

中华人民共和国商务部

MINISTRY OF COMMERCE OF THE PEOPLE'S REPUBLIC OF CHINA
2, DONG CHANG'AN STREET, BEIJING, CHINA 100731

Non-Confidential

**The Comments on the Particular Market Situation in China's Corrosion
Resistant Steels Market regarding the Transition Review TD0031
Submission of the GOC**

The Notification of PMS allegation dated on 22 March 2023 by Trade Remedies Authority (TRA) requested the Ministry of Commerce of the People's Republic of China (GOC) to comment or provide information on the allegations of a particular market situation (PMS) with regards to the Chinese economy. It is appreciated that TRA gave this opportunity. In order to promote the fair and just settlement of the transition review concerning certain corrosion resistant steels products of non-alloy or other alloy steel originating in China (transition review TD0031). 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 transition review are inconsistent with the WTO rules.

the UK is not entitled to maintain and continue to apply the EU measures after Brexit. The transition reviews are 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 corrosion resistant steels market is general, not supported by any evidence.

UK Steel (EEF Limited) claimed that they had *previously submitted evidence of market distortions in the hot rolled flat steel (HRF) industry in China to the TRA in relation to the HRF AD and AS cases. Corrosion resistant steel is simply a subset of HRF with a further downstream step of coating. Therefore all the evidence that was provided in relation to HRF also applies to corrosion resistant flat steel¹*. But they had not submitted any evidence. What they claimed is only a few words and 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 corrosion resistant steels 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 corrosion resistant steels and Chinese economy 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 corrosion resistant steels 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 corrosion resistant steels market.

¹ Non conf - Other Interested Party and Contributor Registration Form, UK Steel (EEF Limited).

3.1 All types of Chinese corrosion resistant steels 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 corrosion resistant steels 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 14th Five-Year Plan indeed referenced the steel sector, but only in passing and in a general context, noting the importance generally transforming and upgrading traditional industries.²

The white paper "Industrial Strategy - Building a Britain fit for the future", released by the UK government in November 2017, generally has the same intention and scope

² The 14th Five-Year Plan (English),

https://cset.georgetown.edu/wp-content/uploads/t0284_14th_Five_Year_Plan_EN.pdf, page 21.

as the 14th Five-Year 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 corrosion resistant steels market in China is fully competitive and prices are determined by the market force.

There are many corrosion resistant steels producers in China. The market concentration of the corrosion resistant steels industry is low. China's corrosion resistant steels market is a fully competitive market. The domestic sale prices and export prices of China's corrosion resistant steels are determined by market factors. The GOC does not intervene in or control the sale practices and sale prices of the corrosion resistant steels. 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 corrosion resistant steels products are artificially low.

China's corrosion resistant steel market is open and free, the production and sale are decided by domestic and international market forces. While sell corrosion resistant steels in domestic market the China's corrosion resistant steel producers exported the products according to the situation of international market. While purchasing in domestic market, downstream users of China's corrosion resistant steels are also importing large volumes of corrosion resistant steels from the international market. In 2022, the corrosion resistant steels imported by China accounted for 888 Kiloton from Korea, Japan, Germany, France and other countries. Chinese corrosion-resistant steel producers decide whether to sell or export their products in China according to the domestic and international prices. Similarly domestic downstream users can determine the purchase sources according to the domestic and international prices. The domestic market price of China's corrosion resistant steels is formed by the joint forces of domestic and international market.

3.4 No barter trade in China's corrosion resistant steels market.

China's domestic corrosion resistant steels market is not engaged in barter trade. Domestic corrosion resistant steels products are traded all in the general trade. The producers decided the price of the corrosion resistant steels according to the market factors. Domestic corrosion resistant steels 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.

As set out in the WTO Appellate Body's ruling in *US – Definitive Anti-dumping and Countervailing Duties on Certain Products from China*³:

*“In our view, merely incorporating by reference findings from one determination into another determination will normally not suffice as a reasoned and adequate explanation”.*⁴

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. The volume of corrosion resistant steels imported from China is negligible.

	Y 2019	Y 2020	Y 2021	Y 2022
Imports from China (KT)	24. 7	1. 2	1. 7	0. 8
All imports (KT)	412. 4	314. 0	731. 7	497. 3
Chinese import share	6. 0%	0. 4%	0. 2%	0. 2%

According to the table⁵, during the injury investigation period, the imports from China were reduced. From 2020 to 2022, the Chinese import share of corrosion resistant steels was less than 1%. 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

³ WTO Appellate Body, 11 March 2011, WT/DS379/AB/R.

⁴ *US – Anti-Dumping and Countervailing Duties (China)*, Appellate Body Report, para 354.

⁵ UK Trade Info.

like product in the importing Member. The negligible volume of corrosion resistant steels imported from China cannot cause injury to UK domestic corrosion resistant steels industry. Therefor TRA shall terminate the current investigation and revoke the relevant measures accordingly.

5. It is not in the UK's interest to continue to apply the corrosion resistant steels anti-dumping measures.

The price of corrosion resistant steels in UK is significantly distorted by existence of steel safeguard measures and anti-dumping measures for corrosion resistant steels, which 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 corrosion resistant steels in the UK to shrink.

6. Conclusion.

The maintenance or application of the EU measures by the UK lacks legal and 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 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 entities 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 corrosion resistant steel market. All types of Chinese corrosion resistant steel 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 corrosion resistant steels market is fully open and free, and the price is determined by the market forces. Negligible volume of corrosion resistant steels imported from China cannot cause injury to UK domestic corrosion resistant steel industry. Continuing to apply the corrosion resistant steels anti-dumping measures is not in the UK's interest. Therefore TRA shall terminate the current investigation and revoke the relevant measures accordingly.