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OPEN FOR INSPECTION

Imogen Yapp
Lead Investigator
Trade Remedies Investigations Directorate
Government of the United Kingdom
United Kingdom

Brussels, 20 April 2021

Submission by TRS Portal

Dear Ms Yapp,

Subject: Comments on the questionnaire responses filed by Outokumpu and UK Steel (EEF Limited) in the framework of the UK Safeguard Transition Review on Certain Steel Products (TF0006)

Our client: Valbruna UK Limited

We refer to the questionnaire responses filed by Outokumpu Stainless Limited (hereinafter, "Outokumpu") and EEF Limited - on behalf of UK Steel – (hereinafter, "UK Steel") in the framework of the transition review of the EU safeguard measures on steel products (TF0006).

By this letter, Valbruna UK Ltd (hereinafter “Valbruna”) wishes to comment on the arguments put forward by Outokumpu in relation to the product scope of the safeguard measures and the existence of injury to the UK industry (Section 1) and by UK Steel in relation to the need for a transition of the safeguard measures after 1 July 2021 (Section 2).

1. COMMENTS ON OUTOKUMPU’S QUESTIONNAIRE RESPONSE

1.1 Product scope

At the outset, Valbruna wishes to note that the questionnaire response filed by Outokumpu essentially confirms that, as stated in Valbruna UK’s submission of 13 November 2020, the UK stainless bar and light sections industry is characterized by the presence of just one major domestic producer, namely Outokumpu. Indeed, the latter clearly stated on page 18 of its questionnaire response that “[t]here is no other UK producer of the like or directly competitive goods”.

The question therefore arises whether Outokumpu’s production capacity is sufficient to satisfy the increasing demand for of stainless steel bars and light sections in straight length falling within product category 14 (hereinafter, SSBs) in the UK market.¹ In this respect, the following should be noted.

According to Outokumpu’s questionnaire response, such capacity amounts to 10,000 - 20,000 MT/year. However, the information provided by Outokumpu suggests that the actual capacity is much closer to 10,000 MT/year than to 20,000 MT/year. In this regard, the following should be noted.

According to the information reported in Annex 5 (Cost to Make and Sell) to Outokumpu’s questionnaire response, from 2013 until the end of the MRP Outokumpu produced between 5,000 and 10,000 MT/year of SSBs. Moreover, according to the information reported in Annex 6 (Sales) to Outokumpu’s questionnaire response, from 2013 until the end of the MRP Outokumpu’s total SSBs sales amounted to between 5,000 and 9,000 MT/year (most of which exported out of the UK). Based on these figures, a production capacity close to 20,000 MT/year would be just not credible since it would mean that Outokumpu used only

¹ In its most recent investors’ presentation, Outokumpu indicated that the demand for SSBs will increase by 24% between 2019 and 2025 (see **Annex 1**). This clearly indicates that safeguard quotas on imports of SSBs should not be transitioned or should be in any event increased (*quod non*).

30-40% of its capacity in the last 8 years, something which is clearly not sustainable from a financial viewpoint in capital-intensive industry such as the steel industry.

It follows that Outokumpu's production capacity for SSBs should be estimated in approximately 10,000 MT/year, as already (and correctly) pointed out by Valbruna UK in its submission of 13 November 2020. A declared capacity exceeding 10,000 MT/year would cast serious doubt about the methodology used by Outokumpu for the calculation of its production capacity. Should this be the case, Valbruna respectfully requests the TRID to **carefully verify how Outokumpu calculated its production capacity for SSBs.**²

In any event, Valbruna submits that even a production capacity of about 20,000 MT/year cannot in any way be considered sufficient to meet the demand for SSBs in the UK. In this respect, it is worth recalling that throughout the POI approximately 60,000 MT/year needed to be imported into the UK to meet the demand in the UK market. This data speaks for itself.

Despite the above, Outokumpu stated on page 42 of its questionnaire response that “[t]here will be no shortage of supply if the safeguarding continues as Outokumpu has ample spare capacity” and that “there is enough supply in the market”. These statements are clearly in contradiction with the figures reported in Outokumpu's questionnaire response. In fact, on the one hand, the production capacity of this producer (i.e., less than 20,000 MT/year) is clearly not sufficient to meet the demand in the UK market; on the other hand, the fact that there is enough supply in the market does not mean that the UK SSBs industry alone is capable of meeting the needs of the users in the UK. Indeed, it is a fact that also importers – and not only the UK industry – contribute to supply users in the UK market.

In addition, Valbruna notes that, due to technical constraints, Outokumpu can only manufacture a very limited range of SSBs in terms of available sizes and shapes. See, for instance, the attached excerpt from Outokumpu's website showing that the company can only manufacture a limited range of SSBs, and namely: (i) round bars up to a maximum diameter of 32mm; (ii) square bars up to a maximum diameter of 23 mm, and (iii) hexagon bars up to a maximum diameter of 24 mm.³ It follows that

² As already explained to the TRID in writing, Valbruna UK wishes to point out that the performance of finishing operations (such as, e.g., the peeling process) is not a “substantial transformation” within the meaning of the customs legislation. Therefore such kind of operations are **not sufficient to confer the UK origin**. As a result, bars which are hot rolled in third countries and then peeled (or otherwise finished) in the UK cannot be considered as UK-manufactured products.

³ See Outokumpu Sheffield Stainless Rod & Bar website (**Annex 2**).

Outokumpu cannot manufacture larger sizes in the UK.⁴ For further details, please refer to Valbruna's submission of 13 November 2020 providing comprehensive evidence of the fact that Outokumpu is not capable of producing most of the product types included in product category 14. In that regard, Valbruna would like to stress that **nothing in Outokumpu's questionnaire response confutes the information and evidence provided by Valbruna.**

In the light of the foregoing, Valbruna respectfully requests TRID to acknowledge the following undisputed circumstances, which undoubtedly show that the transition of the safeguard measures applicable to product category 14 would not be in the economic interest of the UK:

- the UK SSBs industry is characterized by the presence of only one producer, namely Outokumpu Stainless Limited;
- Outokumpu's production capacity is clearly not sufficient to meet the demand for SSBs in the UK market. As a result, imports of SSBs are needed to satisfy the UK demand for SSBs; and
- In any event, Outokumpu cannot produce the whole range of SSBs included in product category 14, but just a small subset of the products included in this category, as explained in detail in Valbruna's submission of 13 November 2020.

1.2 Serious injury

On page 19 of its questionnaire response, Outokumpu claimed that “[s]tainless wire rod, bar and wire imports have exerted severe financial strain on the UK industry”. It further stated that “[i]mports have increased pressure on UK industry at a time when other external influences such as COVID or Brexit and automotive have resulted in a general downturn. This results in falling prices”.

However, available evidence suggests that in 2020 Outokumpu improved its economic performance.

In its consolidated 2020 financial statement, Outokumpu reported that it “*navigated successfully through the pandemic in 2020.*”⁵ In particular, the UK producer stated

⁴ By contrast, Valbruna SpA can produce round and square bars up to a maximum diameter of 600 mm, and hexagon bars up to a maximum diameter of 72,5 mm (see the excerpt from Valbruna SpA product catalogue attached as **Annex 3**).

⁵ *Outokumpu financial statement release for 2020*, p. 3 [link](#)

that, after a challenging second quarter, “*profitability improved significantly as a result of stronger than expected market recovery*”⁶ in the last months of the year 2020.

Moreover, in Outokumpu’s annual review for 2020, it is stated the following: “*in 2020 we kept our financial performance on a similar level than year before, despite a challenging year, and most importantly, we reduced our net debt to EUR 1,028 million*”⁷. Most importantly, Outokumpu acknowledged that “*year 2020 concluded without any pandemic-related production losses.*”⁸

Given the above, Valbruna fails to understand how an improvement of the economic performance of Outokumpu, and in particular of its profitability, can be considered as pointing to injury, let alone to serious injury.

2. COMMENTS ON UK STEEL’S QUESTIONNAIRE RESPONSE

2.1 UK Steel’s global and product-family analysis is meaningless and methodologically incorrect

On page 8 of its questionnaire response, UK Steel submits that “*TRID should conduct all analysis at the global and product family level and not the individual product category level. The significant linkages and interrelationships between the product categories show that categories should not be considered in isolation but, rather, as a single group. The global analysis should be supplemented by a secondary analysis at the level of the three product families (flat, long and tube)*”.

Valbruna strongly questions this approach for the following reasons.

First, an analysis based on each of the three product families (flat products, long products and tubes) would be contrary to the methodology described by TRID in the Notice of Initiation of this review.

According to the Notice of Initiation, this review will “*consider whether goods belonging to each specified category of steel products were, during the investigation period considered by the European Commission in connection with EU tariff rate quotas, imported into the United Kingdom in increased quantities*” (emphasis

⁶ Outokumpu Q4 & full year 2020 results Power Point presentation, p.4 [link](#)

⁷ Outokumpu Annual Report, p. 5 [link](#)

⁸ Outokumpu Q4 & full year 2020 results Power Point presentation, p.5 [link](#)

added). The Notice of Initiation also clarified that, where those goods were imported into the UK, the review will consider whether:

- *“there would be serious injury to UK producers of like goods and directly competitive goods if goods belonging to the specified category were no longer subject to a tariff rate quota;*
- *the continuation of a tariff rate quota is necessary to facilitate the adjustment of UK producers of the like goods and directly competitive goods to the importation of goods belonging to that category; and*
- *whether an alternative tariff rate quota or the application of a safeguarding amount to goods belonging to that category would better meet the aim of preventing serious injury to UK producers of the like goods and directly competitive goods” (emphasis added).*

It is clear from the very wording of the Notice of Initiation that the whole assessment concerning the need for a transition of the safeguard measures after 1 July 2021 must be carried out by taking into account the single product categories and not, as suggested by UK Steel, the product families.

Second, in the Notice of Determination 2020/06, TRID started its analysis by examining the increase in imports into the UK by product category. Following its analysis, TRID excluded from the scope of its analysis seven product categories for which it had found no increase over the period of investigation⁹ and imposed safeguard measures in the form of TRQs on each of the remaining 19 product categories, for which it had found an increase in imports.

Third, the approach suggested by UK Steel would be contrary to WTO law. It is worth recalling, in this respect, that in *US – Steel Safeguards*, the Appellate Body ruled that:

“[W]hen an importing Member wishes to apply safeguard measures on imports of several products, it is not sufficient merely to demonstrate that ‘unforeseen developments’ resulted in increased imports of a broad category of products that included the specific products subject to the respective determinations by the competent authority. If that could be done, a Member could make a determination and apply a safeguard measure to a broad category of products even if imports of one or more of those products did not

⁹ Notice of determination 2020/06: safeguard measures on certain steel products – application of tariff rate quotas. Updated 1 March 2021, available [here](#).

increase and did not result from the 'unforeseen developments' at issue¹⁰
(emphasis added)

It follows that, under WTO law, the analysis of the import evolution must be carried out for each product category subject to a safeguard measure.

In light of above, Valbruna respectfully requests TRID to follow the approach as set forth in the Notice of Initiation and the Notice of Determination, namely an examination of the situation of each of the product categories taken individually.

Following this approach, TRID should determine, for each product category individually, whether the substantive conditions to impose a safeguard measure are fulfilled. Consequently, TRID should terminate the safeguard investigation for a certain product category as soon as one of the substantive conditions is, for that specific product category, not fulfilled, even if the relevant condition were to be fulfilled when looking at all product categories taken together.

2.2 UK Steel's injury analysis based on theoretical UK quotas is meaningless and methodologically incorrect

On page 15 and following of its questionnaire response, UK Steel engaged in a complex analysis aimed at showing the likeliness that imports into the UK will increase in case the safeguard measures are repealed in June 2021. In this context, UK Steel made a comparison between UK imports in 2018/19 and the relevant "theoretical 2018/19 Quota" per product category, which would have been allocated to the UK.

Valbruna submits that, for the reasons outlined below, UK Steel's exercise is unreliable and meaningless and, as such, should be disregarded by the TRID.

First, when estimating the level of penetration of import allowed for by liberalised quotas, UK Steel considered the total UK steel demand, without differentiating amongst the different product categories covered by this review. By UK Steel's own admission, figures reported in the tables on pages 13 and 14 of its questionnaire responses include "*some products not captured by safeguards*". In Valbruna's view, this circumstance alone would be a sufficient ground for regarding the whole exercise carried out by UK Steel as unreliable.

Second, it is not clear what is the methodology used by UK Steel to calculate the theoretical quotas which would have been allocated to the UK in 2018/19. UK Steel

¹⁰ Appellate Body Report, US – Steel Safeguards, para. 319.

simply indicated in footnote 5 that “*Quota estimates have been made taking the quotas set out in the notice of determination and ‘de-liberalising’ them and making necessary pro-rata modifications*”. However, this unclear – not to say cryptic – explanation does not allow interested parties to comment on the whole reasoning adopted by UK Steel to arrive at the conclusion that “*without any measures in place, imports would grow significantly*”.

Third, the EU safeguard quotas cannot be used as a reference for calculating theoretical UK quotas, simply because importers in the EU could clear the imported steel products in any EU Member State in order to benefit from the safeguard quotas. Indeed, no matter what customs office of which Member State was chosen by the importer to clear the relevant goods, once the goods entered the EU single market, they benefitted – and still benefit – from the EU safeguard quotas and could freely circulate within the EU (which in 2018/2019 included the UK). Therefore, it is simply impossible to estimate what is the volume of the goods cleared in one Member State which was destined to the UK in 2018/2019.

All of the above shows that the complex analysis carried out by UK Steel in a self-serving attempt to show that without safeguard measures in place imports into the UK would have been significantly higher and, in any event, will increase in the future, is unreliable and without any relevance for the purpose of this review.

3. CONCLUSION

In the light of the foregoing, Valbruna respectfully requests TRID to disregard the arguments put forward by Outokumpu on the product scope of the safeguard measures and the existence of injury to the UK industry (Section 1) and by UK Steel in relation to the need for a transition of the safeguard measures after 1 July 2021 (Section 2).

Yours sincerely,

Gabriele Coppo