Safeguard measures applicable to imports of certain steel products into the UK – Tata Steel UK ("TSUK")'s requests for temporary suspension of the safeguard measures concerning imports of hot-rolled flat steel ("HRFS") (Product Category 1)

NON-CONFIDENTIAL VERSION

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WHITE & CASE

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I. Introduction

1. TSUK hereby requests that the Trade Remedies Authority ("TRA") initiates a suspension investigation of the safeguard measures applicable to imports of hot-rolled flat steel ("HRFS") which fall under Product Category ("PC") 1.[1] The request is made with reference to Regulation 39 of the Trade Remedies (Increase in Imports Causing Serious Injury to UK Producers) (EU Exit) Regulations 2019 (the "Safeguards Regulations").[2]

2. As explained below, the temporary suspension is needed for two main reasons. First, TSUK has been experiencing significant operational issues at its steelmaking facilities leading to a shortage of HRFS substrate for its downstream assets. In order to secure stability of such downstream assets, TSUK may have to import HRFS from third countries. Second, TSUK is planning to undertake a necessary modernisation of its HRFS production facilities for the purposes of developing more environmentally sustainable and economically viable production processes. TSUK's transition to proposed EAF-based steelmaking is likely to result in a further disruption of TSUK's production of HRFS for downstream processing on a temporary basis.

3. At the same time, as explained below, the existing safeguard measures on imports of HRFS into the UK, and TSUK's status as the only steel producer in the UK currently producing HRFS, mean that if the safeguard measures are not suspended there is a considerable risk that TSUK's downstream operations will be significantly disturbed while the technical reconfiguration is being undertaken. This is likely to have a severe negative impact on TSUK as the major HRFS user in the UK.

4. TSUK therefore requests that the TRA makes a recommendation to the Secretary of State to suspend the application of the safeguard measures as far as imports under PC 1 (HRFS) until 30 June 2024. TSUK notes this request is conditional upon the outcome of TSUK's consultation with the trade unions, and that it also expects an alternative mechanism, such as a license or a separate quota for imports of HRFS for downstream processing, to be introduced as of 1 July 2024 assuming that the safeguard measures are extended. This will allow TSUK to adapt and avoid serious disruptions of supply in downstream markets.

5. The present request is separate from TSUK's request to create a licensing mechanism for HRFS or to establish an additional quota for HRFS imports destined for downstream processing. The present request is aimed at providing a short-term relief allowing TSUK to avoid disruption of its downstream operations while a licensing mechanism or an additional quota for downstream processing is being considered and implemented.

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[1] Non-alloy and other alloy hot-rolled sheet and strip; Commodity Codes (72081000, 72082500, 72082600, 72082700, 72083600, 72083700, 72083800, 72083900, 72084000, 72085210, 72085299, 72085310, 72085390, 72085400, 72111300, 72111400, 72111900, 72126000, 72251910, 72253010, 72253030, 72253090, 72254015, 72254090, 72261910, 72269120, 72269191, 72269199).

[2] A link to the Safeguards Regulations may be found here: The Trade Remedies (Increase in Imports Causing Serious Injury to UK Producers) (EU Exit) Regulations 2019 (legislation.gov.uk).

II. Legal basis

6. The UK steel safeguard is currently set to expire on 30 June 2024, although we note that the TRA initiated an extension review on 4 September 2023.

7. Part 7 (Regulations 39 to 42) of the Safeguards Regulations sets out the legal basis for the TRA to carry out a suspension investigation with respect to safeguard measures.

8. In accordance with Regulation 39(1), the TRA may make a recommendation to the Secretary of State that "*the application of a definitive safeguarding remedy be suspended for a specified period […] in relation to the goods specified in the public notice made by the Secretary of State*".

9. Pursuant to Regulation 39(4), the TRA may make a suspension recommendation with respect to safeguard measures only where it considers the following circumstances to exist:

   a) that market conditions have changed temporarily; and

   b) that as a consequence of the change in market conditions, the serious injury caused to UK producers is unlikely to recur if the application of a definitive safeguarding remedy were to be suspended.

10. The TRA must also be satisfied that a suspension is appropriate, and that is has given UK producers the opportunity to comment on the suspension proposed in the application for suspension.

11. In addition, pursuant to Regulation 40(2), a suspension application to the TRA must include, as far as possible, information regarding the following factors:

   a) the change in market conditions;

   b) the temporary nature of that change; and

   c) the effect of the change on UK producers.

12. As demonstrated below, TSUK submits that circumstances required for the TRA to make a suspension recommendation are met with respect to the safeguard measures for the imports of HRFS falling within PC 1, and that such a suspension would be appropriate. TSUK therefore calls on the TRA to undertake a suspension investigation with respect to these safeguard measures and recommend that the measures be suspended until 30 June 2024.

III. Market conditions have changed temporarily

1. Background information

13. TSUK is the only producer of HRFS in the UK market. TSUK also produces a wide range of other downstream steel products that span across 10 different product categories in the context of the safeguard measures (in addition to hot-rolled steel covered by product category 1):

- Cold-rolled steel (product category 2);
- Metallic coated steel (product category 4);
- Organic coated steel (product category 5);
- Packaging steel (product category 6); and
- Tubular steel products (product categories 20, 21, 25A, 25B and 26)

14. All of the above-mentioned products require HRFS as the initial input material. TSUK's current production output of HRFS is around [non-confidential range: 3-4] million tonnes per annum. TSUK sells approximately [non-confidential range: 400-600] thousand tonnes of its output directly to the UK market, while the major part (approximately [60-80] % or [2-2.5] million tonnes) of HRFS is consumed internally for further processing into downstream products. The latter are also supplied to the UK market satisfying the demand and requirements of a great number of local businesses in various sectors, including but not limited to Automotive, Domestic Appliances, Construction and Engineering.

15. As will be explained below in more detail, TSUK has been experiencing severe issues with the performance of its upstream assets which have disrupted – and are likely to continue to disrupt – TSUK's HRFS production. While TSUK has already complemented its supply of HRFS substrate for downstream processing with HRFS imports from third countries, the company is likely to require a higher level of imports in the near future. Moreover, as TSUK has announced a plan to shift towards a more environmentally sustainable and viable business model, it is crucial for TSUK to have access to HRFS substrate to remain operationally viable in preparation for the transition period to proposed EAF-based steelmaking.

2. The change in the market conditions

(a) Recent developments that affected the UK market

16. The state of the UK market for HRFS has been relatively stable after a number of significant changes took place in the period from 2015 to 2018.

17. *First*, in 2015, TSUK mothballed its hot strip mill in Llanwern, Newport with a total capacity of [2.5-3] million tonnes per annum. This was due to "difficulties brought by surging Chinese imports in Europe as well as adverse currency movements". As a result, by 2016, TSUK's capacity for HRFS decreased from [6-7] million tonnes per annum to the current level of around [3-4] million tonnes per annum. This change in TSUK's HRFS production capacity has had a fundamental impact on TSUK and the state of the UK HRFS market in general. Most notably, TSUK's supply of HRFS to the domestic market decreased to an average of approximately [400,000-600,000] tonnes per annum. This has created a new market reality in which UK importers, traders, and users of HRFS adapted to a new level of domestic supply and demand for imports from third countries.

18. *Second*, in 2017, the EU imposed a number of anti-dumping and anti-subsidy measures with respect to HRFS, namely: (i) anti-dumping and anti-subsidy measures

on imports of HRFS from China; and (ii) anti-dumping measures on imports of HRFS from Ukraine, Brazil, Iran and Russia.

19. These measures applied directly in the UK before Brexit and were transitioned as UK trade defence measures after Brexit.

20. *Third*, in 2018, the EU imposed safeguard measures in the form of tariff-rate quotas on a number of steel products, including HRFS. Similarly, the safeguard measures were transitioned by the UK after Brexit.

21. While a number of other factors continued to influence the UK HRFS market (e.g., raw material price hikes, contraction of UK demand, the Covid-19 pandemic, import volumes and prices of other exporting producers, etc.), these three developments have had the most significant impact on the current state of the UK market.

(b) Upcoming developments at TSUK are likely to change the market

22. However, the above-described state of the UK market may change significantly for a period of time as a result of TSUK's transition to proposed EAF-based steelmaking. Indeed, it has become essential for TSUK to transition to an environmentally sustainable green steel production in order to remain a responsible and competitive UK steel manufacturer. Currently, the UK produces 7 million tonnes of steel each year, giving rise to around 11.6 million tonnes of CO2 (with a significant part of such emissions occurring at TSUK's blast furnace in Port Talbot). It is impossible to achieve a meaningful reduction in the level of emissions without the above-described transition.

23. Such a transition is also required in the wider context of the UK's net zero initiatives, as steel will be a critical material to support the UK's transition to net zero, through its use in wind turbines, electric vehicles, infrastructure, and the energy sector, making decarbonisation of steelmaking essential to the overall decarbonisation of UK industry. Moreover, reducing emissions would be in line with the UK's Industrial Decarbonisation Strategy which sets out indicative targets of reduction of two thirds by 2035 and 90% by 2050.[3]

24. TSUK is considering several options to shift to more environmentally sustainable and economically viable production processes. Some of such options may result in a disruption of HRFS production in the UK during the tentative transition period of 2024-2027 ("transition period"). It must be noted that the final decision determining the details of the transition will be taken only after consultations with trade unions.

25. TSUK's commitment to transition its business and the UK Government's support for such plans have been confirmed in UK Government's press release of 15 September 2023, in which the UK Government and TSUK have agreed on a proposed joint investment package, which is expected to "*secure a sustainable future for steelmaking*

[3] See Industrial Decarbonisation Strategy (publishing.service.gov.uk).

in Port Talbot, modernise production of greener steel and protect skilled jobs, subject to consultation and regulatory approvals."[4] As noted in the press release:

> *Tata Steel is expected to invest £1.25 billion, including a UK Government grant worth up to £500 million – one of the largest government support packages in history – in a new Electric Arc Furnace for greener steel production at Port Talbot, which is currently the UK's largest single carbon emitter.*
>
> *This is expected to replace the existing coal-powered blast furnaces – which are nearing the end of their effective life – and reduce the UK's entire carbon emissions by around 1.5 percent as a result.*

26. [Non-confidential summary: the transition may impact TSUK's output of HRFS. It may be necessary for TSUK to have access to HRFS imports beyond the quota volume and without incurring the 25% safeguard duty to feed its downstream assets.]

27. It must also be noted that if TSUK's production of such downstream products is disrupted, it will have a direct negative impact on UK users of a wide range of goods, including cold-rolled steel, metallic coated steel, organic coated steel, packaging steels and tubular products.

(c) TSUK's stability issues affecting HRFS output

28. TSUK notes that over the last year, it has been severely impacted by stability issues on its Blast Furnaces causing a significant volume loss for liquid steel, which has had a knock-on effect on TSUK's hot-rolling mill due to insufficient supply of slab for processing.

29. The ongoing performance issues affecting TSUK's current steelmaking assets and its effect on HRFS production have already impacted TSUK's downstream production facilities at all levels. The most notable declines due to the insufficient supply of HRFS have occurred in the production of cold-rolled steel and packaging steel, but all other production facilities have been impacted as well. As a result, TSUK has been far behind its production plan for a number of products with a severely adverse effect on its financial performance. Importantly, as TSUK has been unable to profit from its downstream assets, the situation has been further aggravated the impact of fixed costs (which are traditionally very high in the steel industry) of TSUK's production facilities.

30. In order to remedy the above-described situation, TSUK has imported HRFS from several sources in third countries over the last year. TSUK's imports were limited in volume and only partly helped to compensate for the insufficient operating stock of slab and HRFS. Given that TSUK does not expect any immediate improvements in the performance of its steelmaking assets, it is clear that in order to secure operational stability of the downstream production facilities, TSUK may have to import a more significant volume of HRFS from third countries. TSUK expects that such imports

[4] See UK Government Press Release here: Welsh steel's future secured as UK Government and Tata Steel announce Port Talbot green transition proposal - GOV.UK (www.gov.uk).

may exceed the current quota levels for HRFS, especially as far as the 'Other countries' quota is concerned.

(d) TSUK's increased demand for HRFS imports

31. In light of the above, TSUK may require significant imports of HRFS during the transition period, especially amid the on-going stability issues impacting TSUK's production of HRFS. In these circumstances, TSUK faces a significant gap in its own supply required to feed downstream operations. As stated above, TSUK uses approx. [non-confidential range: 2mt-2.5mt] of HRFS per annum to feed its downstream facilities, which produce a range of the above-mentioned products.

32. While TSUK and other UK companies could continue to import HRFS once the quotas have been fully consumed, the 25% safeguard duty applicable to such imports would make them unfeasible for processing purposes from the cost perspective. This would have a dramatic impact on TSUK and potentially other UK users of HRFS, and would lead to suspension of operations and closures of processing facilities across the UK, thereby impacting users of downstream processed products. This may apply to TSUK's own facilities that employ more than 8,000 people in the UK, with this number increasing two-fold if contractors and local jobs supported by TSUK are factored in.

33. While it is difficult to estimate the impact on the UK users of TSUK's downstream products, it is fair to assume that it may have severe consequences in terms of domestic production of certain goods and employment. Therefore, it is crucial to enable TSUK to access duty-free imports of HRFS for downstream processing, separately from and in addition to the current TRQ for HRFS. TSUK notes that it would also be in the interest of other UK importers of HRFS.

34. In view of the above, it is clear that the combination of TSUK's stability issues and its transition to EAF-based steelmaking necessitate imports of HRFS that will be used as substrate for TSUK's downstream production facilities.

3. <u>The temporary nature of that change</u>

35. If TSUK were to reduce the production of HRFS, such a change would be temporary for two reasons. First, after the transition, TSUK would return to a higher level HRFS production in the UK, but on a more sustainable basis. Second, TSUK expects the TRA to create an alternative mechanism (i.e. a license or a separate quota for downstream processing) which would allow TSUK to import HRFS in the required volume to maintain its downstream facilities.

36. Indeed, while currently the safeguard measures are set to expire on 30 June 2024, they may be extended as a result of the extension review. TSUK also expects that by that time, the TRA will have concluded a TRQ review which would establish either a licensing mechanism or an additional quota which would allow TSUK to import HRFS for downstream processing in the required volume without paying the 25% tariff. Even if the appropriate mechanism is not implemented in practice by that date, it is expected that the TRA will have adopted a decision in this respect with an appropriate timeline for implementation. TSUK wishes to emphasize that as the

change in circumstances is indeed temporary, the period of suspension can be clearly defined, i.e. until 30 June 2024.

37. If, however, the TRQ review concluded that it would not be appropriate to introduce an additional quota or a licensing mechanism, this would not affect the temporary nature of the transition as outlined above.

38. That this is only a temporary situation, which does not aim at curtailing overall UK HRFS capacity in the long run, but merely at replacing existing steelmaking capacities with more environmentally friendly ones, is also confirmed by information that is already public. TSUK's own press-release and FAQ confirm that the transition is only temporary in nature (as it is expected to take no longer than three years), and that it is needed for the installation of a new, more environmentally friendly electric arc furnace. In particular, FAQ states that "*electric arc furnace steelmaking would be operational at Port Talbot within 36 months of the receipt of relevant regulatory and planning approvals.*"[5] It is therefore clear that any disruption to UK HRFS production as a result of the transition is only temporary in nature.

(a) The effect of the change on UK producers

(i) Effect of the proposed suspension on TSUK

39. TSUK is the sole producer of HRFS in the UK. Due to the above-described changes and the on-going stability issues, TSUK may have to rely on imports of HRFS from third countries for its downstream operations during the transition period. This will not be possible without a suspension of the quota applicable to PC 1, as the associated costs (i.e. the 25% duty applicable to imports made in excess of the quota) will mean that downstream processing is not economically viable. In such circumstances, it may have a dramatic knock-on effect on TSUK's employment at its downstream production facilities (such as at Trostre, Llanwern, Corby and Hartlepool, as well as numerous distribution centres and steel service centres). It would also have a negative impact on UK steel users who currently rely on TSUK's downstream products.

40. By contrast, a suspension of the safeguard measures applicable to imports of HRFS into the UK is not likely to have any negative effects on TSUK in the short or medium term. As TSUK explained in the context of the transition review on anti-dumping measures concerning imports of steel originating in Brazil, Iran, the Russian Federation and Ukraine (TD0026), the effectiveness of EU and then (following Brexit) UK trade defence measures on imports of HRFS has enabled the UK steel industry to improve its performance despite other external factors such as the COVID-19 pandemic and high energy prices. As a result of these trade defence measures, TSUK's production, capacity, capacity utilization, sales, market share, profitably and employment improved in the period 2019-2022, which makes it less likely that it will suffer injury in the short or medium term in the event that the UK's safeguard measures are suspended with respect to imports of HRFS.

41. Therefore, although TSUK has in no way fully recovered (as further explained in its submission made in the context of TD0026), in TSUK's view, TSUK's improved financial situation against the backdrop of continued protection from UK anti-

[5] See TSUK's press-release and FAQ here: Green Steel Future | Tata Steel UK (tatasteeleurope.com)

dumping and anti-subsidy measures on steel products, supports the temporary suspension of the safeguard measures as far as imports of HRFS are concerned.

42. Importantly, in view of the above-described factors, TSUK requests a suspension solely as a short-term relief for a period until 30 June 2024.

(ii) Liberty Steel's mothballed production likely not to restart

43. Although another UK steel producer, Liberty Steel, technically has a facility at which HRFS can be manufactured, this facility has been mothballed without any specific plans to resume production.[6] Therefore, neither TSUK nor other UK users of HRFS could rely on supply from Liberty Steel in order to replace TSUK's supply both for its downstream operations and for the UK market.

44. Liberty Steel's plans to mothball its HRFS production were announced as early as the beginning of 2023 when the company's plans to shut down its production line was reported by the press. By way of example, a MetalMiner press report "Liberty Steel UK Cuts its Steel Production"[7] dated 23 January 2023 noted that:

> *LSUK will also mothball hot rolled coil producer Liberty Steel Newport in south Wales, turning it into a sales and distribution hub. That site can roll hot rolled coil in 980-1,540mm widths and in 1.5-12.5mm gauges. These tend to supply the construction, automotive pipe and tube, yellow goods, materials handling, and power sectors.*

45. Another press report by the Guardian dated 12 January 2023 also confirmed Liberty Steel's plans to shut down capacity.[8]

46. It must be also noted that Liberty Steel is unlikely to start producing HRFS in the light of the above-described change, as the key reasons for mothballing their HRFS facility will remain in place.

47. Moreover, Liberty's range of HRFS products is limited in terms of grades and physical characteristics, and would not necessarily match TSUK's products (or the products that TSUK and other UK users may have to import). For example, according to Liberty Steel's own information, their HRFS range is limited to the following characteristics: widths between 980mm & 1540mm in a combination of thicknesses from 1.5mm to 12.5mm.[9] The widths that Liberty Steel could offer would fail to meet TSUK's requirements for several downstream products, in that these widths are:

- not sufficiently narrow for TSUK's Corby facility that manufactures tubes and the Trostre facility where TSUK manufactures packaging steel products, some of which require HRFS with width of less than 980mm;

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6 See Hundreds of jobs at risk as Liberty Steel mothballs manufacturing sites in Wales - Wales Online; Liberty Steel UK to idle sites, cut jobs | Argus Media.

7 See Steel Production Cut at Liberty Steel - MetalMiner (agmetalminer.com).

8 See Liberty Steel plans to cut 440 jobs in UK and reduce production | Sanjeev Gupta | The Guardian.

9 See LIBERTY STEEL NEWPORT | LinkedIn.

- not sufficiently wide for TSUK's production of automotive steel products that are manufactured in Llanwern;

- not wide enough to double width roll it and cut in half.

48. Lastly, it must be noted that no injury can be caused to Liberty Steel as a result of imports of HRFS, as Liberty is not producing HRFS and is very unlikely to restart production.

IV. The changes to be implemented at TSUK seek to save jobs and lower carbon emissions

49. TSUK's transition to proposed EAF-based steelmaking is intended to ensure continued UK employment and environmentally friendly production. This understanding of the purpose of the transition appears to be shared by the UK Government, as confirmed in its recent press release.[10]

50. *First*, in terms of employment, the modernization of the TSUK plant will help to save thousands of jobs in the UK. The UK Government press release noted that:

> *Tata Steel UK employs over 8,000 people, including at Port Talbot, which would otherwise be under serious threat without substantial investment to guarantee its future. Tata Steel also supports around 12,500 further jobs in the upstream supply chain. […]*
>
> *Without substantial investment, Port Talbot would otherwise be at serious threat and Tata Steel's operations in the UK employing 8,000 people would be at risk. […]*
>
> *Thanks to UK Government intervention, it is expected that the proposal announced today – which remains subject to information and consultation processes led by Tata Steel – has the potential to safeguard over 5,000 jobs across the UK.*

51. *Second*, the new investment at TSUK will serve to reduce carbon emissions. Again this understanding is shared by the UK Government, which noted the following:

> *The transition to sustainable steelmaking at Port Talbot is also expected to reduce the UK's entire business and industry carbon emissions by 7 percent, Wales's overall emissions by 22 percent and the Port Talbot site's emissions by 85 percent. […]*
>
> *Transformational investment – including one of the largest UK Government support packages in history – would modernise production with state-of-the-art Electric Arc Furnace steelmaking and reduce UK's entire carbon emissions by around 1.5%.*

[10] See Welsh steel's future secured as UK Government and Tata Steel announce Port Talbot green transition proposal - GOV.UK (www.gov.uk).

52. *Finally*, the many benefits of the new project have also been confirmed by Cabinet members. By way of an example, the Rt Hon Kemi Badenoch MP, Secretary of State for Business and Trade, noted that: "*[t]he UK Government is backing our steel sector, and this proposal will secure a sustainable future for Welsh steel and is expected to save thousands of jobs in the long term.*" In addition, the Rt Hon Jeremy Hunt MP, Chancellor of the Exchequer, also noted that: "*[t]his proposal is a landmark moment for maintaining ongoing UK steel production – supporting sustainable economic growth, cutting emissions, and creating green jobs.*"

V. Conclusion

53. TSUK submits that the above-described developments and TSUK's on-going stability issues require the company to import a significant volume of HRFS from third countries to support its downstream operations.

54. TSUK therefore calls on the TRA to undertake a suspension review of the safeguard measures applicable to imports of PC 1 (HRFS) and to recommend to the Secretary of State that they be suspended until 30 June 2024 subject to the outcome of the consultations with the trade unions.