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Our ref [redacted – our reference number]

Your ref TS0023

18 August 2022

Trade Remedies Authority  
North Gate House 21-23  
Valpy Street Reading  
Berkshire RG1 1AF

### **NON-CONFIDENTIAL VERSION FOR TRADE REMEDIES AUTHORITY (TRA)**

Dear Members of the Case Team,

#### **Re: Case TS0023 – Request for exemption from anti-subsidy transition review TS0023**

On behalf of our client, Viraj Profiles Private Limited (“Viraj”), we would like to submit a request for the exclusion of Viraj from the anti-subsidy transition review TS0023 under the Trade Remedies (Dumping and Subsidisation) (EU Exit) Regulations 2019 as subsequently amended.

The submission is structured as follows:

- **Section I** presents background information about the company;
- **Section II** briefly outlines the measures imposed by the EU in respect to the company;
- **Section III** briefly outlines the current actions undertaken by the UK authorities towards the company;
- **Section IV** provides arguments in accordance with the WTO case law to support the exclusion of the company from the UK’s transition review; and
- **Section V** elaborates some conclusions.

#### **I. Background information**

Viraj is one of the largest manufacturers and exporters of stainless steel long products in the world. With a turnover of US\$ 1.5 billion, the company is exporting its stainless steel products (wire rods, wires, welding wires, flanges, fasteners, bright bars and profiles) to more than 1,300 customers in 96 countries. With a melting capacity of 528,000 tons per annum, the company produces more than 50,000 SKUs in different shapes and sizes with grades like austenitic, ferritic, martensitic, duplex and electrode.

[redacted – sensitive information about the legal firm, including its legal form, registration number, bank details, names of the Partners]

Viraj's tradition, sound business principles and ethical practices have propelled it to the forefront of the stainless steel industry. In the stainless steel flanges segment, it has achieved a leading position in the world. For instance, in 2007 Viraj was ranked as the fifth most eminent producer of stainless steel long products worldwide, leaping up to third place just a year later.

In line with its commitment to world-class quality products, Viraj operates 360-degree facilities with advanced technologies for generating a broad array of stainless steel solutions. Viraj's stainless steel products have been used in automotive, food processing, boilers, pressure vessels, shipbuilding, oil pipelines, petrochemical facilities, construction projects and surgical instruments, and other industries. Viraj also functions as one of the world's largest stainless steel flange manufacturers, which has led to the company's trusted reputation as a leading provider of flanges for marine applications.

## **II. Measures imposed by the EU**

According to the Council Implementing Regulation (EU) No 405/2011 of 19 April 2011 imposing a definitive countervailing duty ("CVD") and collecting definitively the provisional duty imposed on imports of certain stainless steel bars and rods originating in India<sup>1</sup>, a definitive CVD of 4.3% was imposed on Viraj, among other companies, for imports of stainless steel bars and rods, not further worked than cold-formed or cold-finished, other than bars and rods of circular cross-section of a diameter of 80 mm or more, falling within CN codes 7222 20 21, 7222 20 29, 7222 20 31, 7222 20 39, 7222 20 81 and 7222 20 89 and originating in India.

Following the partial interim review of the definitive countervailing duty for Viraj on imports of the products under investigation, the Council, by adopting the Council Implementing Regulation (EU) No 721/2013 of 22 July 2013<sup>2</sup>, decided to reduce the CVD from 4.3% to 0% (nil), thus, finding Viraj not to be subsidized such as to justify imposing a CVD.

In addition, the EU conducted an expiry review in 2016 and adopted the Commission Implementing Regulation (EU) 2017/1141 of 27 June 2017 imposing a definitive CVD on imports of certain stainless steel bars and rods originating in India following an expiry review under Article 18 of Regulation (EU) 2016/1037 of the European Parliament and the Council.<sup>3</sup> According to this Commission Implementing Regulation, a definitive CVD was imposed on imports of stainless steel bars and rods, not further worked than cold-formed or cold-finished, other than bars and rods of circular cross-section of a diameter of 80 mm or more, falling within CN codes 7222 20 21, 7222 20 29, 7222 20 31, 7222 20 39, 7222 20 81 and 7222 20 89 and originating in India. The Commission confirmed the definitive CVD for Viraj at the level of 0% (nil).

Most recently, the definitive CVD on imports of certain stainless steel bars and rods originating in India, including Viraj company, expired on 29 June 2022, as per the European Commission's Notice of the expiry of certain anti-subsidy measures as the Commission did not receive any duly substantiated request for a review from the industry.<sup>4</sup>

The EU has repeatedly confirmed in its measures that since 2013 there were no reasons to consider Viraj to be relevantly subsidized, thus, the company has not had CVD applied to its EU imports under this CVD regime. Moreover, on 29 June 2022, the EU measure expired altogether for other Indian companies as well after no duly substantiated review request was lodged to the Commission.

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<sup>1</sup> OJ L 108, 28.4.2011, p. 3–10

<sup>2</sup> OJ L 202, 27.7.2013, p. 2–5

<sup>3</sup> OJ L 165, 28.6.2017, p. 2–28

<sup>4</sup> OJ C 245, 28.6.2022, p. 18–18

Accordingly, there never was a basis to apply a CVD to Viraj's EU imports under the previous CVD regime for imports of stainless steel bars and rods, not further worked than cold-formed or cold-finished, other than bars and rods of circular cross-section of a diameter of 80 mm or more, falling within CN codes 7222 20 21, 7222 20 29, 7222 20 31, 7222 20 39, 7222 20 81 and 7222 20 89 and originating in India, and there is no longer any EU CVD regime for which any UK transition review could compare.

### **III. Transition Review in the UK**

Following the UK's withdrawal from the EU, it has decided to maintain some measures applied by the EU under its now-independent WTO commitments and authority. Scrutiny is conducted through transition reviews regulated by the Trade Remedies (Dumping and Subsidisation) (EU Exit) Regulations 2019 with subsequent amendments.

By adopting the Notice of determination 2020/16 dated 31 December 2020<sup>5</sup>, the UK determined the CVD on certain stainless steel bars and rods originating in India imposed by the EU, specifically the above-mentioned Commission Implementing Regulation (EU) 2017/1141, that should be transitioned, and based on Taxation notice 2020/16<sup>6</sup>, which gave effect to the Notice of determination 2020/16, the duty amount applied to Viraj was determined at the level of 0% (nil).

Being transitioned means that the trade remedy measure will continue to apply when the UK begins operating an independent trade remedies system, which it actually introduced. On 21 June 2022, the UK's TRA initiated a transition review to assess whether the trade remedies measure is appropriate to the UK.<sup>7</sup>

In addition, the UK authorities adopted the Suspension notice 2020/08: Countervailing duty on certain stainless steel bars and rods originating in India dated 31 December 2020<sup>8</sup> that reads that:

*"The trade remedies measure applied by Taxation Notice 2020/16: Countervailing duty on certain stainless steel bars and rods originating in India is suspended and not to be charged if the goods to which the measure applies, on importation into the United Kingdom, are also subject to the charge of a safeguarding measure applied by Taxation Notice 2020/06: Safeguard measures on certain steel products – application of tariff rate quotas."*

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<sup>5</sup> Notice of determination 2020/16: countervailing duty on certain stainless steel bars and rods originating in India, available at <https://www.gov.uk/government/publications/trade-remedies-notices-countervailing-duty-on-stainless-steel-bars-and-rods-from-india/notice-of-determination-202016-countervailing-duty-on-certain-stainless-steel-bars-and-rods-originating-in-india>

<sup>6</sup> Taxation notice 2020/16: countervailing duty on certain stainless steel bars and rods originating in India, available at <https://www.gov.uk/government/publications/trade-remedies-notices-countervailing-duty-on-stainless-steel-bars-and-rods-from-india/taxation-notice-202016-countervailing-duty-on-certain-stainless-steel-bars-and-rods-originating-in-india>

<sup>7</sup> NOTICE OF INITIATION TRANSITION REVIEW No. TS0023 Certain stainless steel bars and rods originating in India Initiation of a Transition Review of Countervailing Measures

<sup>8</sup> Suspension notice 2020/08: Countervailing duty on certain stainless steel bars and rods originating in India, available at <https://www.gov.uk/government/publications/trade-remedies-notices-countervailing-duty-on-stainless-steel-bars-and-rods-from-india/suspension-notice-202008-countervailing-duty-on-certain-stainless-steel-bars-and-rods-originating-in-india>

According to the Taxation notice 2020/06 (safeguard measures on certain steel products – application of tariff rate quotas)<sup>9</sup>, the Viraj products under transition review fell under Category 14 (steel products: Stainless Bars and Light Sections), however at the moment are not subject to the safeguard duty, as according to Proposed approach to steel safeguard reconsideration (last updated on 23 June 2022) “[t]he Secretary of State does not propose to reapply the measure to the 4 categories for which the measure was discontinued in 2021 (categories 14, 15, 27 and 28).”<sup>10</sup> Therefore, only measures based on Notice of determination 2020/16 and Taxation notice 2020/16 are applicable.<sup>11</sup>

#### IV. WTO Case Law

Following the UK’s withdrawal from the EU and establishment of its own trade remedies system, the UK continues to be a full member of the WTO and, thus, has to abide by the WTO rules when trading with third countries. The UK has not concluded any preferential trade agreement with India.

One of the key pillars of the TRA as a new competent authority, as was reported in its Note on its first year of operation, is *Reputation* meaning that the TRA’s “strategic goal is to be well-understood, known and respected by our domestic and international stakeholders.”<sup>12</sup> This necessarily implies the adherence to and respect for international trade rules, as interpreted by the WTO bodies.

In *US-Stainless Steel (Mexico)* the Appellate Body found that “[d]ispute settlement practice demonstrates that WTO Members attach significance to reasoning provided in previous panel and Appellate Body reports”.<sup>13</sup> For that reason, such reports “are relied upon by panels and the Appellate Body in subsequent disputes” and “WTO Members take into account the legal interpretation of the covered agreements developed in adopted panel and Appellate Body reports.”<sup>14</sup>

Adopted reports thus “become part and parcel of the *acquis* of the WTO dispute settlement system” and ensure “security and predictability ... as contemplated in Article 3.2 of the DSU” that “implies that, absent cogent reasons, an adjudicatory body will resolve the same legal question in the same way in a subsequent case.”<sup>15</sup>

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<sup>9</sup> Taxation notice 2020/06: safeguard measures on certain steel products – application of tariff rate quotas, available at <https://www.gov.uk/government/publications/trade-remedies-notices-tariff-rate-quotas-on-steel-goods/taxation-notice-202006-safeguard-measures-on-certain-steel-products-application-of-tariff-rate-quotas>

<sup>10</sup> Proposed approach to steel safeguard reconsideration (HTML version), at Section C2, available at <https://www.gov.uk/government/publications/steel-safeguard-reconsideration-the-secretary-of-states-proposed-approach/proposed-approach-to-steel-safeguard-reconsideration-html-version>

<sup>11</sup> Updated information is available at <https://www.gov.uk/government/publications/trade-remedies-notices-tariff-rate-quotas-on-steel-goods>

<sup>12</sup> Note “The Trade Remedies Authority our first year of operation”, available at [https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/1086932/The\\_TRA\\_-\\_its\\_first\\_year\\_of\\_operations.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/1086932/The_TRA_-_its_first_year_of_operations.pdf)

<sup>13</sup> United States - Final Anti-dumping Measures on Stainless Steel from Mexico - Report of the Appellate Body, WT/DS344/AB/R, paragraph 160.

<sup>14</sup> *Ibid.*

<sup>15</sup> *Ibid.*

Such approach was confirmed in later cases, for instance, in *EU-Energy Package*<sup>16</sup> and *EU-Biodiesel*<sup>17</sup>, in which the Panels found no reasons to depart from the legal interpretation adopted by panels or the Appellate Body in prior cases.

The practice of the WTO regarding the review of measures for those exporters that have a definitive CVD established at the *de minimis* level, that being the case of *Viraj*, is that they should not be considered in duty review cases since the purpose of such reviews is whether to maintain an existing duty. In the case of an exporter such as *Viraj* in this case, there is no such prior duty imposed and paid to decide upon.

In *Mexico — Anti-Dumping Measures on Rice*<sup>18</sup>, the WTO Appellate Body interpreted Article 11.9 of the Agreement on subsidies and countervailing measures (“SCM Agreement”) for the situation in which exporters had the margin below *de minimis* following the investigation.

Article 11.9 of the SCM Agreement reads as follows<sup>19</sup>:

*An application under paragraph 1 shall be rejected and an investigation shall be terminated promptly as soon as the authorities concerned are satisfied that there is not sufficient evidence of either subsidization or of injury to justify proceeding with the case. There shall be immediate termination in cases where the amount of a subsidy is de minimis, or where the volume of subsidized imports, actual or potential, or the injury, is negligible.*

The similar provision Article 5.8 of the Anti-Dumping Agreement reads as follows<sup>20</sup>:

*An application under paragraph 1 shall be rejected and an investigation shall be terminated promptly as soon as the authorities concerned are satisfied that there is not sufficient evidence of either dumping or of injury to justify proceeding with the case. There shall be immediate termination in cases where the authorities determine that the margin of dumping is de minimis, or that the volume of dumped imports, actual or potential, or the injury, is negligible.*

In *Mexico — Anti-Dumping Measures on Rice*, the Appellate Body’s interpretation of the respective provisions of the SCM Agreement and Anti-Dumping Agreement concerned Article 68 of the Mexico’s Foreign Trade Act, according to which exporters with *de minimis* margins were subject to the following condition:

*Article 68*

*Final countervailing duties shall be reviewed annually at the request of a party or ex officio by the Ministry at any time, as shall imports from producers for whom no positive margin of price discrimination or subsidization was determined in the investigation.*

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<sup>16</sup> European Union and its Member States - Certain Measures Relating to the Energy Sector – Report of the Panel, WT/DS476/R, paragraph 7.1350.

<sup>17</sup> European Union - Anti-Dumping Measures on Biodiesel from Argentina - Report of the Panel, WT/DS473/R, paragraph 7.276.

<sup>18</sup> Mexico - Definitive Anti-dumping Measures on Beef and Rice - Complaint with Respect to Rice - AB-2005-6 - Report of the Appellate Body, WT/DS295/AB/R.

<sup>19</sup> Agreement on subsidies and countervailing measures, Article 11.9, available at [https://www.wto.org/english/docs\\_e/legal\\_e/24-scm.pdf](https://www.wto.org/english/docs_e/legal_e/24-scm.pdf)

<sup>20</sup> Anti-Dumping Agreement (Implementation of Article VI of the GATT), Article 5.8, available at [https://www.wto.org/english/docs\\_e/legal\\_e/19-adp\\_01\\_e.htm#art5](https://www.wto.org/english/docs_e/legal_e/19-adp_01_e.htm#art5)

Having analysed relevant provisions, the Appellate Body came to a conclusion by confirming the finding of the Panel in that case that Article 5.8 of the Anti-Dumping Agreement “requires an investigating authority to terminate the investigation “in respect of” an exporter found not to have a margin above *de minimis*, and that the exporter consequently must be excluded from the definitive anti-dumping measure.”<sup>21</sup> The Appellate Body followed the reasoning of the Panel that “**such exporters cannot be subject to administrative and changed circumstances reviews, because such reviews examine, respectively, the “duty paid” and “the need for the continued imposition of the duty”**” (emphasis added).<sup>22</sup>

In view of the Appellate Body’s, “such exporters were to have been excluded from the anti-dumping measure, by virtue of Article 5.8 of the Anti-Dumping Agreement, and from the countervailing duty measure, by virtue of Article 11.9 of the SCM Agreement.”<sup>23</sup> Moreover, it follows from the reasoning of the Appellate Body that it is implied that such exporters for whom the definitive CVD was imposed at 0% (nil), or otherwise falling under *de minimis*, which is the case of Viraj, “must also be excluded from administrative and changed circumstances reviews” that is the case of the transition review undertaken by the UK.<sup>24</sup>

The Appellate Body concluded, and therefore upheld the Panel’s interpretation of relevant provisions in the case, which are also applicable to the pending transition review in respect of Viraj, that “by requiring [trade defence authority] to conduct a review for exporters with no margins and, by extension, *de minimis* margins, [provision of a national law requiring review of imports from producers for whom no positive margin of price discrimination or subsidization was determined in the investigation] is inconsistent with Article 5.8 of the Anti-Dumping Agreement and Article 11.9 of the SCM Agreement” (neutral description added in brackets).<sup>25</sup>

It follows from the case law of the WTO and from factual information, that Viraj, which as shown above has had zero CVD for its imports to the EU, including the UK, for almost 10 years since 2013, and in view of the fact that the EU definitive countervailing duty expired at all on 29 June 2022, cannot be subject to another administrative or changed circumstances review. The purpose of these reviews is to “examine, respectively, the “duty paid” and “the need for the continued imposition of the duty”<sup>26</sup> which was imposed at 0% (nil) and therefore there is no subject matter of review at all.

## V. Conclusions

In view of the above-mentioned facts, Viraj respectfully requests the Trade Remedies Authority to:

- terminate its investigation TS0023 in respect of Viraj Profiles Private Limited, and
- exclude Viraj Profiles Private Limited from the transition review TS0023.

In the alternative, Viraj Profiles Private Limited respectfully requests the Trade Remedies Authority, following the transition review, to:

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<sup>21</sup> Mexico - Definitive Anti-dumping Measures on Beef and Rice - Complaint with Respect to Rice - AB-2005-6 - Report of the Appellate Body, WT/DS295/AB/R., paragraph 305.

<sup>22</sup> *Ibid.*

<sup>23</sup> *Ibid.*, paragraph 306.

<sup>24</sup> *Ibid.*

<sup>25</sup> *Ibid.*

<sup>26</sup> *Ibid.*, paragraph 305.

- recommend to the Secretary of State to revoke the application of any CVD amount, or to vary CVD in respect of Viraj to maintain the current level of 0% (nil).

[redacted – name of the Counsel]

[redacted – title of the Counsel]

for Crowell & Moring LLP

Counsel to Viraj Profiles Private Limited

Yours faithfully,

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