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**MINISTRY OF ECONOMY  
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На № \_\_\_\_\_ від \_\_\_\_\_

**Trade Remedies Investigations  
Directorate  
Department for International Trade**  
55 Whitehall, London  
SW1A 2EY  
United Kingdom

**Subject: TF0006 – Transition review concerning the safeguard measures on certain steel products**  
- Comments of Ukraine

The Department of Foreign Economic Activity and Trade Defence of the Ministry of Economy of Ukraine presents its compliments to the Trade Remedies Investigations Directorate and has the honour to note the following.

Having considered Statement of Intended Preliminary Decision within the transition review on safeguard measures on certain steel products, Ukraine respectfully submits its comments within the case.

The Department of Foreign Economic Activity and Trade Defence of the Ministry of Economy of Ukraine avails itself of this opportunity to renew to the Trade Remedies Investigations Directorate the assurances of its highest consideration.

Sincerely yours,

*(e-signed)*

**Oleg ZHYZHKO**  
**Director of the Department of**  
**Foreign Economic Activity and**  
**Trade Defence**

Enclosure: Comments of Ukraine



ДОКУМЕНТ СЕД Мінекономіки АСКОД

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**Comments of Ukraine regarding  
Statement of Intended Preliminary Decision within the transition review on safeguard  
measures on certain steel products  
(Transition review TF0006)**

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On 1 October 2020, the Trade Remedies Investigations Directorate (TRID) published a Notice of Initiation for a transition review of EU tariff rate quotas on certain categories of steel products.

Ukraine is of the opinion that the United Kingdom could not implement the EU safeguard measures on its territory as the result of the current transition review.

We hope that our arguments will be taken into consideration and the decision under the review will comply with the WTO rules and principles, in particular, Articles 2, 3, 4, 5 and 7 of the WTO Agreement on Safeguards.

**1. THERE IS NO LEGAL GROUNDS FOR APPLICATION OF SAFEGUARD MEASURES**

Ukraine is disappointed with the intension of UK authorities to apply safeguard measures on 10 product categories of certain steel products for the next 3 years. Product categories recommended for maintaining safeguard measures are 1, 2, 4, 5, 13, 15, 19, 20, 21 and 26.

As the UK left the EU and established a separate safeguard regime in its own right, with investigations, determinations and applications that are distinctly separated from the EU's, it cannot rely on the EU determinations within the trade remedies cases.

TRID showed absolute increase in imports for the period 2013-2017 which could not be considered as recent enough according to the meaning of Article 2 of the Agreement on Safeguards<sup>1</sup>. There was certainly no surge in imports into the UK in the recent period as the EU TRQs were in place.

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<sup>1</sup> Paragraph 131 of the Appellate Body Reports on Argentina — Footwear (EC) stipulates: “... 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

On the other hand, TRID has used data from the last three representative years, 2017 to 2019, to determine traditional trade flows for the calculation of the tariff rate quotas (“TRQs”) to be applied. This timeframe was also used to identify developing countries to be exempted from a safeguarding measure.

Therefore, using different periods for different parts of the determination by TRID is considered to be a biased approach in this case which is against the WTO rules.

Moreover, TRID failed to give careful consideration to the influence of COVID-19 pandemic, Brexit and high cost of production that recently presented challenges to the UK steel industry as the other factor within the meaning of Article 4.2(b) of the WTO Agreement on Safeguards.

In our opinion, determination that there is a likelihood of serious injury should the goods be no longer subject to the tariff rate quotas is not consistent with the WTO requirements for application of safeguard measures as there were significant other factors that influenced the UK industry. The WTO Agreement on Safeguards does not allow the imposition of safeguard measures based on a mere threat of injury and increase in imports.

Moreover, the European Commission’s original investigation in 2018 concluded that there was a threat of serious injury, which safeguard measures were intended to prevent. At the same time, threat of serious injury was mostly related to unforeseen developments, caused by US measures under section 232 of Trade Act 1962. Ukraine is of the opinion that three years were enough for the UK steel industry to adjust to such an “unforeseen development” as the U.S. Section 232 tariffs.

Moreover, application of the safeguard measures in the form of tariff rate quotas could lead to shortages of supply of crucial raw materials, affect UK downstream steel industries that, in turn, would slow economic recovery after the crisis caused by the COVID-19 pandemic.

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*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. And this language... ...requires that 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."*

Therefore, Ukraine is of the opinion that there is no legal grounds for the application of the safeguard measure and if measures are to be maintained it would not be in line with the UK interest.

## **2. EXCEPTIONAL CIRCUMSTANCES OF UKRAINIAN ECONOMY SITUATION**

For more than 7 years Ukraine has been dealing with Russian armed aggression. The UK states support Ukraine and maintain sanctions against Russia. Metallurgical industry is responsible for a quarter of Ukraine's total exports and is one of the city-forming industries in Ukraine. Lifting safeguard measures or excluding Ukraine from such measures is essential for country's economic capability to withstand the continuing Russian armed aggression.

Given the significant decrease in production caused by the Russian military aggression, exacerbated by the COVID-19 crisis, it is unlikely that Ukraine would increase its exports of steel products.

In light of the continuation of Russian military and economic pressure on Ukraine and the difficult situation in the Ukrainian economy, we would like to ask the UK to consider all possible ways to ease the access for Ukrainian products on the UK market.