

NON-CONFIDENTIAL**TD0006: Transition review of safeguard measures on certain steel products – submission of Tata Steel UK Ltd. concerning the Statement of Intended Preliminary Decision**

26 May 2021

Dear case team,

We refer to the Statement of Intended Preliminary Decision (SIPD) published by TRID on 19 May 2021. As a major domestic steel producer and an interested party in TF0006, Tata Steel UK Ltd. (TSUK) will set out its views on several highly important issues contained in the draft recommendation and directly affecting TSUK, in the present submission.

At the outset, TSUK welcomes TRID's decision to maintain the safeguard measures on a wide range of steel products, including product categories 1, 2, 4, 5, 20, 21 and 26. TSUK is of the opinion that TRID's conclusions with respect to these product categories reflect valid concerns around the level of imports into the UK and their impact on the domestic industry as well as on a wider range of UK stakeholders. However, there are certain elements of TRID's analysis that TSUK respectfully disagrees with and which are addressed in detail below.

1 Product category 6 (Tin Mill Products) must remain in the scope of the safeguard measures

According to section D 2 (Goods not being imported into the UK in increased quantities) of the SIPD, TRID found that there was no increase in imports of product category 6 in absolute terms in the period of investigation (POI). TRID's assessment of the level of imports is based on the following table:

Table 1. Absolute increase in imports analysis (Index 2013 = 100)

Product category	2013	2014	2015	2016	2017
6. Tin Mill Products	100	98	113	116	98

Source: SIPD, p. 17, table 4.

In particular, TRID acknowledges that "some increases in imports can be seen across the POI" for product category 6, but then concludes that imports "fall back to or below the 2013 import levels by the end of the POI, therefore the development in imports across the POI does not meet the criteria of an absolute increase in imports".¹

TSUK respectfully disagrees with the above conclusion for several reasons which are explained in detail below.

¹ SIPD, p. 18.

1.1 TRID's assessment of import trends during the POI goes contrary to WTO rules

First, TSUK submits that TRID completely disregarded the substantial increase in imports that took place in 2015 (by 13% as compared to 2013) and 2016 (by 16%), and limited its analysis exclusively to the comparison at the starting-point of the POI and the volume of imports at the end of that period (known as "end-point-to-end-point-comparison"). However, WTO case law clearly states that "*competent authorities are required to consider the trends in imports over the period of investigation*".² Moreover, according to WTO case law, a mere comparison of end points without due consideration of intervening trends during the POI is incorrect as it may provide an arbitrary picture of the movement of imports.³ In this respect, TSUK draws TRID's attention to the fact that the rate and amount of the increase in imports in 2015 and 2016 was much more significant in comparison to the base year of 2013 (up to 16%) than the decline in 2017 (only -2%). And, in fact, there was no decline at all in 2017 as compared to 2013 according to the ISSB import data, as explained in more detail in Section 2 below.

It must be also noted that the minor decrease which allegedly took place in 2017 as compared to the base year does not prevent TRID from concluding that imports continued in increased quantities, which is confirmed by the Appellate Body in *US – Steel Safeguard*:

*"We agree with the United States that Article 2.1 does not require that imports need to be increasing at the time of the determination. Rather, the plain meaning of the phrase 'is being imported in such increased quantities' suggests merely that imports must have increased, and that the relevant products continue 'being imported' in (such) increased quantities. We also do not believe that a decrease in imports at the end of the period of investigation would necessarily prevent an investigating authority from finding that, nevertheless, products continue to be imported 'in such increased quantities.'"*⁴

The Appellate Body further clarified their reasoning concerning the end of the POI in the official footnote as follows:

*"We note that a decrease at the end of a period of investigation may, for instance, result from the seasonality of the relevant product, the timing of shipments, or importer concerns about the investigation. As we have said, the text of Article 2.1 does not necessarily prevent, in our view, a finding of 'increased imports' in the face of such a decline."*⁵

Indeed, as will be demonstrated below, the decrease in imports in the last year of the POI does not reflect the deteriorating situation in the UK market and the injurious impact of imports on the UK industry.

In view of the above, TSUK is of the opinion that the level of TRID's analysis does not satisfy the requirements for the assessment of an increase in imports established by the WTO Agreement on Safeguards and WTO case law. TSUK submits that a more

² Appellate Body Report, *Argentina – Footwear (EC)*, para. 129; Panel Report, *Argentina – Footwear (EC)*, para. 8.276.

³ Appellate Body Report, *US – Steel Safeguards*, para. 354.

⁴ Appellate Body Report, *US – Steel Safeguards*, para. 367.

⁵ Official footnote to Appellate Body Report, *US – Steel Safeguards*, para. 367.

comprehensive analysis shows an increase in imports of tin mill products during the POI that calls for an extension of the safeguard measures for this product category.

1.2 Relative increase in imports of product category 6

TSUK draws TRID's attention to the fact that imports of product category 6 were increasing even despite the dropping UK consumption of tin mill products. In view of this, TSUK submits that TRID should also take into account a substantial increase in the import market share and assess it in the context of a relative increase in imports.

Indeed, the UK market for tin mill products has suffered from a declining trend over the last decade. In 2010, the market size was estimated at the level of 400 kt/a, which dropped below 250 kt/a in last years. One of the most significant decreases in demand took place in period of 2017-2018 and was caused by two major factors:

- 1) Closure of Crown Neath factory. Crown acquired Mivisa in Spain and optimised their production configuration leading to the closure of the UK factory and moving the production of can ends to their European plants in France and Spain;
- 2) Ardagh (previously Ball) Rugby switched their Beer & Beverage plant from steel to aluminium.

Nevertheless, imports continued to enter the UK market in increased quantities amid the dropping demand, which resulted into a substantial increase in the import market share during the POI. Indeed, import market share increased by striking 25% in 2016 as compared to the base year and remained 18% higher in 2017 than in 2013:

Table 2. Relative increase in imports analysis

	2013	2014	2015	2016	2017
Imports, MT (1)	134,863	132,801	152,787	156,808	132,223
UK consumption, MT (2), index	100	98	99	95	85
Import market share (3), index	100	101	116	125	118

Source: (1) – HMRC data; (2) – own calculations ($UK\ consumption = UK\ production^6 - UK\ export\ to\ third\ countries^7 + imports\ to\ the\ UK$); (3) – own calculations ($imports\ to\ the\ UK / UK\ consumption$).

In light of the significant structural changes in the UK tin mill market, TSUK respectfully requests TRID to analyse the increased level of imports relative to the UK consumption and to take into consideration its negative impact on the domestic industry.

1.3 Economic interest calls for an extension of the safeguard measures for product category 6

TSUK notes that since TRID concluded that there was no increase in imports of product category 6, it did not carry out any analysis for the purpose of the economic interest test for this product. As shown in the sections above, that conclusion is incorrect as it is based on incomplete analysis and contradicts the actual import trends during the POI. In light of this, TSUK submits that the economic interest assessment must be carried out with respect to product category 6.

⁶ Available in TSUK's questionnaire response in the present investigation.

⁷ Available in TSUK's questionnaire response in the present investigation.

TSUK notes that domestic supply of tin mill products is of vital importance to a wide range of both large downstream manufacturers and SMEs in the UK. Indeed, TSUK has a strong position in the UK market due to its full product range, supply chain services and technical support. TSUK also has leading positions with all major can makers and brand owners in the UK, [Non-confidential summary: information concerning the key domestic customers of TSUK]. Finally, TSUK is the sole supplier in the bakeware niche market, with some UK companies being market leaders in the EU in this product segment.

In view of the above, a large number of downstream enterprises rely on stable domestic supply of high-quality tin mill products, which is ensured by TSUK. On the other hand, the imported material coming into the UK is primarily landing in the General Line market (paint & coatings), which is far less dependent on the quality of the material and timely deliveries.

It must be also noted that the domestic market is the main priority of TSUK and its Trostre facility producing tin mill products. [Non-confidential summary: information concerning TSUK's domestic sales estimated at the level of 150-200kt]. Moreover, the UK market remains critical for Trostre's profitability and future in general due to the high level of protectionist measures in third country markets. [Non-confidential summary: information concerning the importance of the EU and the US market for TSUK]. Indeed, due to the current steel safeguard measures applied by the EU, UK imports of tin mill products into the EU are now capped at the level of less than 36 kt per year. Trostre has been also struggling with its exports to the US due to Section 232 measures applicable to a wide range of tin mill products, not all of which can be exempted from the measures. Given the current situation in these two key export markets, Trostre will not be able to reorientate its sales from the domestic market if imports are allowed to reoccur in increased quantities. We also note that Trostre's profitability has previously been significantly impacted by market changes with assets mothballed as a result. Removal of the safeguard will precipitate further such steps.

In light the foregoing, TSUK submits that it is in the wider economic interest of the UK to maintain the safeguard measures on imports of product category 6.

2 Increase in imports should be assessed based on the ISSB data

TSUK notes that TRID's conclusion on the absence of an increase in imports of several product categories, including tin mill products, is based on the data available from HMRC. In this respect, TSUK supports the claim of UK Steel⁸ that the International Steel Statistics Bureau (ISSB) is a more appropriate and accurate source of import data for the purpose of TRID's analysis.

Indeed, as HMRC data does not reflect volumes of imports into the UK from the EU-27 below a certain value threshold, it does not provide a full picture of actual import volumes and trends. According to the changes to the UK's thresholds that were introduced in 2013 by the European Commission, EU Member States, including the UK at the time, had to capture only 93% of their estimated trade with other EU states. Therefore, the HMRC data for the period from 2013 to 2017 is missing a significant share of steel imports from the EU into the UK.

⁸ Please refer to UK Steel's submission concerning the Statement of Intended Preliminary Decision.

In absolute terms, it means that the HMRC data does take into account 156,860 tonnes of steel imports across the 19 product categories in 2013 alone. Moreover, by 2017, this unaccounted-for data had increased to 542,548 tonnes.

Table 3: Comparison of HMRC and ISSB Data for UK steel imports from 2013 to 2017

	2013	2014	2015	2016	2017
ISSB - Total imports (MT)	5,104,805	6,148,236	5,995,856	6,456,643	6,397,699
HMRC – Total imports (MT)	4,947,945	5,875,304	5,681,760	5,967,872	5,855,151
Difference (MT)	156,860	272,932	314,096	488,771	542,548
Difference (%)	3%	5%	6%	8%	9%

As to product category 6 specifically, the ISSB data shows a different trend in imports as compared to the HMRC data.

Table 4. Absolute increase in imports of PC6 – HMRC data vs. ISSB data

Data source	2013	2014	2015	2016	2017
ISSB	136,520	136,863	157,060	163,666	136,935
<i>Index</i>	100	100	115	120	100
HMRC	134,863	132,801	152,787	156,808	132,223
<i>Index</i>	100	98	113	116	98

It is clear from Table 4 that imports of tin mill products did not decrease in 2017 below the level of 2013. Moreover, given the trends during the POI and significant increases in 2015 and 2016 specifically, it must be concluded that there was a rapid and significant increase in imports during the POI.

In light of the foregoing, we respectfully request TRID to re-assess the level of imports in the period from 2013 to 2017 based on the ISSB import data instead of the HMRC data as the former represents a more appropriate and accurate source.

We remain at your disposal if you have any questions.