the imposition of safeguard measures, taking into account relevant factors such as exempt countries. Based on these data, we find that:

- There is no evidence of importation in increased quantities as required by the Safeguard Regulations, and the requirement of Article 4.2 of the WTO Safeguards Agreement.
- For category 20 products, there was no major change in import levels between 2013 and 2017. There were some year-to-year fluctuations within that period with increases followed by immediate declines.

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<sup>21</sup> WTO Agreement on Safeguards

<sup>22</sup> Panel Report, *Argentina – Footwear* (EC), para. 8.159

<sup>23</sup> Appellate Body Report, *Argentina – Footwear* (EC), para. 129.



- For category 21, the trend in imports also remained flat between 2013-17, with minor changes in the level of imports from year to year.

### There was no sustained increase or upwards trend in imports of category 20 products during the POI

Category 20 products include HS codes 73063041, 73063049, 73063072, and 73063077. Data from the POI does not show that the increased quantities test has been met.

While the quantity of category 20 products imported into the UK increased in 2014 relative to 2013 and in 2016 relative to 2015, imports of these products declined again after these brief increases. Consistent with the jurisprudence on the interpretation of the expression “increased quantities”, a transient one-year increase in imports is not sufficient to conclude that imports have increased over the period in question.

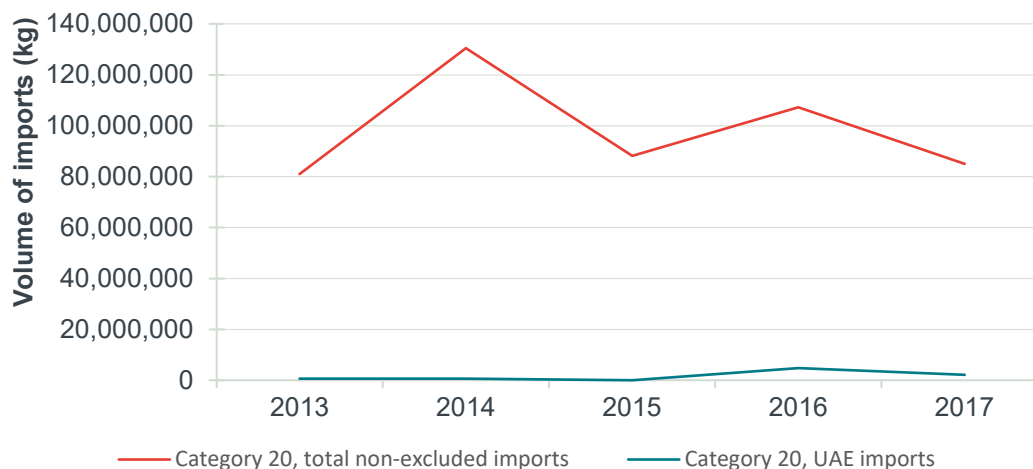
An increase in imports in one year in the data is not compelling evidence that imports have increased in general, particularly where the imports then immediately decline in the subsequent year. In the language of the panel in *Argentina – Footwear*, the upturn in imports appears to be temporary, and not reflective of a longer-term trend.

Moreover, the general trend in imports over the period is flat. Overall non-excluded imports into the UK of category 20 products averaged 98.4 million kg per year over the POI, with annual levels of imports varying slightly around this average. While import volumes for category 20 are marginally higher at the end of the investigation period than at the start (85.1 million kg in 2017, compared to 80.8 million kg in 2013), in line with the Appellate Body’s statement that it is the trend that should be considered, and not the end points (i.e. not “an absolute increase”), we find that the data do not suggest a discernible increasing trend over the period but rather that products are imported at consistent volumes that may be subject to idiosyncratic fluctuations.

Taken as a whole, the available data does not suggest a material, sustained or significant increase in imports in the period 2013-17, as illustrated in Figure 1 below. An accurate characterisation of imports of category 20 products over the POI was that there was no discernible change in the trend in imports, and that there is no evidence that imports increased over the POI.

As such, the increased quantities thresholds contained in Regulations 4, 5 (steps 1 and 2 as explained above) and 49(4) of the Safeguard Regulations have not been met and therefore the TRQs on imports for category 20 products should be revoked.

**Figure 1 Total and UAE imports of category 20 products, 2013-17**



Source: Frontier calculations, based on Eurostat data

### There was no sustained increase or upwards trend in imports of category 21 products during the POI

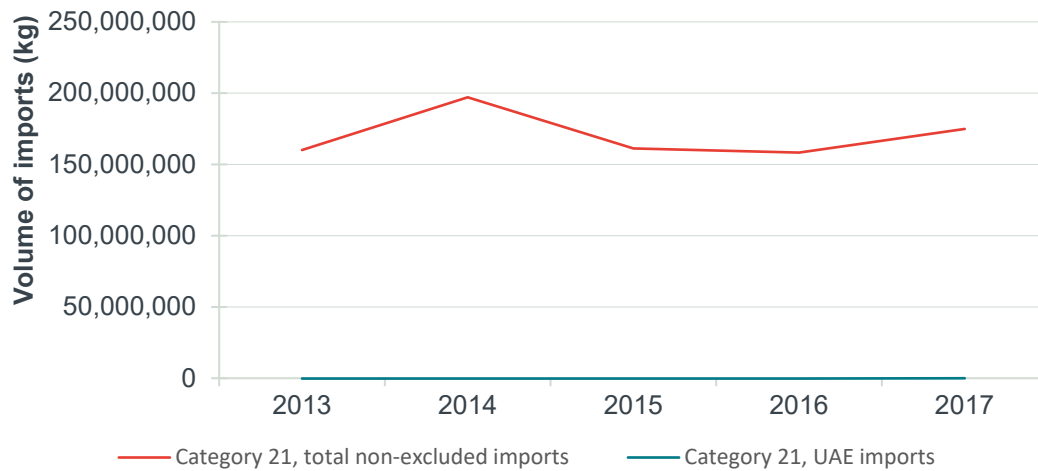
Category 21 products include HS codes 73066110, 73066192, and 73066199. As was the case with category 20 products, the POI does not show that the increased quantities test has been met for category 21. The overall trend in imports was flat over this period, and small increases relative to previous years in 2014 and 2017 likely reflects idiosyncratic variation and is not sufficient to conclude that imports of category 21 products have increased over the POI. In the language of the panel in *Argentina – Footwear*, the upturn in imports appears to be temporary, and not reflective of a longer-term trend.

Imports of category 21 products from non-excluded countries averaged 170.2 million per year over the POI, with small fluctuations around this average from year to year. A minor increase in imports in 2014 relative to 2013 was immediately followed by an equivalent drop in 2015. Similarly, a slight increase in imports in 2017 relative to 2016 appears to be a random and temporary variation based on the trend over the period. Overall, there is no upwards trend in imports of category 21 products over the POI, with imports instead varying slightly up and down around a central average..

While import volumes for category 21 are marginally higher at the end of the investigation period than at the start (174.8 million kg in 2017, compared to 160.1 million kg in 2013), again it is the trend that should be considered and not just the end points. This is illustrated in Figure 2 below.



**Figure 2 Total and UAE imports of category 21 products, 2013-17**



Source: Frontier calculations, based on Eurostat data

In sum, there is nothing in the import data to suggest a material, sustained or significant increase in imports in the period 2013-17

It follows that the increased quantities thresholds contained in Regulations 4, 5 (steps 1 and 2 as explained above) and 49(4) of the Safeguard Regulations have not been met and therefore the TRQs on imports for category 21 products should be revoked.

**Imports of the relevant goods from the UAE were less than 3% of total imports over the POI and therefore should trigger the developing country exception.**

In respect of developing countries, the UK cannot impose a safeguard measure on products originating from a developing country member of the WTO whose imports account for 3% or less of the total imports of those goods into the UK ("low volume exporters"). This exception applies providing that the collective volume of all the low volume exporters of the goods concerned is no more than 9% of the total imports into the UK (the "developing country exception").

The developing country exception is set out in Article 9(1) of the WTO Safeguard Agreement, and given effect in UK law by the Safeguards Regulations.<sup>24</sup> UK legislation provides that, where TRID was making the initial determination to transition EU steel safeguards, the determination must exclude:

"goods originating from a developing country member of the WTO that is a low volume exporter provided the imports, during such periods as the TRA [TRID] determines **appropriate**, from all such members who are low volume exporters collectively account for no more than 9 per cent. of the total imports of such goods into the United Kingdom."<sup>25</sup> (Emphasis added)

<sup>24</sup> Regulation 43 of the Safeguard Regulations

<sup>25</sup> Regulation 46(7) of the Safeguard Regulations

### Findings in favour of the developing country exception

As noted in the section above, imports of category 20 and 21 products during the POI do not meet the increased quantities test, and therefore the TRQs for these products should be revoked.

However, even if this were not the case, imports from the UAE during the POI should be subject to the developing country exception as they fall below the 3% threshold for both categories of products, while imports from all exempt low volume countries similarly account for far less than 9% of total imports of these products into the UK.

Based on our review of the Eurostat data, we find that:

- For category 20 products, imports from the UAE have remained low, averaging less than 2% over the period. A minor increase in the period 2015-2016 appears to reflect a temporary fluctuation and is not reflective of a trend.
- For category 21, imports were very limited over the period of investigation, averaging close to 0%, with no fluctuation or discernible trend.

### Imports of category 20 products from the UAE during the POI meet the developing country exception

There were very limited imports of category 20 products from the UAE in the period 2013-17, and data from the POI shows that these imports fall within the threshold for the developing country exception.

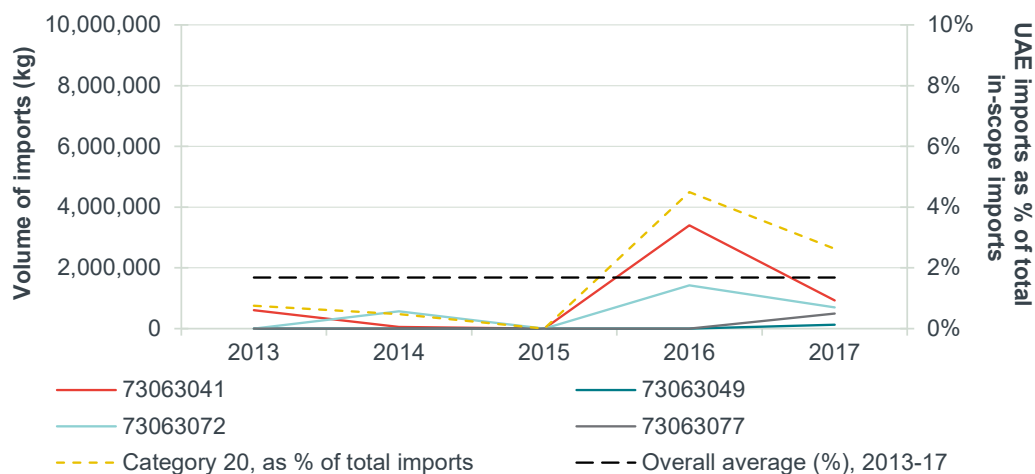
Imports for the whole period for category 20 from the UAE were low – representing around 1.7% of all category 20 imports to the UK. Indeed, looking at individual years, imports of the relevant products were near zero from 2013-2015. There was a brief increase in imports in 2016, largely driven by an increase in imports of HS code 73063041. This increase was largely reversed in 2017 when imports fell substantially. Over the whole period, average annual imports of category 20 products from the UAE was ca. 1.66 million kg, or approximately 0.41 million kg per quarter. Imports from other excluded countries which received a developing country exception were similarly negligible over the POI, averaging less than 0.09 million per year, meaning that total imports from excluded countries also fell well below the relevant threshold.<sup>26</sup>

Taken as a whole, imports from the UAE fell below the relevant threshold over the POI. This is illustrated in Figure 3 below.

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<sup>26</sup> This is based on analysis of Eurostat data using the list of excluded countries provided to us by DIT.

**Figure 3 Imports of category 20 products from the UAE, 2013-17**



Source: Frontier calculations, based on Eurostat data

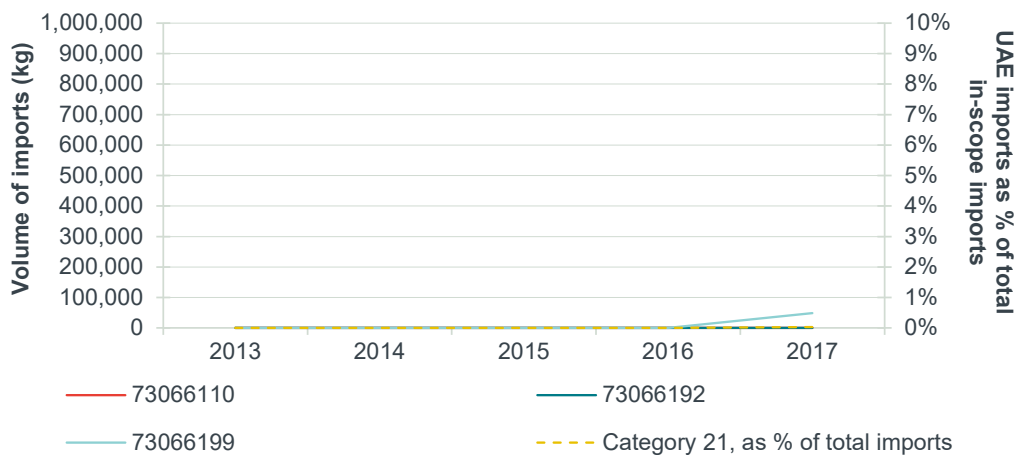
It follows that, even if the TRQs were not revoked, the UAE meets the developing country exception for category 20 products based on the data for the POI, and imports from the UAE should therefore not be subject to the TRQs.

### Imports of category 21 products from the UAE during the POI meet the developing country exception

As was the case with category 20 products, data from the POI shows that imports of category 21 products from the UAE fell within the threshold for the developing country exception.

There were almost no imports of these products from the UAE over the period 2013-2017. While imports increased from zero in 2013-2016 to a very small amount in 2017, this increase was negligible and likely reflects idiosyncratic variation. In total, ca. 0.05 million kg of category 21 products were imported from the UAE over the POI, all of which were imports of HS code 73066199 in 2017. This represented ca. 0.03% of UK imports of category 21 products in 2017, and less than 0.01% of imports of category 21 products from 2013-17. Furthermore, there were no imports from other excluded countries which received a developing country exception over the POI, meaning that total imports from all excluded countries also fell well below the relevant threshold. This is illustrated in Figure 4 below.

**Figure 4 Imports of category 21 products from the UAE, 2013-17**



Source: Frontier calculations, based on Eurostat data

It follows that, even if the TRQs were not revoked based on the increased quantities test, the UAE nevertheless meets the developing country exception for category 21 products based on the data for the POI, and imports from the UAE should therefore not be subject to the TRQs.

The appropriate period for determining the developing country exception

TRID has used 2019 data to consider whether the UAE should be granted a developing country exception. The choice of 2019, when the POI was 2013-2017 is, we understand, because the European Commission had used 2019 data to determine developing country exceptions at the time these safeguard measures were transitioned.

We consider that it was “appropriate” – “rational” in public law terms - for TRID to use import data for 2019, when the POI was from 2013-17, as the relevant period for the developing country exception, particularly given the fact that imports of both category 20 and 21 products during the POI were under the 3% threshold. As mentioned above, imports of category 20 products from the UAE amounted to only 1.7% of in-scope imports over the POI, while imports of category 21 products from the UAE amounted to less than 0.01% of imports over the POI, and both of these categories fall within the 3% threshold for the developing country exception.

In addition, the use of 2019 data to determine the developing country exception is not intellectually coherent with the rest of the investigation given that the POI covered the period 2013-2017, and that the entire economic logic of safeguard action is based on detecting a causal link between imports in a period and damage caused, the aim of the safeguard being to remedy the damage. We therefore submit that the appropriate period for considering the developing country exception was the POI.

## Did imports of the relevant goods cause or threaten to cause serious injury to domestic producers

TRID should only go on to consider the impact of imports of category 20 and 21 products on domestic industry if the increased quantities test has been met. As explained above, the import data are compelling in demonstrating that the test has not been met. Moreover, we also submit that imports from the UAE have not exceeded

Nonetheless, for completeness we consider whether the imports of the relevant goods were able to cause or threaten to cause serious injury to domestic producers.

The relevant cumulative tests are set out in Regulation 49(4) of the Safeguard Regulations.

The WTO Safeguards Agreement is also relevant in interpreting Regulation 49(4) of the Safeguard Regulations. The wording of Article 4.2 of the Safeguards Agreement places the investigation into the rate and amount of any increase in imports as a key step in the analysis of whether imports cause or threaten to cause serious injury. The causality between trends and injury is therefore critical. In *Argentina- Footwear*, the panel stated that:

*As noted above we consider that this language means that the trends – in both the injury factors and the imports – matter as much as their absolute levels. In the particular context of a causation analysis, we also believe that this provision means that it is the relationship between the movements in imports (volume and market share) and the movements in injury factors that must be central to a causation analysis and determination<sup>27</sup>. The Appellate Body upheld this view.*

Moreover, the jurisprudence also highlights the stringency of the causal test that needs to be met to yield a finding of serious injury. As noted by the Appellate Body in *US-Lamb*

***"The standard of 'serious injury' set forth in Article 4.1(a) is, on its face, very high. Indeed, in United States – Wheat Gluten Safeguard, we referred to this standard as 'exacting'. Further, in this respect, we note that the word 'injury' is qualified by the adjective 'serious', which, in our view, underscores the extent and degree of 'significant overall impairment' that the domestic industry must be suffering, or must be about to suffer, for the standard to be met"***<sup>28</sup> (emphasis added).

## The absence of a trend increase in imports of the relevant products means the causal analysis required for a finding of injury cannot be sustained

As reported in the previous section, the data provide no indication of a trend towards significant increased imports. That in turn would suggest that the first limb of the causal test required to comply with the provisions of the WTO Safeguards Agreement does not hold: if there is no trend increase in imports, causality between such a trend and damage factors cannot be demonstrated.

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<sup>27</sup> Panel Report, *Argentina – Footwear (EC)*, para. 8.237

<sup>28</sup> Appellate Body Report, *US – Lamb*, paras. 124 and 126.

### Qualitative information from domestic producers show little evidence of a causal relationship between imports and performance

However, for completeness we also consider further if the “movements” in imports over the period of investigation suggest there is likely to have been any serious injury or threat of such to domestic producers of these goods from imports of the relevant products.

There appear to be 4 main producers of steel pipes and tubes in the UK, based on membership of UK Steel.<sup>29</sup> These are the key domestic manufacturers which could in theory be affected by the imports during the POI, although not all of these manufacturers will necessarily produce the relevant products in categories 20 and 21:

- **Tata Steel**, which produces HFI steel pipe in County Durham and steel tubes in Northamptonshire;
- **Liberty House Group**, which produces steel line pipes and large diameter steel pipes in County Durham, precision ERW steel tubes in Oldbury, and cold drawn welded and cold drawn seamless precision steel tubes in West Bromwich. Hub Le Bas Ltd, which is a major distributor of steel tubes in the UK, also appears to be a part of the Liberty House Group.<sup>30</sup>
- **Marcegaglia**, which produces electro-welded carbon steel tubes in Dudley & Rotherham; and
- **HDM Tubes Ltd**, which produces Large OD spiral pipes & piles in Cardiff.

Tata Steel,<sup>31</sup> Liberty Group,<sup>32</sup> and Marcegaglia<sup>33</sup> are all major global steel manufacturers, with Tata ranked in the top 10 Steel producers by output worldwide in 2019.<sup>34</sup> Detailed annual reports for Liberty Group and HDM Tubes Ltd are unavailable as these are private companies. However, we have reviewed the annual reports for Tata Steel UK Limited for the year ended 31 March 2020 and Marcegaglia Steel for the year ended 31 December 2019. These reports covered a period which included a rise in imports from the UAE for categories 20 and 21 observed in 2019 (which it is worth noting lies outside of the POI, but can help illustrate company views to changes in import levels).

- While the Tata Steel UK Limited 2019/20 annual report noted that revenue from operations was 11% lower than the previous year, it attributed this to lower steel demand within the European market, as opposed to pressure from foreign imports.<sup>35</sup> Furthermore, the report noted a number of principal risks and uncertainties, but none of these appear to relate specifically to competition from imports in the UK.<sup>36</sup>

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<sup>29</sup> See “UK Steel Sites & Statistics 2<sup>nd</sup> Edition 2018”, published by UK steel. List of Tube and Pipe manufacturers are on page 12.

<sup>30</sup> Hub le Bas is majority owned by Sanjeev Gupta, the CEO and chairman of the group that owns Liberty Group. See <https://find-and-update.company-information.service.gov.uk/company/09899350/persons-with-significant-control> and <https://libertysteelgroup.com/news/hub-le-bas-bouncing-back-to-uk-top-spot/>.

<sup>31</sup> <https://www.tatasteeleurope.com/ts/about-us/at-a-glance>

<sup>32</sup> <https://libertysteelgroup.com/about/>

<sup>33</sup> <https://www.marcegaglia.co.uk/global-player/>

<sup>34</sup> <https://www.worldsteel.org/steel-by-topic/statistics/top-producers.html>

<sup>35</sup> See Tata Steel UK Limited Annual Report 2019-20, page 4.

<sup>36</sup> See Tata Steel UK Limited Annual Report 2019-20, page 5.

- The Marcegaglia Steel 2019 annual report noted that performance of the welded steel tube division was positive overall in Europe, increasing its market share in the EU to 13.7%, up from 13.0% in the previous year.<sup>37</sup> It noted that the introduction of safeguard measures reduced imports from 2 million tonnes in 2018 to 1.7 million tonnes in 2019.<sup>38</sup> However, despite this change in imports, Marcegaglia production of welded tubes was largely unchanged from previous years, with 1,247 million tonnes shipped in 2019 compared to 1,226 million tonnes shipped in 2018.<sup>39</sup> This means that the rise in European market share is not attributable to an increase in demand for Marcegaglia goods resulting from lower foreign imports, but rather that the reduction in foreign imports reduced the overall size of the market. Taken together, there is nothing to imply from this report that higher levels of foreign imports in general would represent a material harm to Marcegaglia in welded steel tubes, and the report does not highlight imports from third countries as a substantial risk.

Overall, nothing in either annual reports suggested a causal relationship between imports and measures of firm production and profitability. This in turn suggests that the high threshold for a finding of serious injury to Tata Steel UK Limited or Marcegaglia from foreign imports in general or imports from the UAE in particular cannot be met.

Based on our understanding of domestic production of these products in the UK, there is no prospect of serious harm to UK producers from imports of category 20 and 21 products

As already observed, the focus of the causal analysis is on the relationship between imports and the commercial performance characteristics, including production and sales of domestic producers. In general, detailed manufacturing data in the UK do not match the degree of detail available for trade data. The most granular publicly provided data on domestic production comes from the Annual Business Survey (“ABS”) published by the ONS, which are derived from survey responses from UK registered companies. However, these data are only available at the 4-digit SIC level, which is not detailed enough to draw conclusions about the products in question.

As a result, to assess the potential impact on domestic production we turn to the export data as a suitable proxy for domestic production for these goods. Export statistics effectively serve as a lower bound for domestic production. That is to say, a manufacturer can produce output both for export and domestic consumption. Exports are a lower bound in the sense that production is at least equal to these (if sales on the domestic market are nil).

It is our understanding that in reality the significant majority of category 20 and 21 products produced in the UK are produced exclusively for export. As a result, any level of imports of these products is unlikely to impact domestic producers, as UK producers are not actually competing domestically in the UK for sales.

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<sup>37</sup> See Marcegaglia Financial Statement 2019, page 29.

<sup>38</sup> Ibid.

<sup>39</sup> Ibid.



For completeness, we have summarised the global imports of category 20 products relative to UK exports in Figure 5 below. While the UK exports less of this category than it imports, the UK exports a relatively minor amount of category 20 products overall which suggests production of these products in the UK is limited. Furthermore, as noted above we understand that these products are largely produced by the UK for export. As a result, even though the UK was a net importer of these products over the POI, imports are unlikely to be competing with domestic production and there is limited prospect of harm to UK producers.

**Figure 5 Value of global imports relative to UK exports of category 20 products, 2013-17**

	<b>Global Imports into the UK (EUR)</b>	<b>UK exports to world (EUR)</b>
2013	55,258,887	31,537,655
2014	85,981,589	33,956,061
2015	63,661,308	33,475,924
2016	67,247,078	25,068,724
2017	65,618,048	41,071,032
<b>Total 2013-17</b>	<b>338,766,910</b>	<b>165,109,396</b>

Source: Frontier calculations, based on Eurostat data. Note that global imports in this figure includes a small value of imports from excluded countries.

The UK is a much larger exporter of category 21 products than category 20 products, and production of these goods appears to be more significant in the UK. This is summarised in Figure 6. While the UK was a net exporter of these products over the POI, imports are still relatively large when compared to exports in the UK. However, as again we understand that these products are largely produced by the UK for export, imports are unlikely to be competing with domestic production and there is limited prospect of harm to UK producers of category 21 products.

**Figure 6 Value of global imports relative to UK exports of category 21 products, 2013-17**

	<b>Global imports into the UK (EUR)</b>	<b>UK exports to world (EUR)</b>
2013	118,663,867	163,059,985
2014	131,415,940	175,194,363
2015	112,305,342	164,144,657
2016	93,715,391	125,488,987
2017	121,823,521	162,422,152
<b>Total 2013-17</b>	<b>577,924,061</b>	<b>790,310,144</b>

Source: Frontier calculations, based on Eurostat data. Note that global imports in this figure includes a small value of imports from excluded countries.

For the above reasons, imports of category 20 and 21 products appear unlikely to satisfy the requirements for serious injury to UK producers, as required by Regulation 49(4)(b) of the Safeguard Regulations; and, as a result, the TRQs on imports of category 20 products should be revoked.

Based on UK export data, UAE imports in particular appear unlikely to have had a material effect on UK producers of category 20 products

As noted above, production of category 20 products in the UK appears to be limited as the UK exports a relatively minor amount of category 20 products overall. However, the value of UK exports was still significantly larger than the imports of these same products from the UAE over the POI. This suggests that UAE imports in particular appear unlikely to be able to impact UK producers, which reinforces the point that UAE imports of category 20 products are *de minimis* and should not be subject to the TRQs.

Overall, the UAE imports cannot be found to satisfy the requirements for serious injury to UK producers as:

- If UK producers also sell significant quantities of category 20 products domestically, the scale of UK production is significantly larger than UAE imports and should therefore not be materially affected; or
- If the UK largely produces these goods for export, which we understand to be the case, then UK producers are not competing with UAE imports domestically and should not be injured by them.

The UK's exports of category 20 products in 2013-17 was limited, averaging EUR 33 million per year for a total of EUR 165 million worth of exports over the whole period. This is still significantly larger than the value of UAE category 20 products imported over the same period, which averaged EUR 1 million per year for a total of EUR 5 million from 2013-17. Overall, the value of category 20 product imports from the UAE into the UK represented only 3% of the value of the UK's exports of these same goods from 2013-17. This is reflected in Figure 7 below.

**Figure 7 Value of UAE imports relative to UK exports of category 20 products, 2013-17**

	UAE Imports into the UK (EUR)	UK exports to world (EUR)	UAE imports relative to UK exports
2013	416,473	31,537,655	1%
2014	470,626	33,956,061	1%
2015	5,837	33,475,924	0%
2016	2,578,338	25,068,724	10%
2017	1,510,991	41,071,032	4%
<b>Total 2013-17</b>	<b>4,982,265</b>	<b>165,109,396</b>	<b>3%</b>

Source: Frontier calculations, based on Eurostat data.

This suggests that UAE imports were largely insignificant relative to the scale of domestic production in the UK from 2013-17, and are unlikely to have been capable of injuring domestic producers. If any of the category 20 products produced by UK manufacturers were consumed domestically between 2013-17, then UAE imports represent even less than 3% of UK manufacturing of these goods over the period in question.

Based on UK export data, UAE imports in particular appear unlikely to have had a material effect on UK producers of category 21 products

The same holds true for category 21 products, where UK production appears to eclipse UAE production and imports by a large amount. The UK is a much larger exporter of category 21 products than category 20 products. Based on UN Comtrade data, the UK was the 23<sup>rd</sup> largest exporter of HS code 730661 products globally in 2019, which is the best available proxy for category 21 exports in the UN data. By comparison, the UAE was the 157<sup>th</sup> largest exporter of these goods in 2019, with the UAE’s global exports equal to less than 4% of the UK’s in terms of value.<sup>40</sup> Overall, it appears unlikely that UAE imports could have caused serious injury to UK producers, as:

- If any UK production is consumed domestically, the scale of UK production is significantly larger than UAE imports into the UK; and
- In the event that these goods are produced in the UK almost exclusively for export, as we understand they were, UK production is still significantly larger than UAE imports and UK producers would also not be competing with UAE imports domestically and should not be harmed by them.

The UK was a significant exporter of category 20 products in 2013-17, averaging EUR 158 million per year for a total of EUR 790 million worth of exports over the whole period. This is significantly larger than the value of UAE category 21 products imported over the same period, of which only EUR 0.03 million were imported over the whole period (all in 2017). This is reflected in Figure 8 below.

**Figure 8     Value of UAE imports relative to UK exports of category 21 products, 2013-17**

	UAE Imports into the UK (EUR)	UK exports to world (EUR)	UAE imports relative to UK exports
2013	0	163,059,985	0%
2014	0	175,194,363	0%
2015	0	164,144,657	0%
2016	0	125,488,987	0%
2017	32,477	162,422,152	0%
<b>Total 2013-17</b>	<b>32,477</b>	<b>790,310,144</b>	<b>0%</b>

Source: Frontier calculations, based on Eurostat data.

This demonstrates that UAE imports were completely insignificant relative to the scale of domestic production in the UK from 2013-17, with imports from the UAE functionally equivalent to 0% of UK exports (and therefore UK production).

Conclusion

Overall, there has not been a material or sustained increase in imports of category 20 and 21 products during the POI, with imports of these goods being steady over the relevant period. Accordingly, the requirements of Regulation 49(4) of the Safeguard Regulations interpreted in the light of the Safeguards Agreement,

<sup>40</sup> Based on UN Comtrade data for exports of HS code 730661 in 2019. See <https://comtrade.un.org/data>.

specifically the finding of a significant increased trend in imports, are not met. That in turn suggests that the causal test between increased imports and serious injury cannot be satisfied. As a result of both of these findings, the TRQs on imports from the UAE of category 20 and 21 products should be revoked.

Furthermore, imports of category 20 and 21 products from the UAE during the POI fell well below the relevant threshold for the developing country exception. As a result, even if the TRQs were not revoked, the UAE should receive an exception to the TRQs as a developing country. The POI, rather than 2019, was the relevant period for the developing country exception.

A finding of serious injury is also impaired by our understanding that UK producers largely produce these products for export, meaning that they are largely not competing with imported products in categories 20 and 21. Furthermore, the relative size of UAE imports and UK production evidences that UAE imports are very small relative to UK production. Imports of category 21 products appear to be negligible relative to the size of UK domestic production of these products, which would suggest any imports from the UAE in particular are unlikely to injure these domestic producers. Similarly, while domestic production of category 20 products appears to be limited relative to production of category 21 products, UK production of these goods was still significantly larger than UAE imports during the POI.