

# 中华人民共和国商务部

MINISTRY OF COMMERCE OF THE PEOPLE'S REPUBLIC OF CHINA

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**Non-Confidential**

**The comments on the particular market situation in China's heavy plate market  
regarding the transition review TD0014  
Submission of the GOC**

The Notification of PMS enquiry dated on 23 August 2022 by Trade Remedies Authority (TRA) requested the Ministry of Commerce of the People's Republic of China (GOC) to comment or provide information on whether a particular market situation (PMS) exists in China's heavy plate market. It is appreciated that TRA gave this opportunity. In order to promote the fair and just settlement of the transition review concerning certain heavy plate of non-alloy or other alloy steel originating in China (transition review TD0014). The GOC would like to submit the following comments.

**1. The position on maintenance or application of the EU trade remedy measures (the EU measures ) and transition reviews.**

**1.1 The maintenance or application of the EU trade remedy measures by the UK lacks legal and factual basis.**

The very act of exit from the EU by the UK released the UK from all its rights and obligations as a former member state. The maintenance or application of the EU measures by the UK lacks legal basis. The EU's Notice clearly states that "all anti-dumping and anti-subsidy measures in force apply from 1 January 2021 only to imports into the twenty-seven Member States of the European Union". There is no international law or WTO rules authorizing the UK to maintain or apply the EU measures. The maintenance or application of the EU measures by the UK also lacks factual basis. The continued application of the EU measures without WTO-compliant investigation is inconsistent with WTO rules.

**1.2 The initiation and on-going "transition review" TD0010 are inconsistent with the WTO rules.**

the UK is not entitled to maintain and continue to apply the EU measures after Brexit.

The "transition review" TD0014 is invalid from the beginning. The "transition review" is not an investigation procedure under the WTO rules. The Call for Evidence and the initiation of the "transition review" lacks transparency. TRA also failed to demonstrate the initiation of "transition review" meet the requirements of the domestic industry representativeness under Articles 5.4 the ADA.

## **2. Investigations on PMS should be in accordance with the WTO rules.**

### **2.1 Extensive interpretation of PMS does not comply with ADA.**

In accordance with the Anti-Dumping Agreement (ADA), the scope of PMS investigation should be directed to its purpose, which PMS should have a direct impact on the domestic sales price of the relevant products, thus affecting the comparability of domestic sales prices with export prices. Different economies are at different development stages and have their own economic characteristics. If the anti-dumping measures are extended to the evaluation of national systems and policies, and attribute competitiveness arising from the macro-political conditions and development environment to enterprises, such an extended scope of investigation would neither directly support the finding of a PMS nor be consistent with ADA.

### **2.2 The allegation on PMS in China's heavy plate market is general, not supported by any evidence.**

UK Steel (EEF Limited) and other interested parties claimed that a PMS exists in China's heavy plate market, but they have not submitted any evidence, which is only a general allegation. According to Article 5 of ADA, *Simple assertion, unsubstantiated by relevant evidence, can not been considered sufficient to meet the requirement of the application.* If the UK interested parties claim that a PMS exists in the China's heavy plate market, they should provide relevant sufficient evidences. Instead of TRA asking the GOC to provide contrary evidence or information to prove that there is no PMS in China's heavy plate against their simple assertion. This is a typical inversion of the burden of proof, which is inconsistent with the relevant provisions of ADA.

## **3. No PMS exists in the China's heavy plate market.**

The Article 7(4) of the Trade Remedies (Dumping and Subsidisation) (EU Exit) Regulations 2019 stipulates that a "particular market situation" includes situations where—(1) prices are artificially low; (2) there is significant barter trade; (3) prices reflect non-commercial factors. The GOC has assessed that the above situations do not exist in the China's heavy plate market.

### **3.1 All types of Chinese heavy plate enterprises are equal competitors in the market.**

Article 15 of the Constitution of The People's Republic of China stipulates that China shall practice a socialist market economy. After years of efforts, China has established

a market economy in which the market plays a decisive role in the allocation of resources, which is recognized by most countries in the world. All kinds of heavy plate manufacturers in China are established and operate in accordance with the relevant provisions of the Company Law of the Peoples Republic of China. They allocate resources fully accordance with price signals and participate fairly in market competition. The Company Law of the Peoples Republic of China does not interfere with the production, operation and pricing of these enterprises.

After years of reform, China's state-owned enterprises (SOEs) have become independent market participants, which allocates resources, sets sales prices and conducts business fully compliance with price signals. Article 16 of the Constitution of The People's Republic of China clearly stipulates that State-owned enterprises should, within the scope prescribed by law, have the right to operate autonomously. SOEs in China are market entities that operate independently, bear their own profits and losses, exercise self-restraint and self-developments. They participate in market competition equally with enterprises of other ownership, without special treatment. The total assets of listed companies controlled by SOEs account for 67% of that of central enterprises'. Listed companies have quarterly, half-yearly and annual reports, and their information are transparent. It can be seen that SOEs are independent market entities operating in accordance with the provisions of Chinese Constitution Law and do not enjoy special treatment. Like other types of enterprises, SOEs allocate resources, set prices for domestic sales and exports and conduct their business in full accordance with price signals.

### **3.2 Five-year plans are not equal to government intervention.**

The primary purpose of China's five-year plan is to provide a framework guidance for economic and social development during the plan period. The plan is not self-executing and the government does not interfere with business operations and pricing practices accordingly, which should not be considered to be government intervention. Five-year plan may be used by commercial enterprises to anticipate the direction of the economy and economic development so as to make informed investments according to the anticipated direction. The white paper "Industrial Strategy - Building a Britain fit for the future", released by the UK government in November 2017, also regards as a guiding plan. The GOC request TRA to determinate whether the white paper demonstrates that the UK government intervenes or controls business and would cause a PMS in the UK economy. Therefor, GOC requests TRA give equal treatment to China's five-year plans and this UK white paper rather than implement double standards.

### **3.3 The heavy plate market in China is fully competitive and prices are determined by the market force.**

There are more than 40 heavy plate producers in China. The top five producers account for about 40-50% of the total domestic heavy plate outputs. The market concentration of the heavy plate industry is low, and the market competition is full.

Therefore, China's heavy plate market is a fully competitive market.

The domestic sale prices and export prices of China's heavy plate are determined by market factors. The GOC does not intervene in or control the sale practices and sale prices of the heavy plate. The production and sale decisions of various types of enterprises are entirely determined by market factors. There is no evidence that the prices of Chinese heavy plate products are artificially low.

While purchasing in domestic market, downstream users of China's heavy plate are also importing large quantities of heavy plates from the international market. In 2020, the heavy plate imported by China accounted for 2,848.9KT, and in 2021, the imports were 1,916.7KT. The import data shows that downstream users can determine the procurement source according to the domestic market price and the international market price, and the domestic market price of China's heavy plate is formed by the joint action of domestic and international market forces.

### **3.4 No barter trade in China's heavy plate market.**

China's domestic heavy plate market is not engaged in barter trade. Domestic heavy plate products are traded all in the general trade. The producers decided the price of the heavy plates according to the market factors. Domestic heavy plate sales are normal sales behaviors in the trade process.

### **3.5 The wrong conclusions of the third party are neither facts nor evidence.**

The GOC and relevant enterprises do not accept the European Commission's Commission Staff Working Document and the findings conducted by investigation authorities of Canada, Australia and United States. The GOC and relevant enterprises had submitted their defense comments to the above-mentioned institutions. For example, regarding Commission Staff Working Document, the GOC stated that Article 2(6a) of the Basic Regulation is not consistent with Article 2.2 and 2.2.1.1 of the ADA and decisions of the Appellate Body and panel of the WTO dispute settlement mechanism on relevant issues. Commission Staff Working Document issued against China does not represent the EU's official position. The content of Commission Staff Working Document and the ways it is used have serious factual and legal flaws, the investigation based on this should be invalid from the beginning.

TRA should maintain its independence. The report from the third party or the wrong conclusion of other investigation authorities should not become the basic facts on which the TRA investigation conclusion is based. Under the Article 1 of ADA, *an anti-dumping measures shall be applied only pursuant to investigations initiated and conducted in accordance with the provisions of this agreement.* The conclusions or findings mentioned by the UK interested are the investigation conclusions or working document of other investigation authorities, they are not an objective facts, nor can they be used as the basic evidences for the findings made by the investigation authority of another sovereign country. As an independent investigation authority,

TRA shall make a decision based on the objective facts obtained from its own investigation and take relevant measures accordingly.

#### 4. No dumping motivation and demand for Chinese heavy plate enterprises.

##### 4.1 The volume of heavy plate imported from China is negligible.

**Table 1: UK Heavy Plate Imports – (all tariff codes listed in the measure taken at an 8-digit level)**

	2014	2015	2016	2017	2018	2019	2020	2021
Imports from China (tonnes)	12,678	38,267	2,128	75	123	245	114	393
Total plate imports (tonnes)	279,971	282,286	359,104	336,207	402,281	368,318	292,740	251,992
Plate imports from China as % of total imports	4.53%	13.56%	0.59%	0.02%	0.03%	0.07%	0.04%	0.16%

Source: UK Trade Info (See Annex 1 – Tab 2)

According to the Table 1<sup>1</sup>, during the injury investigation period (from 2018 to 2021), the proportion of the imports of heavy plate from China to the total imports of the United Kingdom did not exceed 1%, and was less than 0.1% in most years. According to Article 5.8 of the ADA, the volume of dumped imports shall normally be regarded as negligible if the volume of dumped imports from a particular country is found to account for less than 3% of the imports of the like product in the importing Member. Negligible volume of heavy plate imported from China cannot cause injury to UK domestic heavy plate industry. Therefore TRA shall terminate the current investigation and revoke the relevant measures accordingly.

##### 4.2 The decline in heavy plate demand has led to poor performance of the UK producers.

**Table 2: UK Heavy Plate Production, Demand, Trade (thousand tonnes) – ALL TARIFF CODES**

	Production	Demand	Imports	Exports
2018	100	100	402	112
2019	92	91	368	107
2020	90	78	293	104
2021	90	50	252	232

Source: Spartan UK, Liberty Steel, UK Trade Info (HMRC) **PRODUCTION AND DEMAND INDEXED IN NON CONFIDENTIAL VERSION**

According to the Table 2<sup>2</sup>, during the injury investigation period, the demand for heavy plate in the UK decreased year by year, and the demand in 2021 was only half of that in 2018. Over the same period, the import of heavy plate in the UK decreased by 37% and the export increased by 107%. In the case of a sharp drop in imports and a sharp rise in exports, if UK heavy plate producers suffer injury and are in poor operating

<sup>1</sup> Table 1, TD0014 UK Steel Appendix to Response NON CON, UK Steel (EEF Limited).

<sup>2</sup> Table 2, TD0014 UK Steel Appendix to Response NON CON, UK Steel (EEF Limited).

conditions, then a sharp drop in domestic demand is the main reason. As the importer KROMAT TRADING LIMITE said, "*However, in the case of the product subject of this review, existing quotas are not generally fully utilised, suggesting that it is demand rather than supply which is the issue.*"<sup>3</sup> Article 3.5 of the ADA stipulates that "*the injury caused by these other factors must not be attributed to the dumped imports.*"

## **5. It is not in the UK's interest to continue to apply the heavy plate anti-dumping measures.**

Community Union, an interested party, said in the questionnaire response that "*Prices in the market for heavy plate are currently at historic highs, with UK prices double what they were just a year ago. In the European market prices are approximately 20% less per tonne, and prices in Asia are far lower and can be half the UK price. Because the price differential is so significant.*"<sup>4</sup> The price of heavy plates in UK is significantly different from that in the international market. The existence of steel safeguard measures and anti-dumping measures for heavy plates will continue to maintain the price of heavy plate in the UK at an abnormally high level. Abnormally high price of heavy plate will significantly increase the cost of downstream users and seriously weaken the competitiveness of downstream users' products, which will delay or retard the recovery ability and speed of downstream industries from the impact of the COVID-19. It will further cause the domestic demand for heavy plate in the UK to shrink. As the importer KROMAT TRADING LIMITE said, "*Trade Measures can and do have a distorting effect on the so-called 'free' market in the UK, which is not to the benefit of the importer, nor the consumer and nor even the domestic producer.*"<sup>5</sup>

## **6. Conclusion.**

The maintenance or application of the EU measures by the UK also lacks factual basis. The relevant transition reviews are invalid from the beginning. The UK shall terminate the application of the EU measures and all the on-going transition reviews. The scope of PMS investigation conducted by TRA shall comply with WTO rules. China has established a market economy in which the market force plays a decisive role in resource allocation. All kinds of enterprises are equal subjects of market competition. The GOC opposes discrimination based on the ownership of Chinese enterprises. There are no all the situations of PMS under the Trade Remedies (Dumping and Subsidisation) (EU Exit) Regulations 2019 in China's heavy plate market. All types of Chinese heavy plate producers operate independently according to the price signal. The GOC has not intervened in the production, operation and pricing of these enterprises. The five-year plan does not belong to the government's intervention in enterprises. China's heavy plate market is fully competitive, and the price is

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<sup>3</sup> Page 18, TD0014 Importer Questionnaire (nonconf), KROMAT TRADING LIMITED.

<sup>4</sup> Page 9, TD0014 Contributor Questionnaire non-confidential, Community Union.

<sup>5</sup> Page 18, TD0014 Importer Questionnaire (nonconf), KROMAT TRADING LIMITED.

determined by the market force. Negligible volume of heavy plate imported from China cannot cause injury to UK domestic heavy plate industry. The decline in heavy plate demand has led to poor performance of the UK producers. The price of heavy plate in the UK is abnormally high. Continuing to apply the heavy plate anti-dumping measures is not to the benefit of the importer, nor the consumer and nor even the domestic producer, which is not in the UK's interest. Therefore TRA shall terminate the current investigation and revoke the relevant measures accordingly.