

UK Steel Application for Reconsideration TF0006 – Steel Safeguards

Introduction:

This is an application made by UK Steel under regulation 10 of the Trade Remedies (Reconsideration and Appeals) (EU Exit) Regulations 2019 (hereafter referred to as the Reconsideration Regulation) for reconsideration of certain parts of the Recommendation to the Secretary of State regarding “Transition review TF0006 – Safeguard measure on certain steel products” published by the Trade Remedies Authority on 11 June 2021.

This document provides the necessary information required for the opening of a reconsideration and does not represent the totality of information that UK Steel will provide in support of the points made below. Further submissions will be made in due course and we are advised that the TRA will also proactively seek the information it requires to carry out its reconsideration.

The TRA's recommendation was for the continuation of safeguard measures on 10 of the 19 product categories, with a revocation of the other nine. This application for reconsideration concerns the TRA's recommendation to revoke measures on seven product categories namely:

- 6 (Tin Mill Products),
- 7 (Non-Alloy and Other Alloy Quarto Plates),
- 12 (Non-Alloy and Other Alloy Merchant Bars and Light Sections),
- 16 (Non-Alloy and Other Alloy Wire Rod),
- 17 (Angles, Shapes and Sections of Iron and Non-Alloy Steel),
- 27 (Non-Alloy and Other Alloy Cold Finished Bars) and
- 28 (Non-Alloy Wire).

We believe the TRA's recommendation to discontinue the measures on these seven product categories was wrong and suffered from errors of a factual and legal nature, as well as a being the result of an overly stringent analytical process not explicitly required by the Trade Remedies (Increase in Imports Causing Serious Injury to UK Producers) (EU Exit) Regulations (hereafter referred to as the Safeguard Regulation) particularly in relation to the Transitional Provisions.

Furthermore, the TRA's recommendation coming before the EU's decision to maintain its own steel safeguards in their entirety for three years, was unable to fully take into account the impact that this would have on trade diversion to the UK and subsequent injury to UK industry. Importantly, the Secretary of State's statement announcing a one-year extension of measures to five of those seven product categories explicitly advises that this EU decision now be taken into account.

For product category 19 (Railway Material), we agree with the TRA's recommendation to extend the measures for three years, but disagree with the new quota size set. It is evident this has been calculated based on an incorrect dataset as a result of a seemingly misplaced decimal point in HMRC data. We therefore ask the TRA to recognise this as an obvious error and recalculate the quota size accordingly.

The three conditions to make a reconsideration application, listed in regulation 10(5) of the Reconsideration Regulation, are met: (i) the applicant is eligible to apply, under regulation 9 of the Reconsideration Regulation; (ii) the applicant has given the grounds for the application; and (iii) the applicant has described the outcome sought. Furthermore, the application is made within a month of

the publication of the Recommendation and so is served in good time in accordance with regulation 10(2) of the Reconsideration Regulation.

Criteria for the appeal:

I. ELIGIBILITY TO APPLY FOR RECONSIDERATION

Under regulation 9(6) of the Reconsideration Regulation an ‘interested party’ is eligible to apply for reconsideration of a decision listed in paragraph (1), this includes the Recommendation as it was a recommendation to the Secretary of State made under Regulation 51(1) of the Trade Remedies (Increase in Imports Causing Serious Injury to UK Producers) (EU Exit) Regulations 2019. An “interested party” is defined under regulation 2 of both the Reconsideration Regulation and the Safeguard Regulation as encompassing “a trade or business association of UK producers of the like goods or directly competitive goods” which would include UK Steel. Hence, UK Steel is eligible to apply to have certain parts of the Recommendation reconsidered by the TRA.

II. GROUNDS FOR RECONSIDERATION

1. The TRA recommended category 6 for revocation on the basis that the increase in UK imports was not significant. This application for reconsideration of this decision is made on the grounds that:
 - The Safeguard Regulation, in setting out the criteria to be met in this transition review, do not require a consideration of whether an increase was significant.
 - Even if the TRA determines that assessing significance is relevant, it is not required to do so at the individual product category level and given the interrelatedness of the products, it is more appropriate to assess significance at the global (all steel products) or product family level (Long, flat and tubes)¹.
 - Even if the TRA determines that assessing significance at the individual product category is relevant/necessary, the TRA has substantial discretion in what it considers significant and it should use that here. Given the likely impact on industry of removing the measures, particularly in light of EU safeguards extension, a relative and contextual assessment of significance is both necessary and justified.
 - In accordance with WTO case law, whether an increase is significant is not absolute but depends on the context. The TRA erred in treating it as a matter of the absolute increase in imports. To the contrary, “significance” must be judged in the context of a number of factors including: the domestic industry’s vulnerability, the likelihood of continued and/or further increase in imports (particularly in light of the EU extension of safeguards), developments in the size of the UK market, UK industry market share, and the impact that a revocation would have on other, interrelated, product categories.
 - Ultimately, the TRA erred in its decision to use a ‘significance of the increase in imports’ test, conducted on an individual product category level, without due consideration of wider context, as a standalone assessment as the basis for recommending a revocation of measures.
 - In addition to these points, the TRA’s conclusion that the 16-20%² absolute increase in imports seen between 2013 and 2016 does not constitute a significant increase is seriously questionable. An examination of safeguard measures implemented elsewhere (not least the EU steel safeguards) would demonstrate that an absolute

¹ The European Commission established the definitions of ‘global’ and ‘product family’ in its own 2018 investigation into steel safeguards. Commission Implementing Regulation 2018/1013

² 16% increase in imports based on HMRC data not including below threshold trade, 20% increase in imports based on HMRC data including below threshold trade.

increase of this size is considered significant enough to warrant the introduction of safeguards. Once the increase in imports relative to production and market size are also considered, the TRA's determination in this respect is even more questionable.

2. The TRA recommended categories 7 and 28 for revocation on the basis the data was not provided to demonstrate the likelihood of serious injury on an individual product category basis. This application for reconsideration is made on the grounds that:
 - Regulation 49(4)(b) of the Safeguard Regulation does not explicitly require injury analysis to be done at product category level. Given the interconnectivity of the various steel products, analysis conducted at a global or product family level is more suitable.
 - The TRA should have enough information on injury (at the global and individual category level) to reasonably infer any missing injury elements/values for these categories (given the interrelatedness of the product categories).
 - Even if the injury analysis is done at the product category level, the TRA has been furnished with enough data to demonstrate serious injury. It is clearly sufficient for TRA to find that the impact of increased imports (or the likely impact of future increased imports) in certain of the elements enumerated in regulation 8(3) of the Safeguard Regulation was (or will likely be) sufficient to cause serious injury to the domestic producers' overall operations.
 - New facts are available to demonstrate an increased likelihood that imports would increase in the absence of measures and therefore an increase likelihood of serious injury to UK producers resulting from trade diversion due to the EU safeguards extension.
 - With respect to Product Category 7 – the TRA was made aware of the difficulty of the UK plate producer providing injury data pertaining to the period prior to 2016 on the basis that it did not own or run the plant before this date. The TRA were also made aware of the closure of one plate mill (Scunthorpe) and the mothballing of a second (Dalzell) during the period of investigation and seemingly did not take this into account in its injury analysis.
 - UK Steel will be providing additional data on serious injury for categories 7 and 28 in a subsequent submission. Further explanation of why this information was not provided during the transition review will be provided alongside this data submission.
3. The TRA recommended category 12 for revocation on the basis that there was no increase in imports or no significant increase in imports (the TRA's final determination is ambiguous). This application for reconsideration is made on the grounds that:
 - The TRA found a relative increase in imports and no adequate justification was given why this was not considered sufficient to provide an extension, when it would have been permissible under the Safeguard Regulation.
 - The TRA erred in its rejection of the use of 'below threshold trade allocations' (BTТА) data available from HMRC in assessing the increase in imports. In doing so the TRA has underestimated the actual level of imports into the UK during the period of investigation and, in the case of category 12, has therefore wrongly concluded that there was no absolute increase in imports. UK Steel will be providing additional evidence and detail to demonstrate that any assessment of import levels into the UK between 2013 and 2017 must take account of BTТА data and that doing so demonstrates significantly higher levels of imports than the TRA has concluded.
 - Importantly, in rejecting the use of BTТА data from HMRC the TRA failed in its legal responsibility, set out under Regulation 19(2) of the Safeguard Regulation, to "publish its reasons for rejection in the statement of intended final determination (see regulation 29) or, where such information is rejected after the statement of intended final

determination has been published, in the final affirmative or final negative determination.” Given the TRA had rejected the use of such data at the time of its publication of its Intended Final Determination (demonstrated by its conclusions based exclusively on the use of HMRC data excluding BTTA), it had a legal responsibility to publish the reasons for this in advance of its final determination to allow industry to adequately respond to this rejection.

- The TRA failed to base its increase in imports analysis on the trends of imports (in compliance with the World Trade Organisation (WTO) case law), and erroneously relying on a period-beginning to period-end comparison.
 - The TRA failed to take into account imports since 2017 as it is required to do by regulation 49(5A) of the Safeguard Regulation. Imports of category 12 increased by almost 20% between 2017 and 2018, with imports in 2018 11% higher than in 2013. This is even before BTTA data is considered.
 - The Safeguard Regulation, in setting out the criteria to be met for a transition review, do not explicitly require a consideration of whether an increase was significant.
 - Even if the TRA determines that assessing significance is relevant, it is not required to do so at the individual product category level and given the interrelatedness of the products, it is more appropriate to assess significance at the global (all steel products) or product family level (Long, flat and tubes).
 - Even if the TRA determines that assessing significance at the individual product category is relevant, the TRA has substantial discretion in what it considers significant and it should use that here. Given the likely impact on industry of removing the measures, particularly in light of EU safeguards extension, a relative and contextual assessment of significance is both necessary and justified.
 - In accordance with WTO case law, whether an increase is significant is not absolute but depends on the context. The TRA erred in treating it as a matter of the absolute increase in imports. To the contrary, “significance” must be judged in the context of a number of factors including: the domestic industry’s vulnerability, the likelihood of continued and/or further increase in imports (particularly in light of the EU extension of safeguards), developments in the size of the UK market, UK industry market share, and the impact that a revocation would have on other, interrelated, product categories.
 - Ultimately, the TRA erred in its decision to use a ‘significance of the increase in imports’, conducted on an individual product category level, without due consideration of wider context, as a standalone test and the basis for recommending a revocation of measures.
4. The TRA recommended category 16 for revocation on the basis that there was no increase in imports. This application for reconsideration is made on the grounds that:
- The TRA erred in its rejection of the use of BTTA data available from HMRC in assessing the increase in imports. In doing so the TRA has underestimated the actual level of imports into the UK during the period of investigation and, in the case of category 16, has therefore wrongly concluded that there was no absolute increase in imports. UK Steel will be providing additional evidence and detail to demonstrate that any assessment of import levels into the UK between 2013 and 2017 must take account of BTTA data and that doing so demonstrates significantly higher levels of imports than the TRA has concluded.
 - Importantly, in rejecting the use of BTTA data from HMRC the TRA failed in its legal responsibility, set out under Regulation 19(2) of the Safeguard Regulation, to “publish its reasons for rejection in the statement of intended final determination (see regulation 29) or, where such information is rejected after the statement of intended final determination has been published, in the final affirmative or final negative determination.” Given the TRA had rejected the use of such data at the time of its publication of its Intended Final Determination (demonstrated by its conclusions based

exclusively on the use of HMRC data excluding BTTA), it had a legal responsibility to publish the reasons for this in advance of its final determination to allow industry to adequately respond to this rejection.

- The TRA failed to base its increase in imports analysis on the trends of imports (in compliance with the World Trade Organisation (WTO) case law), and erroneously relying on a period-beginning to period-end comparison.
 - In its final recommendation, the TRA stated that it did consider whether it could adjust product categories to take account of the interrelatedness of steel products issue put forward, but the representations received suggested this was a widespread issue across the goods subject to review rather than particularly affecting one or a small number of categories. Given the TRA had demonstrably rejected the relevance of arguments about the interrelated nature of steel products at the time of its Statement of Intended Final Determination, it had a legal responsibility to set out the reasons for doing so at that stage and to allow industry the opportunity to respond in advance of the final determination. Had the TRA made it clear in advance of the final determination that it had rejected arguments concerning the interrelatedness of products at a global and product family level (long, flat, tubes) but could consider more specific cases between product categories, UK Steel and industry would have had the opportunity to respond appropriately.
 - While steel production economics and processes impact steel products as a whole, there are products that are particularly interconnected. Namely, wire rod and rebar are completely interchangeable in terms of production technology and are both produced by the same producers. They can also be substitutable in terms of their end use. Celsa Steel explained this further in its submission, but the TRA provided no reason as to why this was not considered.
5. The TRA recommended category 17 for revocation on the basis that there was no increase in imports. This application for reconsideration is made on the grounds that:
- The TRA erred in its rejection of the use of BTTA data available from HMRC in assessing the increase in imports. In doing so the TRA has underestimated the actual level of imports into the UK during the period of investigation and, in the case of category 17, has therefore wrongly concluded that there was no absolute increase in imports. UK Steel will be providing additional evidence and detail to demonstrate that any assessment of import levels into the UK between 2013 and 2017 must take account of BTTA data and that doing so demonstrates significantly higher levels of imports than the TRA has concluded.
 - Importantly, in rejecting the use of BTTA data from HMRC the TRA failed in its legal responsibility, set out under Regulation 19(2) of the Safeguard Regulation, to “publish its reasons for rejection in the statement of intended final determination (see regulation 29) or, where such information is rejected after the statement of intended final determination has been published, in the final affirmative or final negative determination.” Given the TRA had rejected the use of such data at the time of its publication of its Intended Final Determination (demonstrated by its conclusions based exclusively on the use of HMRC data excluding BTTA), it had a legal responsibility to publish the reasons for this in advance of its final determination to allow industry to adequately respond to this rejection.
 - The TRA failed to take into account imports since 2017 as it is required to do by regulation 49(5A) of the Safeguard Regulation. Imports for category 17 increased by 10% between 2017 and 2018, meaning 2018 imports were 9% higher than in 2013. This is even before BTTA data is considered.
6. The TRA recommended category 27 for revocation on the basis that there was no increase in imports. This application for reconsideration is made on the grounds that:

- In its final recommendation, the TRA stated that it did consider whether it could adjust product categories to take account of the interrelatedness of steel products issue put forward, but the representations received suggested this was a widespread issue across the goods subject to review rather than particularly affecting one or a small number of categories. Given the TRA had demonstrably rejected the relevance of arguments about the interrelated nature of steel products at the time of its Statement of Intended Final Determination, it had a legal responsibility to set out the reasons for doing so at that stage and to allow industry the opportunity to respond in advance of the final determination. Had the TRA made it clear in advance of the final determination that it had rejected arguments concerning the interrelatedness of products at a global and product family level (long, flat, tubes) but could consider more specific cases between product categories, UK Steel and industry would have had the opportunity to respond.
 - While steel production economics and processes impact steel products as a whole, there are products that are particularly interconnected. Namely, category 27 is particularly interconnected with categories 12 and 16 as it is essentially a further downstream product. Currently categories 12 and 16 have not been extended but UK Steel will be putting strong evidence forward that they should. If categories 12 and 16 are covered by safeguards but category 27 is not, then importers would simply shift to importing the finished product rather than the upstream product.
 - The fact that all three products are covered by EU safeguards, further increases the likelihood that imports would increase and that serious injury would recur to the UK industry. Given the likely impact on industry of removing the measures at a time when it is vulnerable and recovering from the effects of the pandemic, taking into account the interrelatedness factor is even more necessary and justified.
7. The TRA recommended category 19 for extension but the proposed quota is oversized. UK Steel requests that the TRA reconsider the quota size for category 19 on grounds that the calculation was skewed by an HMRC data error. (Please see British Steel submission for more detail)

III. OUTCOME SOUGHT

UK Steel submits that for categories 6, 7, 12, 16, 17, 27 and 28, the TRA should recommend that the safeguard measures are extended for a period of three years.

For category 19, UK Steel requests that amendments are made to the tariff rate quota as soon as possible to rectify a clerical error in the HMRC dataset.