August 2021

UK Steel Submission for Reconsideration TF0006 – Steel Safeguards

Introduction:

Following the application made by UK Steel on 9 July 2021 for reconsideration of certain parts of the Recommendation to the Secretary of State regarding "Transition review TF0006 – Safeguard measures on certain steel products", this submission provides more comprehensive analysis of the grounds for appeal and additional evidence in support of the points made in the UK Steel application.

The Trade Remedies Authority's (TRA) final recommendation was for the continuation of safeguard measures on 10 of the 19 product categories reviewed, with a revocation of the other nine. UK Steel has asked the TRA to reconsider its 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).

As stated in our application, 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 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) in the context of this transition/extension review as set out in the Transitional Provisions (part nine of the Safeguard Regulation).

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 listed above explicitly advises that this EU decision now be taken into account[1].

"*This will give an opportunity for the industry to appeal the recommendation made by the TRA so any new evidence can be reviewed in the context of the unique global market conditions which currently prevail.* ***This includes assessing the risk of injury arising from the EU safeguard which was published after the TRA made their decision****."* (emphasis added)

For product category 19 (Railway Material), UK Steel agrees with the TRA's recommendation to extend the measures for three years, but disagrees 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. Please refer to British Steel reconsideration application for further detail.

In addressing this application for reconsideration, the TRA should keep in mind and resolve five major over-arching issues, relating to its interpretation of the regulation and its approach to determining

[1] https://questions-statements.parliament.uk/written-statements/detail/2021-06-30/hcws136

whether safeguards must be maintained or not. UK Steel submits that the TRA did not accurately fulfil its obligation to assess whether there was an increase in imports for each specified steel product category by using a single dataset that clearly omits significant, and increasing, volumes of trade. In addition, UK Steel submits that the TRA did not explicitly need to test for significance but if decided it was relevant to do so, significance and injury would be more appropriately assessed at the global and product family level to account for product interrelatedness, industry vulnerability and the risk of trade diversion – factors which are not product specific. Even in a situation in which the TRA insists the analysis is done at the individual category level, UK Steel submits that all the appealed categories meet the requirements for an extension.

Finally, the TRA only addressed many industry arguments in its final recommendation rather than in its statement of intended final determination, therefore depriving the sector from the opportunity to respond and address any concerns or provide additional evidence. In doing so it directly contravened the Safeguard Regulations.

Part A considers cross cutting issues:

I. Assessing an increase in imports based on incomplete data
II. Defining an increase in imports and considering trends
III. Assessing a significant increase in imports
IV. Assessing injury
V. Consideration of time period since 2017

Part B considers each of the seven product categories which are submitted for reconsideration.

Part A: Cross-cutting issues

I. Assessing an increase in imports based on incomplete data:

The TRA rejected the use of the more comprehensive HMRC data (available from HMRC's bulk download facility[2], provided in Annex 1 of this submission, and hereafter referred to as HMRC bulk data) in order to assess increases in imports on grounds that the below threshold estimates are not accurate and not representative enough on an 8-digit basis.

While UK Steel recognizes that this data relies on estimates, it is considerably more representative than the standard HMRC data (available through uktradeinfo.com, provided in Annex 1, and hereafter referred to as HMRC TI data) which does not account for below threshold trade – a threshold which increased considerably through 2013-2017. In rejecting this data, the TRA has underestimated the actual level of imports into the UK during the period of investigation and therefore wrongly concluded that there was no increase in imports for categories 12, 16 and 17 and no significant increase in imports for category 6.

In support of jettisoning the data, the TRA cited two papers in its final determination, one by the Department of Digital, Culture, Media and Sport (DCMS) and the other, a report to the Forestry Commission. However, neither of the two papers support the position that the below threshold data should be abandoned. The document by DCMS[3] states: "*Previously, HMRC estimated BTTA [below threshold trade allocation] at 8-digit commodity code level by using trade just above the threshold to estimate trade just below, and to then allocate this for each EU country*." However, *"[t]hese estimates were stopped when they were found to be less robust at this level of granularity. They are instead only available at a less granular level (2-digit HS commodity code)*." It is unclear which dataset DCMS are

[2] https://www.uktradeinfo.com/trade-data/latest-bulk-datasets/
[3] DCMS, DCMS Sectors Economic Estimates Trade – Quality Assurance Report, October 2020, available at: https://www.gov.uk/government/statistics/dcms-economic-estimates-2019-trade-report/dcms-sectors-economic-estimates-trade-quality-assurance-report

referring to here since HMRC still provide BTTA estimates at the 8-digit commodity code level which are provided in Annex 1. HMRC's "Overseas trade in goods statistics methodology" last updated July 2021 also confirms this: *"The BTTA process estimates the total value, net mass and supplementary units for each combination of 8-digit commodity code and partner country for below threshold businesses"*.[4] In any event, DCMS still saw the need to continue estimating this trade in order to allow a proper comparison of trade between EU and non-EU countries and therefore developed its own revised BTTA methodology.

DCMS used "*2-digit BTTA (a more robust estimate) to "allocate" BTTA to different 8-digit commodity codes*". Importantly for our purposes, DCMS states that: "*Analysis for this found results* ***broadly similar to the original approach***" (emphasis added). In other words, the conclusion of DCMS was that, despite initial concerns, HMRC's BTTA estimates proved to be reliable and in line with DCMS's new approach. Far from being reason to abandon the HMRC bulk data, the paper by DCMS should give the TRA good reason to have confidence in it. In a case like a safeguards investigation where assessment of an increase in imports is at the crux of the whole case, measuring said imports is the single most important element. It is a serious mistake that the TRA would have knowingly chosen an incomplete dataset to determine the outcome of this investigation and not made best efforts to account for this missing trade. Even if the TRA is not fully satisfied with the estimation methodology, it ought to make at least some adjustment.

The second paper cited by the TRA is a report on wood fuel to the Forestry Commission Plant Health. Once again, the paper does **not** suggest abandoning the use of data which includes below threshold estimates for all goods, even at the eight-digit level. It merely points out that for wood fuel (not steel), there were almost no imports above the threshold. This made estimating below threshold values difficult, as such estimation relied upon having volumes of trade just above the critical threshold which did not exist:

"*With the exception of the large pellet imports by the power generators, the vast majority of which come from the USA or Canada, almost none of these consignments are sufficiently valuable to reach this threshold and so there are no data from Intrastat. BTTA methodology is based on the assumption that distribution of trade by commodity and country just below threshold is the same as that just above threshold*."[5]

This is a problem particular to the wood industry, not necessarily elsewhere. As such, the TRA cannot use this document to jettison the use of HMRC bulk data for steel imports when no evidence has been presented that the steel industry lacks import data just above the critical threshold. In fact, this is not at all the case, as steel is a higher value product than wood and is transported both in smaller consignments on lorries but also shipped in larger consignments in containers. Steel is also a more commoditised product, traded globally, and the value of cargoes is much more likely to be distributed over a broader span of value on the allocation curve.

The use of the HMRC TI data over the HMRC bulk data by the TRA finds no support in the papers cited but is in any case flawed as it will always *underestimate* the volume of imports and, hence, will likely *underestimate* any increase in imports (especially if that increase is partly driven by below threshold imports). Indeed, this state of affairs is borne out by the data presented whereby the comprehensive HMRC bulk data supplied shows much larger increases than the HMRC TI data.

In order to correct for this the TRA is faced with three choices. First, it can rely on the HMRC bulk data which does take account of below threshold import volumes, not captured by the HMRC TI data. Second, it could use the HMRC bulk data more sparingly for those categories which fall just below the criteria set by the TRA to measure whether an increase has taken place. The TRA could then conclude

[4] Overseas trade in goods statistics methodology and quality report - GOV.UK (www.gov.uk)
[5] Forest Research, UK Trade Woodfuel, - An Overview, available at: https://gbr01.safelinks.protection.outlook.com/?url=https%3A%2F%2Fwww.forestresearch.gov.uk%2Fdocuments%2F231%2Fwoodfueltradereport_rDPDGCx.pdf&data=04%7C01%7C%7C469d4502ea774497f5bb08d924d2a1c8%7C6d05c46229564ec4a0d4480181c849f9%7C0%7C0%7C637581309339457645%7CUnknown%7CTWFpbGZsb3d8eyJWIjoiMC4wLjAwMDAiLCJQIjoiV2luMzIiLCJBTiI6Ik1haWwiLCJXVCI6Mn0%3D%7C1000&sdata=RjQWwHPoVxLb2ludVOAnEygUmLBv7PXEx1Uo7yG7pOc%3D&reserved=0

that on the balance of probability there was an increase in imports when accounting for the below threshold trade. Third, it can make an adjustment to the HMRC TI data in order to correct for the underestimate of imports. By failing to do any of these, the TRA has knowingly left out of its analysis significant volumes of below threshold imports which would change the TRA's conclusions.

To dispel any concerns the TRA may have with regards to data supplied by a third party (as presented in the original review), UK Steel has redone the analysis using the raw data from the HMRC bulk download facility for categories 12, 16 and 17 where this is most critical. The full analysis and raw data are presented in Annex 1. The key points are also summarised in the relevant product category sections under Part B.

An examination of EU exports to the UK for categories 12, 16 and 17 as reported by Eurostat, further supports the argument. UK Steel has presented this analysis in Annex 5 and the key points are summarised in the relevant product category sections under Part B. In general, EU reported exports to the UK of the products in question are significantly higher than those reported to HMRC as imports into the UK and increasingly so between 2013 and 2017. This disparity can be partly explained by:

- Intrastat declarations are intended to capture 97% of exports and 93% of imports.
- Consequently, the exemption thresholds for export declaration for Intrastat are lower than those for imports so fewer companies and trade is missed out from these declarations.
- Additionally, exporters of steel will tend to be large companies and therefore above the Intrastat threshold. Conversely, there are a larger number of smaller importing companies, just importing for their own requirements.

As such, export data suffers to a lesser degree from the BTTA issue on Intrastat data compared to import data. Table 2 of the summary tab in Annex 5 demonstrates that replacing standard HMRC EU import data with Eurostat export data (both of which don't include BTTA), yields an absolute increase in imports for two of the product categories (12 and 17). However, it should be noted that even the Eurostat export data will suffer from the BTT issue and as such still represents an incomplete picture of trade between the EU and UK. The threshold for Intrastat declarations was increased progressively for exports as well as imports, and once this is taken into account it is probable that an increase in imports would be demonstrated for all three product categories (12, 16 and 17). The HMRC bulk data, with its BTTA, does its best to try and show as close a complete picture as possible and as noted before, does demonstrate an increase in imports.

Finally, it is worth reiterating that the relative level of below threshold trade has increased significantly during the period of investigation. This is critical because it means the volumes of trade not being reported in HMRC TI data increased each year and therefore this data will underestimate any increases in imports occurring. The declaration threshold for imports in 2013 was £600,000, doubling to £1.2 million in 2014 and increasing again to £1.5 million in 2015. In steel terms this means a small importer could bring in around 1,200 tonnes of steel in 2013 without making an Intrastat return. By 2015 this had increased to around 3,000 tonnes. It is beyond doubt that this will have a meaningful effect on import trends into the UK and whether or not an increase in imports is observed.

Reasoning for rejecting data was not provided until final recommendation:

Importantly, in rejecting the use of HMRC bulk data 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 evidently rejected the use of such data at the time of its publication of its Intended Final Determination (demonstrated by its conclusions in this determination based exclusively on the use of HMRC TI data, which excludes 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.

II. Defining an increase in imports and considering trends:

In establishing the parameters of this transition review, the Safeguard Regulation requires the TRA to assess whether goods were imported "in increased quantities". This raises an obvious definitional question: what does 'increased quantities' mean? If, every year, imports grew either absolutely or relatively, it would be clear that imports had increased. If, conversely, every year imports fell both relatively and absolutely it would be clear that imports had not increased. However, for every intermediate case, where there are years of increase and decrease, a judgement has to be made about whether or not 'an increase' has taken place during the period. The World Trade Organisation (WTO) has prescribed a method to assist in reaching this determination: an examination of trends must take place (rather than an endpoint to endpoint analysis).

On the US case – *Definitive Safeguard Measures on Imports of Certain Steel Products*, the Appellate Body ruled that: *"A determination of whether there is an increase in imports cannot, therefore, be made merely by comparing the end points of the period of investigation. Indeed, in cases where an examination does not demonstrate, for instance, a clear and uninterrupted upward trend in import volumes, a simple end-point-to-end-point analysis could easily be manipulated to lead to different results, depending on the choice of end points. A comparison could support either a finding of an increase or a decrease in import volumes simply by choosing different starting and ending points… Rather, as we have said, competent authorities are required to examine the trends in imports over the entire period".*

An analysis of trends clearly involves being aware of anomalies and outliers, data points that obscure the underlying trend. This is made more difficult by the small size of the dataset – only 5 data points – so that such outliers can have an undue influence in any analysis. UK Steel examines these trends in the relevant product category sections under Part B.

III. Assessing a significant increase in imports:

a) 'Significance' does not form part of the test under regulation 49(4) of the Safeguard Regulation

The Transitional Provisions under Part 9 only require the TRA to consider whether goods were imported into the UK in increased quantities and whether an increase in imports would be likely to recur if no longer subject to a tariff rate quota. There is no explicit requirement to assess whether the increase in imports was significant under regulation 49(4). Regulation 49(6) allows the TRA to apply Parts 2 to 5 (which include assessing the significance of any import increase under regulation 5(1)) to the transition review to the extent that the TRA considers relevant. Therefore, the TRA has considerable discretion in how it performs its increase in imports analysis, whether it applies a significance test and, evidently, how it would apply one if it chose to do so.

b) Even if the TRA does apply the 'significance' test, this does not need to be done at the individual product category level

Should the TRA insist that regulation 5(1) of the Safeguard Regulation must be applied and that it must assess whether increases in imports were 'significant', there is no requirement to do so at the product category level. 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).

Steel companies do not make products in one individual product category but several. They start with the production of crude steel, in a highly energy and capital-intensive process, which is transformed

into 'semi-finished products' (slab, bloom, billet), and then ultimately into a wide array of 'finished products' which are the subject of these safeguard measures. Slabs are rolled into a variety of flat products, blooms into sections and rails, billet into various long products, while tubes can come via either the long products or the flat products route. The products are in this sense highly interrelated, with the dynamics of the market for one having a notable impact on others. The production economics of the steel making process means that economies of scale are key. Companies produce multiple products and rely on multiple product lines running at certain rates to ensure high-capacity utilisation of the crude steel production facilities. An integrated steel plant will typically need to run at around a 70-75% capacity utilisation rate before it will break even and begin to operate profitably. Therefore an increase in imports for one product category will be much more significant in the context of steel production economics and when accounting for the knock-on effects on other product categories and the overall profitability of a steel company.

It was for this reason that the European Commission also took the approach of assessing significance at the global level, recognizing that "*within each of these families, the products present similar characteristics, frequently share production processes, are often the input for other downstream products within the family, have common users or customers in the supply chain.*" The EU Commission therefore assessed the initial increase in imports on an individual product category basis but then conducted all following tests at the global level, supplemented by product family analysis, "*to dispel any doubts about the reliability of the conclusions reached at an overall level*". The Commission excluded the categories for which no absolute or relative imports were found from the global and product family analysis, but ultimately once the first test was met, the assessment of significance and injury was done at the aggregated level as justified by the interrelated nature of steel production and, in many cases, the ability of end users to substitute a product from one category with one from another. (e.g. some products in categories 12 and 16 are rebar and are used for precisely the same function as those in category 13)

c) Even if the TRA does apply the 'significance' test at the product category level, it has considerable discretion about what is deemed significant

Even if the TRA determines that assessing significance is relevant and that it must assess whether increases in imports were 'significant' at the individual product category level, there is no definition within the requirement of 5(1) of what rate and volume of imports is deemed significant. Given the likely impact on industry of removing the measures, particularly in light of the EU safeguards extension, a relative and contextual assessment of significance is both necessary and justified.

The TRA has concluded that for product category 6, there has been an absolute or relative increase in imports but it is not deemed significant based on the development of imports over the assessed period. UK Steel submits that while other product categories where the measure was extended may have demonstrated sharper increases, a relatively smaller increase can still be significant for the product categories in question.

If the TRA was assessing the rate and volume of imports for each category independently rather than relative to other products, it is not clear what rule it applies to assess whether an increase in imports is significant. UK Steel submits that the threshold of 'significance' the TRA applies is arbitrary and not adequately explained/evidenced. Other trade authorities have deemed increases as significant which only amount to single digit increases (examples provided in analysis section for category 6 in Part B). As explained above, the use of HMRC bulk data would also allow for a more accurate assessment of import increases and their significance.

d) Even if the TRA does apply the 'significance test', it has misapplied that test and the WTO case law on it which holds that 'significance' is context specific

Even if the TRA takes the view that 'significance' does form part of the test under regulation 49(4), it has misapplied that test and the WTO case law on it which holds that 'significance' is context specific. The TRA states in their recommendation, that: *"For product category 6, whilst absolute increases were*

seen in 2015 and 2016, these increases were not significant, and were followed by a decline in 2017. Increases were seen following a similar trend as a proportion of production. The 2017 import volume as a proportion of production was higher than 2013, but the increase was negligible. Therefore, the TRA concludes that category 6 does not demonstrate a significant increase in imports and it is therefore recommended for revocation."

The TRA have misapplied the test for significance under WTO which requires looking at whether that increase was such that it could cause or threaten to cause serious injury – this is entirely context dependent and will vary by industry to industry. Such matters are simply not discussed by the TRA – instead there are very general statements that whilst "*increases were seen… these increases were not significant"*. No reason is given as to why they were not significant, let alone by reference to the WTO case law on this.

The WTO judicial authority for an analysis of significance can be found in the Appellate Body report to Argentina — Safeguard Measures on Imports of Footwear which states that:

"In our view, the determination of whether the requirement of imports "in such increased quantities" is met is not a merely mathematical or technical determination. In other words, it is not enough for an investigation to show simply that imports of the product this year were more than last year – or five years ago. Again, and it bears repeating, not just any increased quantities of imports will suffice. There must be "such increased quantities" as to cause or threaten to cause serious injury to the domestic industry in order to fulfil this requirement for applying a safeguard measure… the increase in imports must have been recent enough, sudden enough, sharp enough, and significant enough, both quantitatively and qualitatively, to cause or threaten to cause "serious injury"."

The Appellate Body in United States — Definitive Safeguard Measures on Imports of Certain Steel Products emphasised how context specific this determination would be:

"In our view, this statement is further evidence that the Panel was of the view that the assessment of whether an increase is "recent enough, sudden enough, and significant enough to cause or threaten serious injury" is to be made on a case-by-case basis by the competent domestic authority—and is not, therefore, a determination that is made in the abstract. We agree."

In other words, there are no absolute rules for whether an increase is recent enough, sudden enough and significant enough. The central question for 'significance' centres upon whether any increase is such that it could cause or threaten to cause serious injury to an industry and this question will, in turn, depend on the state of that industry. If the industry is strong and resilient, a seemingly large increase in imports of 25% may be tolerable over a few years and will not cause or even threaten to cause serious injury. However, if the industry is fragile, then even very small increases in imports of 1 or 2% may be enough to adversely affect it and cause or threaten to cause serious injury.

It is submitted that the steel industry, in general, is in a fragile state. Even a small increase in imports could have caused or threaten to cause serious injury to the industry. Indeed the TRA recognised this when it correctly identified that, for the steel industry in general, the increase in imports caused in 2018 *"serious injury… [and] that there existed a substantial threat of further serious injury."*

Given this, it is respectfully submitted that the TRA's decision is unreasoned. It does not explain why the increase in imports did not cause or threaten to cause serious injury to categories 6, 12, 16, 17 and 27 and reached the wrong conclusion as the steel industry was in a vulnerable state where small (or even temporary) increases in imports could have caused or, at least threatened to cause serious injury.

If that was not enough to demonstrate the risk of injury to the UK sector, since the TRA made its determination the EU additionally decided to extend its safeguards across all products. This further amplifies the risk of injury as a result of trade diversion to an already vulnerable UK steel industry.

e) The TRA is allowed to look at the significance of import increases after the period of the EU investigation where the TRA intends to extend the period for which the goods are subject to the quota

If the TRA seeks to extend the quota, then it is allowed to look at the course of imports since 2017 to judge whether any increase is significant. Given that the EU has recently extended its safeguard measure for all goods (including categories 6, 12, 16,17 and 27), there would be substantial diversion of imports to the UK were the safeguard against those products to be lifted. This would significantly increase the importation of products into the UK of categories 6, 12, 16, 17 and 27 such that it would cause or threaten to cause serious injury to the steel industry.

IV. Assessing injury:

a) The test contained in regulation 49(4) of the Safeguard Regulation does not require the likelihood of injury analysis to be done at the individual category level.

Regulation 49(4)(b) requires the TRA to consider whether "*there would be serious injury to UK producers of the like goods and directly competitive goods if goods belonging to that category were no longer subject to the tariff rate quota."*

The phrase used in 49(4)(b) is not that the TRA must analyse injury done to "UK producers of that category of goods" only that injury needs to be demonstrated to "UK producers of the like goods and directly competitive goods" were the tariff to be removed from a category of goods. Producers of goods which are 'like' or 'directly competitive' with a particular category are, by definition, a wider set than producers of goods of a particular category. Indeed because, as the TRA accepts, "there is interrelation in general in the steel industry", a great many goods in the steel industry are 'like' or 'directly competitive'. As such, regulation 49(4)(b) is directing the TRA to conduct an analysis of the steel industry as a whole, at the global level, because so many steel products are like or directly competitive with one another given the interrelations between products. Further, we cannot find any WTO law which states an analysis of injury must be done at a highly granular level -such as the product category basis on which the TRA has conducted its own. Indeed the EU did not conduct their analysis of injury on a product category basis. Instead the Commission conducted its injury analysis at the global level for all product categories that met the initial increase in imports test. The TRA also conducted injury analysis at the global level but did so after excluding categories 7 and 28, both of which demonstrated an increase in imports or even a significant increase in imports. Given that the TRA already recognises the relevance of the global analysis there is no reason why individual categories should be singled out and excluded in advance. There is also no reason why the global analysis should not apply to and be valid for categories 7 and 28, given that the injury factors are non-product specific.

b) Even if the TRA considers that an analysis of injury must be done at the global and individual category level, there is no requirement for an analysis to be done for every element of injury

The TRA states that*: "Pursuant to regulation 8(3) [of the Safeguard Regulation], the TRA is required to assess all relevant economic factors having a bearing on UK producers. This requires the analysis on sales; productivity; production; capacity utilisation; profits and losses; and employment. In the absence of this information for product categories 7 and 28, we have not been able to conduct injury analysis leading us to find evidence of recurrence of serious injury, and as such, the measures on these categories are recommended for revocation".*

UK Steel submits that regulation 8 does not explicitly apply to transition reviews, this is at the discretion of the TRA. Regulation 49(4)(b) requires the TRA to assess whether *"there would be serious injury to UK producers of the like goods and directly competitive goods if goods belonging to that category were no longer subject to a tariff rate quota"*. Crucially, the emphasis for a transition review is the threat of injury if the measure was no longer applied, rather than injury demonstrated in the historical period. The

fact that the TRA is unable to demonstrate previous injury for an induvial product category does not preclude it from concluding that injury would be caused to industry if the measures were removed, particularly given the international developments since the period of investigation (Section 232, EU safeguards etc.) Additionally, nowhere does the regulation require an analysis of each element of injury as laid down by regulation 8(3). Parts 2 to 5 of the regulation apply to the transition review to the extent that the TRA considers relevant. Therefore, the TRA has considerable discretion in how it performs its injury analysis.

It is submitted, given the discretion the TRA has, it is simply not relevant in the transition review to go through every element of injury for every product category. Even for a new safeguard investigation a finding of injury does not necessarily require an adverse conclusion across every element of injury. A determination of injury can be reached on the basis that some, but not all the elements of injury, are negative. The TRA may (and should) already have sufficient data for categories 7 and 28 (alongside 6, 12,16, 17 and 27) to draw a reasonable conclusion on threat of injury.

A key question the TRA should ask itself is: given that for all the product categories that it has completed an injury analysis on, it has concluded that injury would be caused if the measures were removed, is it not reasonable to assume that the same conclusion would have been reached in those categories where a full injury analysis hasn't been possible? Given that these products are made by the same companies, often at the same sites, have a high degree of interrelatedness with those in extended product categories, and the limited data available for these categories clearly shows pre-existing injury, one must reasonably conclude that a threat of injury is also present should the measures be removed.

c) Particular company circumstances hindered the provision of detailed injury data and further justify greater flexibility from the TRA on the threshold of data deemed sufficient to perform an injury analysis

There were several factors which made detailed injury data provision to the TRA challenging for this review, no least the timing of the investigation coinciding with a period when company resources were stretched due to the pandemic and preparations for Brexit. But in addition to this, several companies also did not have access to the data requested for perfectly legitimate reasons, for example change of ownership. It is unjustified for companies to be punished for not having access to data for time periods when they did not own their facility. Furthermore, the TRA has not treated companies going into administration as an injury indicator in its own right, purely because there is no data to measure the injury. Surely companies that no longer exist cannot be expected to participate in this review and provide data, but the fact that they went into administration is telling of the challenging market environment for the other UK producers of the product. Once again, the TRA has too narrowly defined what it considers an injury indicator and as a result is rejecting key evidence. Several companies also do not necessarily collect data at the level of detailed breakdown requested by the TRA, particularly smaller companies, and they do not have the resource for this accounting exercise. Finally, there have also been instances where changes in IT systems, or even ransomware attacks in one instance, have impacted availability of historical data. The TRA has the discretion to consider these factors and reasonably show some flexibility regarding the comprehensiveness of data it requires to make assessments on injury and threat of injury.

V. Consideration of time period since 2017:

The TRA erred in confining its analysis to the EU's original - but not complete - 2013 to 2017 time period, disregarding likelihood of import increases with causal effect on serious injury.

In this transition review, it was the task of the TRA to consider the same investigation period as the European Commission when assessing an increase in imports, as well as the likelihood of recurrence of increased imports and serious injury. The TRA confined its analysis to the period 2013-2017, however

the European Commission based its determination in significant part on the likely injurious effect of further import increases after 2017.

The Commission found that the EU Steel Industry was in a weak and vulnerable condition in 2017 – a determination clearly appropriate as to the UK steel industry, both in 2017 and today – and determined that there was a likelihood of further (post 2017) import increases that would be seriously injurious. For example, the Commission states that it "*used in its analysis the most recent statistics, namely import data covering the first half of 2018*". As another example, the Commission devotes an entire section on "*Post-2017 data analysis*".[6]

Imports did in fact increase after 2017 for several product categories and will now increase further if the safeguard measures are not transitioned and extended, given the EU's measures across all product categories.

The UK's Safeguard Regulation also stipulates consideration of the future period since 2017 under regulation 49(4)(a): *"…where the TRA find that goods belonging to such a category were so imported, whether – (a) the importation of those goods in increased quantities* ***would be likely to recur if they were no longer subject to a tariff rate quota****"* (emphasis added). In other words, once the TRA has established that there was an increase in imports during 2013 to 2017, the Safeguard Regulation requires an examination of what would happen to imports if that quota were removed. This would require the TRA to look beyond 2017 at the course of imports.

In addition, regulation 49(5)(d) states that: "*The Transition review may reduce or extend the period for which the goods are subject to the quota and, if so, what period."* But the amendment under regulation 49(5A) further provides that: *"For the purpose of considering whether it is appropriate to extend the period for which the goods are subject to the quota… the TRA may consider the importation into the United Kingdom of goods belonging to each specified category of steel products* ***since*** ***the investigation period considered by the European Commission****"* (emphasis added).

Consideration of imports since 2017 and the likelihood of increased imports recurring in future if the measures are removed are at the centre of this safeguards transition review and is a clear requirement by the UK Safeguard Regulation. In contrast, the significance test is optional and clearly less relevant in the context of the EU's safeguard extension and the vulnerability of the UK industry. Therefore the assessment of the threat of increased imports recurring and of those imports causing injury to the UK industry as per 49(4)(a) and (b), should clearly be prioritised, rather than categories being revoked on grounds that increases in imports are not deemed significant enough. UK Steel submits that any increases observed are significant, but even if there is any doubt around that, the near certainty that imports would increase in future on the basis of US and EU trade diversion, is evidently the decisive factor here and should trump any other considerations or doubts. Therefore any categories that meet an initial absolute or relative increase over 2013-2017, should be recommended for extension based on expectation of high future imports and therefore injury to UK producers at a time when they are recovering from the economic effects of the pandemic.

Trade diversion analysis:

In an attempt to quantify the likely future import increases for products not covered by a safeguard, UK Steel has considered the impact of Section 232 tariffs on US imports and the impact this could have on the UK market, in light of the European market still being protected by safeguards across all product categories.

UK Steel estimates that as much as 1.3 million tonnes could be diverted to the UK, as a result of diverted US trade and the imbalance of measures within what is ultimately the same European geographical area in the eyes of global exporters. This is the amount by which US imports dropped between 2017

[6] Section 5.6, Commission Implementing Regulation (EU) 2019/159 of 31 January 2019 imposing definitive safeguard measures against imports of certain steel products, available at: https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=uriserv:OJ.L_.2019.031.01.0027.01.ENG

and 2019 across the seven product categories in question after the imposition of 232 tariffs in 2018. Without the protection of safeguards, the UK's tariff-free market would present an obvious alternative market for surplus exports, when tariff-free imports are capped in the neighbouring EU, while barriers to trade are in place in most other major markets[7].

To put into perspective, 1.3 million tonnes is equivalent to 20% of the UK's total crude steel production and 13% of the UK's total finished steel demand.[8] The magnitude of reduced US imports is even more significant relative to the market segments for those seven product categories, corresponding to 74% of UK imports of these products in 2019 (see Annex 3, tab 1). Considering the economic effects of the pandemic, 2020 trade flows cannot be representative and therefore 2019 is chosen as the main comparison year. However, it is worth bearing in mind that demand shocks like the ones experienced in 2020 that may impact US demand to a greater extent than production of steel elsewhere, could increase the volume of steel exports looking for alternative markets even more (an estimated 2 million tonnes based on drop of US imports in 2020 compared to 2017).

Table – US imports (excluding Argentina, Brazil, Australia, Canada, Mexico and South Korea) before and after 232 tariffs

	Imports 2017	Imports 2019 vs 2017	% change 17/19	Imports 2020 vs 2017	% change 17/20
6. Tin Mill	1,202,875	-290,277	-24%	-246,034	-20%
7. Plates	268,320	-83,358	-31%	-188,393	-70%
12. Merchant Bars and Light Sections	563,303	-261,406	-46%	-384,071	-68%
16. Wire Rod	1,133,693	-441,241	-39%	-795,446	-70%
17. Angles, Shapes and Sections	307,604	-143,441	-47%	-259,722	-84%
27. Cold Finished Bars	152,911	-15,733	-10%	-59,275	-39%
28. Wire	216,674	-49,034	-23%	-92,016	-42%

Source: ISSB, UK Steel analysis (see Annex 3, tab 1 for data and calculations)

All this volume would of course likely not all end up in the UK, but for the purposes of measuring and quantifying the risk of trade diversion, this is a useful benchmark. The table below shows the breakdown per product category and the theoretical increase in UK imports as a result of trade diversion from the US under different rates of deflection. The analysis has considered imports into the US from all origins except those that are exempt or partially exempt from 232 measures[9] and also with and without imports from the UK. Excluding US imports from the UK is reasonable in that this volume cannot strictly be considered as trade diversion back to the UK. However, these UK exports will also be looking for a home either domestically or in other markets and are therefore displacing material elsewhere. In this sense, it is correct to include imports from the UK into the analysis, although either way the effect is relatively marginal.

The analysis also considers three different scenarios: a) Maximum deflection if the reduction in US imports is entirely diverted to the UK, b) 20% of redirected imports go to the UK, c) 50% of redirected imports go to the UK. Of course this can only be an approximation, but serves as a useful indicator of the potential magnitude of trade diversion into the UK market in the absence of safeguards. Deflection from the EU is difficult to measure directly considering that safeguards are not designed to reduce imports below historical levels but to curb increases in imports. We can however safely conclude that in the presence of EU safeguards, the EU will not be absorbing any additional volume from diverted

[7] The only major markets for steel without any imports restrictions on steel in place (not including AD and AS duties) would be Japan and South Korea, both of which are major net exporters with low import penetration levels of approximately 10% and 30% respectively, and therefore are not effectively absorbing diverted trade. All other major markets would either have MFN tariffs or some form of emergency measures in place.
[8] World Steel Association
[9] Argentina, Brazil, Australia, Canada, Mexico and South Korea

232 trade – which is ultimately the reason why safeguards were introduced. Moreover, where exporters are looking to make marginal sales or even dump products, a UK market without the complication of safeguard quotas to consider would represent a more attractive proposition than that of the EU.

This increases the likelihood that most of this diverted US trade will end up in the UK rather than the EU, which in the absence of its own safeguards could have been expected to absorb a significant portion.

Table – Estimated increase in UK imports as a result of diverted US trade as a % of UK 2019 imports

Product category	Max increase to UK imports due to trade diversion from US		Increase to UK imports based on 20% of diverted US trade		Increase to UK imports based on 50% of diverted US trade	
	incl UK	excl UK	incl UK	excl UK	incl UK	excl UK
6. Tin Mill	436%	430%	87%	86%	218%	215%
7. Quarto Plates	25%	24%	5%	5%	12%	12%
12. Merchant Bars and Light Sections	95%	85%	19%	17%	48%	42%
16. Wire Rod	162%	152%	32%	30%	81%	76%
17. Angles, Shapes and Sections	24%	18%	5%	4%	12%	9%
27. Cold Finished Bars	37%	22%	7%	4%	19%	11%
28. Wire	38%	37%	8%	7%	19%	19%

Source: ISSB, UK Steel analysis (see Annex 3, tab 1 for data and calculations)

Based on the above analysis, Tin Mill Products and Wire Rod are at most risk from diverted trade volumes, but all product categories would face considerable increases in imports even under the most conservative scenario, just as a result of diverted US trade alone. This does not even take into account directly diverted EU trade from other origins and import pressure caused by other factors such as global overcapacity and aggressive export tactics aimed at gaining market share. Without safeguards, the seven product categories that the TRA recommended for revocation are certain to see imports in increased quantities recurring, which would inevitably cause injury to the UK producers especially at this time of post-Covid recovery. It should therefore be clear that the TRA erred in its conclusion and should have recommended the retention of the measures for these categories.

Part B: Categories for reconsideration

Category 6 (Tin Mill Products):

The TRA erred in its conclusion that import increases for category 6 were not significant. As explained in section (III) of Part A, the TRA was not required to perform a significance test at all, but even if it determined that it was relevant to do so, then significance should be assessed at the global and/or product family level as was done by the EU. This would be completely justified by the interrelatedness of steel products. Even at the individual product category level, it is unclear why the TRA does not deem a 16 % absolute increase in imports (based on HMRC TI data) between 2013-2016 as significant.

In fact, category 6 demonstrated an absolute increase in imports of 16% based on HMRC TI data, and a 20% increase based on HMRC bulk data, from 2013 to 2016 which the TRA deemed was not

significant simply because of a dip in 2017. This is in contrast to the EU which deemed that much smaller and more anaemic increases were significant in many categories for its safeguard regulation. As just one example, we reproduce the figures for category 24 (Other seamless tubes) from the EU investigation:

Table: Category 24 - Other seamless tubes EU imports

	2013	2014	2015	2016	2017	MRP
Imports (tonnes)	440,696	509,052	448,761	448,333	410,822	480,600
Growth vs 2013		16%	2%	2%	-7%	9%

Source: Commission Implementing Regulation (EU) 2019/159, Annex II.1

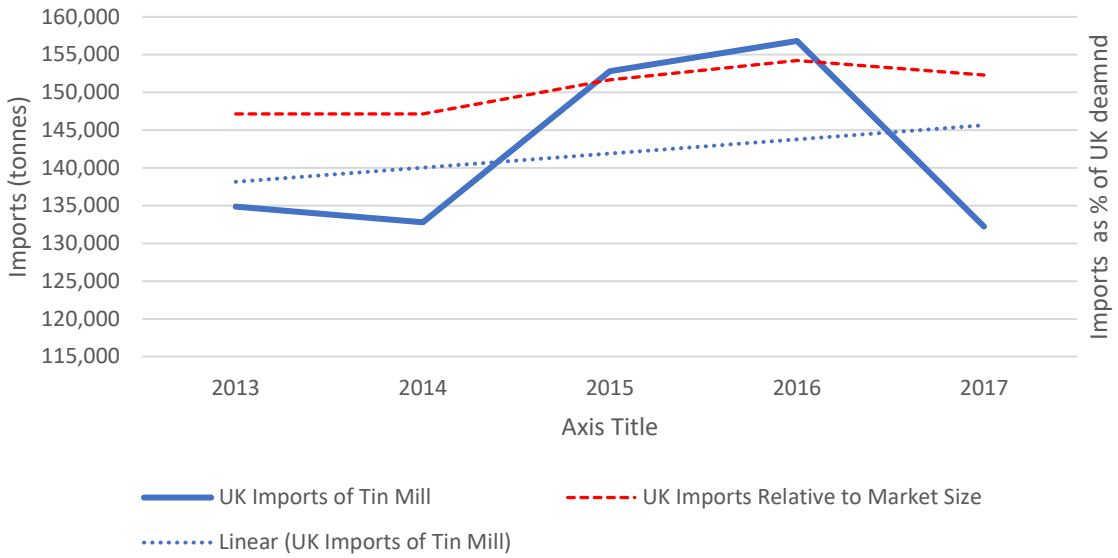
Here the course of EU imports rises in the first year (2013 to 2014), before falling in three consecutive years (2014 to 2017), only to rise again in the MRP. Indeed, from 2013 to 2016 the rate of increase for category 24 in the EU investigation was 2% and from 2013 to 2017 it was negative 7%. Yet the EU introduced measures on the basis of a 16% increase just in the first year, which is identical to the increase for tin mill products in the UK over 2013-2016. The EU Commission also found that an increase of 7% was considered significant for Stainless Steel Hot Rolled Quarto Plates. Which is a far smaller increase than category 6 in the UK investigation.

Significance should also be assessed relative to a wider context, namely the vulnerability of the UK industry, as per WTO case law (as explained in Section (III)(d) of Part A). The 16% increase in imports evidenced for tin mill products between 2013-2016 is clearly significant when considering the shrinking UK market share and falling demand for the product. In 2016, the Crown Packaging factory in Neath closed as a result of Crown acquiring Mivisa in Spain and optimising their production by moving the production of can ends to their European plants in France and Spain[10]. In 2017-2018, Ardagh Group converted its beverage can production capabilities from steel to aluminium at its site in Rugby[11]. These developments contributed to a drastic decline in domestic demand, plummeting by 40% by 2017-2018 compared to 2010 levels. Meanwhile, imports continued to enter the UK at the expense of domestic producer market share. The drop in demand after 2016 is the reason for the drop in 2017 imports for tin mill products. Placed in this context the trend in imports over the period 2013-2017 clearly must be seen as a significant increase.

Whilst WTO rules limit the basic assessment of an increase in imports to absolute increases and/or increases relative to production, once this increase has been demonstrated (as it has in the case of category 6) the TRA can and should, take into account declining domestic demand for the product in making an assessment of significance of the increase in imports.

[10] Crown Packaging to close with the loss of 240 jobs - Wales Online
[11] Ardagh Group Completes Conversion of Rugby Plant from Steel to Aluminium

Chart: UK Imports of Tin Mill products 2013-2016 and percentage of imports relative to UK demand



Source: HMRC TI Data and Tata Steel (see Annex 6)

Against a backdrop of falling demand, a modest increase in imports or even a drop but corresponding to an increased import market share, is significant enough to cause or threaten to cause serious injury to the domestic industry.

Categories 7 (Quarto Plates) and 28 (Non-Alloy Wire):

The TRA revoked the safeguards for categories 7 and 28 on grounds that it did not have sufficient data across all the injury indicators for categories 7 and 28. As stated in Section (IV) of Part A, regulation 8 does not explicitly apply to this transition review and UK Steel submits it is not necessary to assess "*all relevant economic factors*" other than at the global and/or product family level. The TRA accepts that including categories 7 and 28 would not affect their conclusion of injury at the global level: "*The TRA has omitted categories 7 and 28 from their global level analysis as we do not have authenticated data for these categories, but the data we have been provided with would not alter the global level analysis*". In other words, the TRA has admitted that based on the data it has received on categories 7 and 28, its global analysis would still indicate injury if this data was included. As such, given that the TRA only needs to conduct analysis of injury at the global level and has already concluded that there was a likelihood of serious injury were the safeguard to be revoked, such an analysis must now cover categories 7 and 28 (as they would not affect the global analysis). Therefore, the TRA should conclude that threat of injury is sufficiently demonstrated.

But even at the individual product category level, UK Steel submits that the TRA had enough information to reasonably draw a conclusion on injury for categories 7 and 28. Out of the economic factors listed under regulation 8(3) the TRA was able to assess factors (a), (b), (c) and (d)(iii). It is therefore unreasonable to conclude that it is not able to perform any injury analysis. For product category 7, there is also critical evidence of plant closures and mothballing over the period of investigation which is the most severe form of injury that can be suffered by a steel producer. In addition, both categories 7 and 28 demonstrate significant increases in imports. The TRA thus has enough evidence to conclude reasonably that there is a threat of injury in the absence of measures as required under regulation

49(4)(b). Thus an assessment of every injury element (under regulation 8(3) of the Safeguard Regulation) is not required and it is simply not 'relevant' to the analysis (as per regulation 49(6)).

Given that the TRA insists it must assess additional injury indicators (although it is not required), UK Steel and the relevant UK producers have been able to provide additional data for categories 7 and 28 (see Annex 4). This new evidence was not previously provided for a number of reasons, these include: i) the timing of the investigation coinciding with a period when company resources were stretched due to the pandemic and preparations for Brexit, ii) challenges in obtaining data for the investigation period due to changes in company ownership, iii) company specific circumstances.

Category 7:

With regards to category 7, incomplete data was largely due to the fact that Liberty Steel did not own the Dalzell plate mill before 2017. The plant had previously been shut down by its previous owner Tata Steel at the end of 2015[12], having suffered a loss in market share as a result of price undercutting from imports, price pressure and falling margins. It is absurd that Liberty would here be penalised for not owning the plant and not having access to full injury data prior to 2017. Liberty was able to obtain and provide production data for the full period required (shown below) but it cannot be expected to have access to the previous owner's accounting books with sales, employment and profitability data. Likewise, British Steel who now own the Scunthorpe steel works has been able to supply production data for the period prior to 2017 for the Scunthorpe plate mill upon confirmation that the legal agreement with the previous owner Tata allowed the sharing of data for that period. However, the plate mill at Scunthorpe has been closed and dismantled.

Table: Category 7 – Quarto Plates Production (tonnes) – indexed in non-conf version

	2013	2014	2015	2016	2017	2018	2019	2020
Dalzell	100	99	99	55	36	35	27	31

Source: Liberty Steel

	2013	2014	2015	2016	2017
Scunthorpe Plate Mill	100	86	69	29	(0.12)

Source: British Steel

But even without access to the full range of injury indicators, it is clear that the plate business suffered catastrophic injury which resulted in the previous owner Tata Steel having to close two plate mills in the UK. The closure of the plants is surely clear evidence of severe injury, even if the full set of data is not available. Even if the TRA cannot measure and quantify the injury, it can surely conclude that sales, productivity, production, capacity utilisation, profitability and employment have all seriously and unequivocally suffered because of the plant closures.

The Dalzell plate mill was re-opened by Liberty and the first year of production was 2017, but the plate business is still in a precarious position both given its history and even more so post Covid. The entire supply chain to plate production has suffered from import pressure to market pricing and Covid has further impacted both the demand and cost sides. Any removal of safeguards will cause further injury, putting at risk jobs, investment and the future viability of the Liberty business.

Category 28:

This review has straddled the immediate periods before and after Brexit when all companies were intensely focussed on preparing for major changes to trading conditions. Moreover, Covid-19 has caused huge difficulties for steel companies with large numbers of staff furloughed, sites mothballing

[12] Agreement reached to sell Scottish steel plants | Tata Steel in Europe (tatasteeleurope.com)

production, and all having struggled with major downturns in orders. It is unsurprising that some companies, with no experience of trade remedies measures, have struggled to fully participate in this review. The wire category in particular, is dominated by SMEs who have been particularly exposed to the challenges mentioned above and will have had even less resource and expertise to respond to this review. At various points of this investigation, UK Steel has been able to obtain and provide additional data for this category, but the TRA did not verify any of the data as it deemed that the data was inadequate to perform any injury analysis. It is unclear why the TRA adopts this approach and decides it is unable to draw any conclusions on injury whatsoever unless it has access to the full set of injury indicators. While it would be preferable to have fully comprehensive data, it is also unfair for smaller companies to be penalised for not having the resources to fully respond to this review.

The TRA admitted that: *"For category 28, this data, if verifiable, would show a significant relative increase in imports during the POI."* However, the TRA did not undertake any verification activity as it deemed *"that there was insufficient data to show injury."* UK Steel submits that the TRA could have reasonably concluded that there was serious injury to the wire sector based on the global injury analysis.

But even at the individual category level, the TRA had evidence of falling production (by 24% for the combined production of the three producers below) which it could verify. The TRA also had evidence of the rate and volume of the increase in imports, another indicator of injury as per regulation (8)(3)(a).

Table – Sample of UK Wire Production

	2013	2014	2015	2016	2017	2018	2019	2020
Wire producer A	100	83	77	81	101	84	66	62
Wire producer B	100	101	90	89	81	71	53	46
Wire producer C	100	94	67	22	28	28	25	22

Source: Wire producers (see Annex 4)

Again, it should be noted that the Safeguard Regulation does not require a demonstration that serious injury took place against every economic factor, during the period of investigation. Instead, the requirement is to show that in the absence of measures that serious injury would occur – i.e. that there is a threat of injury in absence of measures. UK Steel submits that given the TRA's global analysis that demonstrated existing injury and threat of injury, the production data provided and the new information below – it is entirely reasonable and correct to conclude that injury would be caused to UK wire producers in the absence of measures.

The UK wire industry has also suffered several bankruptcies over the last few years, a further indicator of serious injury and vulnerability of the segment to increased import pressure. While the TRA may not be able to collect detailed injury data from these companies, the significant casualties in the sector in recent years should in themselves directly present clear evidence of injury suffered. These include:

- In 2015, Kiveton Park Steel entered into administration putting 120 jobs at risk.[13] While the company is now revived under new ownership, it is indicative of a challenging environment for the segment.
- Wrexham Wire entered into administration twice within the space of five years – first in 2015 (named Caparo Wire at the time) and more recently in 2020, which resulted in the loss of 80 jobs[14] and 18,000 tonnes per year of output.
- Betafence closed their wire production in Sheffield in 2017, resulting in the loss of an estimated 10,000 tonnes per year. (captive fence manufacturing operation)[15]

[13] Sheffield steel firm Kiveton Park Steel Ltd goes into administration - BBC News
[14] More than 80 jobs lost as Wrexham wire firm goes into administration - North Wales Live (dailypost.co.uk)
[15] Up to 120 Sheffield jobs to go from global fencing company | The Star

- In 2020, PG Wire went into administration,[16] but were acquired by DR Baling and therefore were able to remain in production
- West Midlands Bright Bar went into administration in 2020[17] but were acquired by Aldridge Bright Bar and resumed production. They produced both wire and bar, at an estimated 150 tonnes per month of each, but it is estimated that production has halved post administration.

The pressure of imports and impact on product pricing undoubtedly contributed to the failure of all the above businesses and demonstrate a pattern of a sector under pressure throughout the investigation period. The broader supply chain has also faced a challenging market environment both upstream in the wire rod segment but also downstream with the gradual reduction in components manufacturers. These examples demonstrate that the wire sector has been under considerable competitive pressure in recent years and exposing it to increased imports at this time of recovery from the pandemic would put the industry at serious risk. While this part of the industry is making efforts to adjust, the removal of safeguards may just deprive it of this opportunity. Wire producers, and producers of all the other steel products for that matter, are asking for nothing more than to be on an equal footing to their EU competitors.

Although UK Steel submits that the TRA had adequate information to make an assessment of injury, as part of this reconsideration, UK Steel has sought to provide some additional injury data from G John Power, KTS Wire and Kiveton Park Steel to further support our arguments. These are provided in Annex 4 but the key points are also summarised below.

G John Power:

G John Power has been able to provide data on sales, capacity, employment and wages, in addition to the production data previously provided. Turnover, production and capacity utilisation all dropped between 2013-2017 and remained on a downwards trend in the most recent period.

KTS Wire:

KTS Wire has provided sales data in addition to the production data previously provided as part of the response to the TRA's Statement of Intended Final Determination. This data shows that production fell between 2013-2017 and continued falling in the most recent period by 2020. Sales volumes and revenue also declined accordingly.

Kiveton Park Steel:

Kiveton Park Steel has been in business since 1922 producing cold finished bars and wire. As mentioned above, it went into administration in September 2015 but emerged as a new legal entity at the end of June 2016. The company has no data for the period in administration and historical data is limited due to a "ransomware attack" in late 2016.

Nevertheless the company was able to supply some additional data on capacity, employment, turnover and profitability, although without the breakdown of data per category. This is because the producer often supplies both products to the same customers and using mostly the same machinery and labour for processing. Therefore capacity and employment figures provided are for both cold finished bar and wire as most of the production equipment and all the labour can be applied to both. The company does not identify or record sales of each product separately, but for the purposes of this review turnover can be apportioned pro-rata.

Turnover dropped sharply in 2015, as did capacity utilisation. Losses mounted in the run-up to administration. The business returned to profit post-administration despite a dramatic reduction in sales, but profitability has fluctuated.

[16] PG WIRE LIMITED | Appointment of Administrators | The Gazette
[17] WEST MIDLANDS BRIGHT BAR LIMITED | Appointment of Administrators | The Gazette

Kiveton Park Steel does not collect detailed tonnage figures and therefore the per category volumes provided in Annex 4 are estimates. Sales values per tonne on average are also not meaningful for the company's perspective due to significant and increasing amounts of hirework undertaken, where customers free-issue material for Kiveton Park Steel to process. For example, this can be a drawing operation, or a peeling or grinding operation - all of which would qualify as "cold finishing" - and some of this is in bars and other in wire. Kiveton Park Steel also undertake a lot of hirework cleaning & coating, which involves acid dipping and then coating with lime or drawing compound for their customer to undertake drawing themselves. It is part of the drawing process but technically Kiveton Park Steel has not done the drawing.

The volume of hirework makes it very difficult to compute average selling prices per tonne, when some includes material costs, and others don't.

For Kiveton Park Steel, sales prices and profit margins are significantly higher on export sales as for those customers they are a specialist producer of high-grade bars and wire to the aerospace and safety-critical automotive sectors. But with tariff-free exports to the EU capped as a result of safeguards, export growth opportunities are now stunted.

Category 12 (Merchant Bars and Light Sections):

The TRA erred in its conclusion that there was no increase in imports for category 12. 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. Additionally, the TRA erred in its rejection of the use of BTTA data available from HMRC bulk data in assessing the increase in imports, as addressed in Section (I) of Part A.

The finding of a relative increase in imports should have been enough for the TRA to find that there was an increase in imports for category 12. Had the TRA based its analysis on the HMRC bulk data, then the increase would have been even starker and it would have in fact found an absolute increase in imports as well. As is shown in the table below, while the data for above threshold trade (ATT) show an absolute decrease in imports over 2013-2017, the inclusion of BTTA data shows a 12% absolute increase in imports over that period. If the TRA were to also consider imports from 2018 as did the EU Commission, and as regulation 49(5A) permits, then the increases would be even sharper both for the HMRC bulk dataset but even just for the ATT imports detailed in the HMRC TI data. Imports between 2017 and 2018 increased by 19% based on ATT imports alone.

Table – Category 12: Comprehensive HMRC Trade Data – Above Threshold vs Below Threshold Imports

	2013	2014	2015	2016	2017	2018
Total	**297,317**	**342,659**	**286,107**	**306,365**	**331,767**	**358,748**
EU Total	233,758	235,760	213,040	237,712	259,004	268,248
EU ATT	206,211	191,082	173,715	173,158	181,676	212,051
EU BTTA	27,547	44,677	39,325	64,554	77,328	56,197
Non-EU Total	63,559	106,899	73,067	68,653	72,763	90,500
Non-EU ATT	63,559	106,899	73,067	68,653	72,763	90,500

Source: HMRC bulk data (see Annex 1)

Cleary for non-EU imports there is no below threshold trade facilitation and therefore the total imports reported equal the above threshold imports. When it comes to EU data, however, the disparity is evident. By not taking into account the BTTA data, the TRA is missing 12% of EU imports in 2013 and by 2017 this rises to 30%. As a proportion of total imports then, the HMRC TI data omits 9% of imports in 2013, gradually increasing to 23% by 2017.

An examination of Eurostat export data to the UK further highlights the under-reporting of HMRC EU imports. As explained in Section (I) of Part A, export data is less likely to suffer from the BTTA issue as the threshold for declarations is lower for exports than for imports (£250,000 vs £1.5 million in the UK) and it is larger companies typically engaged in exports and therefore more of the trade is likely to be above threshold. Throughout the period of investigation, EU exports to the UK reported by Eurostat are consistently higher than UK imports from the EU as reported by HMRC TI data. Neither of these datasets account for BTT, so they are still incomplete, but it is telling that even on an ATT basis, the HMRC data under-reports trade even more. In fact, the difference between the Eurostat and HMRC TI data is nearly twice as large in 2017 compared to 2013 – even more looking at the most recent period.

Table – Category 12: EU exports to the UK (Eurostat) vs UK imports from the EU (HMRC) (tonnes)

	2013	2014	2015	2016	2017	2018	2019	2017 vs 2013
Eurostat	237,234	247,235	229,823	233,927	237,392	272,617	238,985	0%
HMRC (EU ATT)	206,211	191,082	173,715	173,158	181,676	212,051	170,289	-12%
Difference	31,022	56,152	56,108	60,769	55,716	60,566	68,696	80%

Source: HMRC, Eurostat (see Annex 5)

To fully illustrate the point, UK Steel has measured the change in UK imports substituting the EU portion of imports with Eurostat data, while keeping HMRC TI data for the non-EU portion. This calculation still does not incorporate BTT so will still underestimate imports but to a lesser extent as explained above. Using this approach and before accounting for BTT, this data already shows an absolute increase in imports for category 12 of 3% between 2013 and 2017. This increases further to 21% when considering 2018 imports. It is still an imperfect approach but at least reduces the omitted trade and by doing so immediately shows an increase in imports rather than the 6% decrease shown by the incomplete HMRC TI data. It is therefore clear that the TRA ought to make some adjustment to the standard HMRC data as it is clearly not representative enough of true imports into the UK.

Table – Category 12: Absolute increase in UK imports using Eurostat data for EU portion of imports (tonnes)

	2013	2014	2015	2016	2017	2018	2017 vs 2013
Eurostat + HMRC Non-EU	300,792	354,134	302,890	302,581	310,155	363,117	3%
Standard HMRC Total	269,770	297,981	246,782	241,811	254,439	302,552	-6%

Source: Eurostat, HMRC, UK Steel analysis (see Annex 5)

Again, it is worth iterating that because the threshold for Intrastat declarations increased in 2014 and 2015, the volumes of BTT grew considerably during the period of investigation. As such the volumes of trade not reported by HMRC TI data grew each year and therefore this dataset unquestionably underestimates the increase in imports during this period.

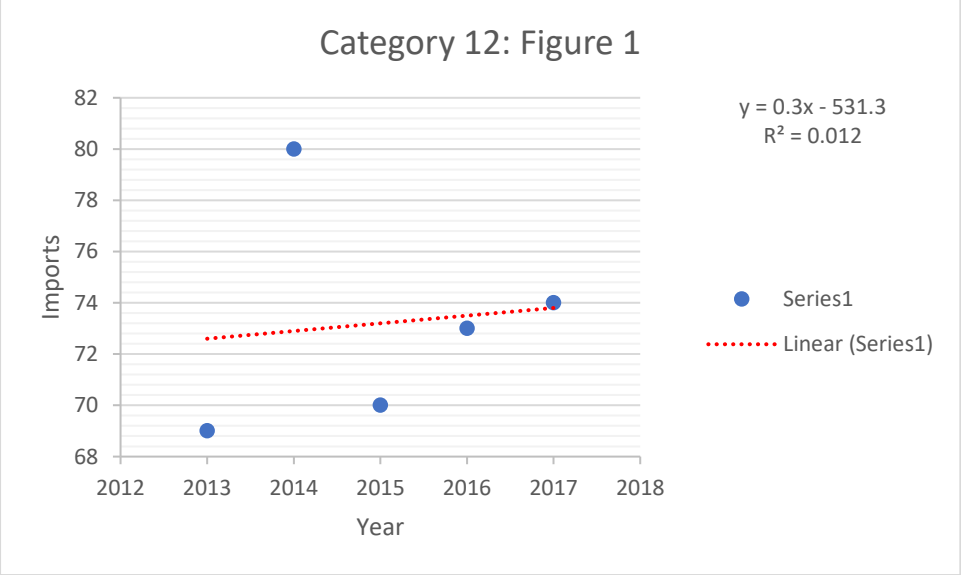
As explained in Part A Section (II), an increase in imports assessment should also consider the trend over the period assessed. With respect to category 12, there was a clear upward trend in relative imports even using HMRC TI data. There was an increase in imports in every year except for one as shown below:

Table – Category 12: Relative Imports

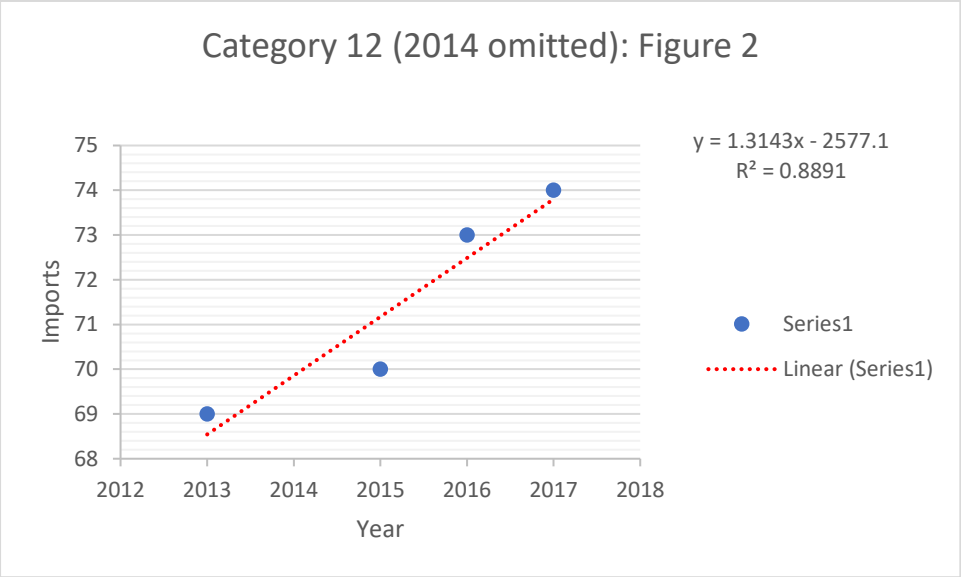
Year	2013	2014	2015	2016	2017
Imports as percentage of UK production	69	80	70	73	74
Year-on-year growth rate	N/A	16%	-12.5%	4.2%	1.4%

It is difficult to understand how the TRA could reach the conclusion that "imports across the POI have remained stable throughout" and thus conclude there was no increase in imports when, in every year bar one, there was a growth of imports and an upward trend is manifest. Even on a beginning to end point analysis there was an increase. If one excludes the year 2014 (which is an outlier), it is clear there is an upward trend of about 1% to 3% percent each year.

With such small data sets, one should be wary of using linear regression to work out trends (especially in tests of statistical significance). Be that as it may, without removing the outlier in 2014, using ordinary least squares, there is an increasing linear trend line with a positive co-efficient of regression of 0.3 (though it is not statistically significant at the 5 or 10% level as it has a 'p' value of 0.86).



However, as can be seen from the scatter plot, there is an outlier in 2014 which obscures the analysis of the trend. Once this has been removed, the upward positive linear trend becomes even clearer, the co-efficient jumps to 1.3 (and is statistically significant at the 10% level with a 'p' value of 0.057). We enclose the regression results in Annex 2.



Given that every way of measuring the trend records an increase (year on year increase and linear regression), the TRA lacks any basis to conclude no increase took place for category 12. Furthermore, this increase does not have to be assessed for significance, but even if the TRA chooses to do so, this increase is significant relative to the vulnerability of the industry as explained in Section (III) of Part A. The increase is even more significant when accounting for BTTA imports and/or considering the period since 2017, all of which are options that the regulation allows for but the TRA has chosen to disregard.

Substitutability of category 13 products with category 12:

This issue is dealt with in further detail under 'Category 16, Interrelatedness particularly affecting wire rod and rebar'**,** but it should be briefly noted here that there are a large number of tariff codes categorised under category 12 that can be directly substituted for those in category 13/rebar: 72283020, 72283041, 72283049, 72283061, 72283069, 72283070, 72283089. All of these codes contain products which at a 10-digit level are classified as 'high fatigue performance concrete reinforcing bars and rods', and importantly are included in the UK's anti-dumping measures on imports of reinforcing bar from China. Removal of measures on category 12 is likely to result in increases in reinforcing bar categorised under these tariff codes, as opposed to those included in category 13. This would fundamentally undermine the measures that have been retained on category 13 and would result in injury to UK producers of this product.

This provides a further justification for the extension of measures on category 12. In the unfortunate scenario in which the TRA does not deem it correct to do this, it must in the very least transfer relevant tariff codes from category 12 to category 13.

Category 16 (Wire Rod):

The TRA recommended category 16 for revocation on the basis that there was no increase in imports, but this was based on data that clearly underestimated imports and increasingly so over 2013-2017. The TRA erred in its rejection of the use of BTTA data available from HMRC bulk data in assessing an increase in imports and for category 16 this resulted in the omission of 17% of EU trade in 2016 compared to just 5% in 2013. This implies the TRA disregarded 16% of total imports in 2016 from 4% in 2013, meaning that it could not possibly have accurately assessed an increase in imports. Taking the

BTTA into account shows a clear absolute increase in imports of 4% over 2013-2017 and 8% over 2013-2016.

Table – Category 16: Comprehensive HMRC Trade Data – Above Threshold vs Below Threshold Imports

	2013	2014	2015	2016	2017
Total	**279,192**	**293,735**	**251,205**	**301,088**	**289,130**
EU Total	254,646	256,951	233,373	289,032	274,679
EU ATT	242,083	244,135	214,465	241,307	242,425
EU BTTA	12,563	12,816	18,908	47,725	32,254
Non-EU Total	24,546	36,784	17,832	12,057	14,451
Non-EU ATT	24,546	36,784	17,832	12,057	14,451

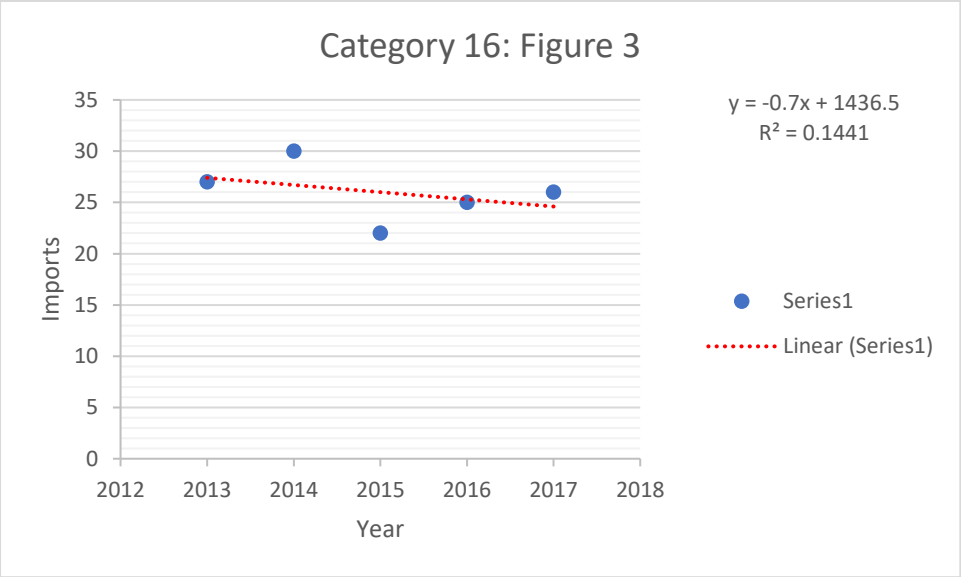
Source: HMRC bulk data (see Annex 1)

But even using the HMRC TI data, the TRA has failed to consider the trend in the data in assessing a relative increase in imports. The TRA concludes that *"import volumes as a proportion of production… ended the POI with lower proportions compared to 2013."* The TRA falls into the mistake of carrying out a beginning to end point analysis, rather than looking at the trend. Similar to category 12, there is an increase of imports in every year except for one:

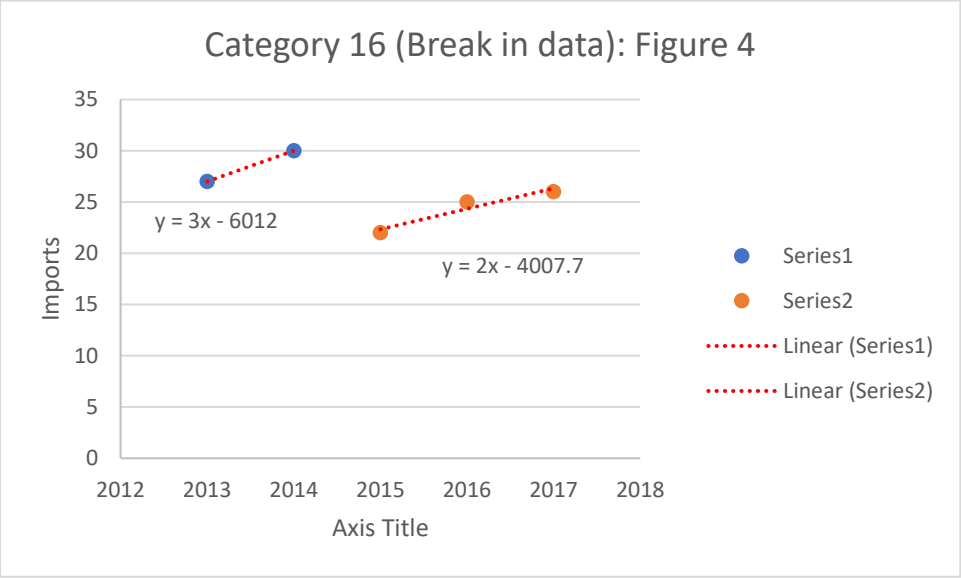
Table – Category 16: Relative Imports

Year	2013	2014	2015	2016	2017
Imports as percentage of UK production	27	30	22	25	26
Year-on-year growth rate	N/A	11%	-26.6%	13.6%	4%

What perhaps confuses the analysis for the TRA is the presence of a break in the data – there is a clear upward trend 2013 to 2014, a sudden break in the data where imports declined in 2014 to 2015 and fell below their previous level, before resuming their increase and upward trend from 2015 to 2017. Indeed, in the last three (and most recent) years of the period of investigation, imports grew by 13.6% and 4%. Analogously, US GDP grew from the early 2000s to 2007, a sudden break in the data occurred during the financial crisis where GDP declined below its previous level in 2008-2009, before resuming its upward trend again. In the US case, we would not doubt that the trend in GDP was upward even though it was interrupted by a decline which temporarily brought the value of GDP below its 2007 level. So too must the TRA reach the same conclusion with respect to category 16 – that there was an upward trend in the data (only interrupted by one anomalous year). Here again one should be wary with such small data sets of using regression. Without taking account of the break in the data, it may appear that there is a downward trend in the data.



However, the negative co-efficient is not statistically significant at the 5 or 10% level with a p value of 0.53 which suggests that the downward trend is not statistically significant (note that to be statistically significant at the 10% level the value of the p number need to be less than 0.1). Further, the apparent (and statistically insignificant) downward trend in the regression is the result of not interpreting the data properly, namely not taking into account the break in the data which occurs after 2014. Once account has been taken of the fact that the upward trend is temporarily broken 2014-2015, before resuming its upward rise, one can discern two increasing trend lines. The first upward trend takes place from 2014 to 2015 and the second one takes places from 2015 to 2017.



The second trend line (2015 to 2017) has a positive co-efficient of 2 (i.e. the data is increasing) and is almost statistically significant at the 10% level with a p-value of 0.18 (unlike the trend line which does not take into account the break in the data in Figure 3). This suggests that the data was, after a temporary decline one year, resuming its upward trend from 2015 (see Annex 2 for the regression output).

Given that imports show an increase every year (except one) and that linear regression shows two upward trends (once account has been taken of the break in the data), the TRA lacks a good and reasoned basis to conclude that imports of category 16 were not increasing.

Interrelatedness particularly affecting wire rod and rebar:

In its final recommendation, the TRA states that it did consider whether it could adjust product categories to take account of the interrelatedness 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. The TRA states that: *"It was therefore not feasible to account for it without combining a large number of product categories, which would prevent the TRA from giving effect to its obligation under the Regulations to conduct its analysis at the product category level."*

UK Steel submits that this request for evidence of interrelatedness for specific product categories is nowhere mentioned in the TRA's Statement of Intended Final Determination and therefore UK Steel had no opportunity to provide this. 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 explained this further in its submission but the TRA provided no reason as to why this was not considered. As Celsa explained, 'rebar-in-coils' (CN code 7213 1000) which is classified under the wire rod category is used for the same purpose as those products in the rebar category (7214 2000). Therefore removing measures on wire rod, is highly likely to increase the imports of products within the rebar category. The market will become distorted as those producers who have the capability of producing rebar both in straight lengths and in coil form (most producers), will be faced with much higher imports of wire rod which is no longer covered by safeguards. The product still covered nominally by safeguards (rebar) will be automatically damaged by this distortion in trade.

As such, given that the TRA has correctly concluded that imports of rebar increased during the period of investigation, it should also conclude that imports of wire rod have also increased because of the substitutability of the two products. As such, the increase the TRA found for rebar should also be judged to be an increase in imports for wire rod. Should the TRA not agree with combining the categories in their entirety, UK Steel requests that the relevant tariff codes within the wire rod category are transferred into the rebar category.

Each of these arguments (use of HMRC bulk data, trend analysis, interrelatedness) individually demonstrate an increase in imports for category 16 and combined make the case even stronger. There is no logical reason as to why the BTTA should not be used, but even without that, an approach that considers the trend and/or the particular product interrelatedness should suffice to demonstrate an increase in imports. Once again, considerations of significance are not necessary and Section (III) of Part A elaborates on why it is more relevant for significance and injury to be assessed at a global and product family level, if at all. But should the TRA insist that it must assess significance and injury at the category level then it must do so in the context of the industry environment.

Category 17 (Angles, Shapes and Sections):

The TRA recommended category 17 for revocation on the basis that there was no increase in imports, but once again this was based on data that clearly underestimated imports and omitted an increasing volume of trade over 2013-2017. The TRA also failed to consider imports after 2017. The HMRC TI

data did not account for 2% of EU imports in 2013, rising to 7% of imports in 2017. Using the complete HMRC bulk dataset, shows a 5% increase between 2013 and 2017, including a 10% rise in 2014 from 2013. Taking 2018 imports into account would show an even greater increase of 14%. Even using the HMRC TI data but considering the period after 2017 like the EU did, would still show an increase in imports of 9% between 2013-2018, with imports increasing 10% from 2017 alone.

Table – Category 17: Comprehensive HMRC Trade Data – Above Threshold vs Below Threshold Imports

	2013	2014	2015	2016	2017	2018
Total	**592,344**	**650,001**	**629,672**	**623,650**	**619,969**	**673,707**
EU Total	538,502	564,327	572,749	511,780	557,916	596,056
EU ATT	528,891	548,192	552,251	485,725	519,505	559,481
EU BTTA	9,611	16,135	20,498	26,054	38,411	36,576
Non-EU Total	53,842	85,674	56,923	111,871	62,053	77,651
Non-EU ATT	53,842	85,674	56,923	111,871	62,053	77,651

Source: HMRC bulk data (see Annex 1)

As for category 12, an examination of Eurostat export data to the UK for category 17 further highlights the under-reporting of HMRC EU imports. The datasets here do not have a consistent relationship, but EU exports to the UK as per Eurostat are much higher in 2017 compared to 2013 versus what the HMRC TI import data show.

Table – Category 17: EU exports to the UK (Eurostat) vs UK imports from the EU (HMRC TI) (tonnes)

	2013	2014	2015	2016	2017	2018	2019	2017 vs 2013
Eurostat	521,842	573,791	542,757	491,993	554,674	565,613	584,378	6%
HMRC (EU ATT)	528,891	548,192	552,251	485,725	519,505	559,481	554,798	-2%
Difference	-7,049	25,600	-9,494	6,268	35,169	6,132	29,579	

Source: Eurostat, HMRC (see Annex 5)

Substituting the EU portion of imports with Eurostat data, while keeping HMRC TI data for the non-EU portion, shows an absolute increase in imports of 7% between 2013 and 2017, even before incorporating BTT. It is therefore clear that the TRA ought to make some adjustment to the HMRC TI data as it is clearly not representative enough of true imports into the UK.

Table – Category 17: Absolute increase in UK imports using Eurostat data for EU portion of imports (tonnes)

	2013	2014	2015	2016	2017	2018	2017 vs 2013
Eurostat + HMRC Non-EU	575,683	659,465	599,680	603,864	616,727	643,264	7%
HMRC TI Total	582,733	633,866	609,174	597,596	581,558	637,132	0%

Source: Eurostat, HMRC, UK Steel analysis (see Annex 5)

Each of above options show a clear increase in imports and as per Section (III) of Part A, it is not relevant for the TRA to test for significance at category level if at all. But even if the TRA insisted it must assess significance at the category level, then UK Steel submits that the increase is certainly significant relative to the wider market context. It is even more significant with a two-digit percentage increase when using the complete and most representative data and when considering a wider time period, both of which are required and allowed by the Safeguard Regulation.

Category 27 (Cold Finished Bars):

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 has presented strong evidence 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. The trade diversion analysis in Section V of Part A of this document estimates that if half of the US's cold finished bar imports prior to 232 tariffs being applied were diverted to the UK, that would result in a 19% increase of UK imports for the product. This is not unrealistic given that without safeguards, the UK would be one of the few open markets for the product. But even if we assume a more conservative US trade deflection of 20%, that would cause a 7% increase to UK imports of cold finished bars. That is before factoring in the import pressure that the category is already experiencing even with safeguards in place. UK producers are operating in a global market where excess capacity has incentivised aggressive export strategies and undercutting of domestic selling prices, damaging their market share and profitability.

This import pressure is manifest in tariff rate quota utilisation in the first six months of 2021 when UK safeguards applied to category 27. The January-March quarter is not as representative as that was the first quarter since Brexit and still during lockdown because of Covid-19, so overall trading activity was subdued. Still, cold finished bars had one of the highest quota utilisations in the first quarter (Fifth highest out of 21 - see Annex 3, tab 2)

Table – First quarter (Jan-Mar) 2021 UK safeguard quota utilisation (tonnes)

27. Cold Finished Bars	Total Quota	Quota Consumed	Proportion of Quota Consumed
Total	**9,840**	**7,490**	**76%**
Other Countries	611	116	19%
European Union	7,144	6,433	90%
Russia	714	297	42%
Turkey	1,371	644	47%

Source: HMRC TRQ monitoring system (data download 26.03.2021, see Annex 3, tab 2)

However, in the second quarter, demand and trading activity started to normalise and the TRQ data show the kind of import pressure that is closer to representative and that can be expected to continue increasing going forward. In the April-June quarter cold finished bars used up 90% of their quota within UK safeguards, the third highest utilisation out of the 21 categories (see Annex 3, tab 3), with EU and Turkish origins completely exhausted as can be seen below.

Table – Second quarter (Apr-Jun) 2021 UK safeguard quota utilisation (tonnes)

27. Cold Finished Bars	Total Quota (Initial)	Total Quota (Including carry over)	Quota Consumed	Proportion of Quota Consumed
Total	**9,950**	**12,300**	**11,027**	**90%**
Other Countries	618	1,113	378	34%
European Union	7,223	7,934	7,934	100%
Russia	722	1,139	601	53%
Turkey	1,387	2,114	2,114	100%

Source: HMRC TRQ monitoring system (data download 29.06.2021, see Annex 2, tab 3)

The threat of further surges in imports is therefore clear and the TRA should consider this when assessing the likely recurrence of increased imports in the absence of a safeguard. Combined with considerations of more narrowly defined product interrelatedness with categories 12 and 16, the initial increase in imports test can also be met. 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.

Liberty has provided data as part of its application for reconsideration. Acenta, KTS Wire and Kiveton Park Steel have also provided injury data for cold finished bar in Annex 4. Please also refer to Kiveton Park Steel section under category 28 analysis.