

that there was no basis for the registration of imports.³ In the very least, the TRA should provide interested parties a robust justification for registering the imports at issue.

Oxy Vinyls considers that the registration decision suffers from both procedural and substantive ills. Accordingly, our comments are structured as follows. Section 1 takes issue with the TRA's failure to provide the rationale behind the registration of PVC imports. Section 2 shows that, in any event, the substantive conditions for registering imports have not been met in the present case: there is no history of dumping and no evidence that importers were (or should have been) aware of any alleged dumping; neither is there a "*massive increase*" in US imports post-initiation of the present investigation and in any event there is no evident injury to the domestic industry; finally, no other factual or circumstances support the registration of imports. Section 3 concludes.

1. Procedural error: failure to notify parties and failure to provide the rationale behind registration

The Public Notice was the first time that interested parties such as Oxy Vinyls were made aware of the TRA's request to the Secretary of State regarding the registration of PVC imports. Thus, before a final call was taken by the UK authorities on the matter at hand, parties to the present investigation did not even have an inkling about the operationalization of a procedure that would severely impact their interests. In other words, the process of registration was put into motion without any prior notification to interested parties. Oxy Vinyls submits that keeping affected parties in the dark till a decision impacting them has already been made does not accord with the principles of procedural propriety⁴ and transparency⁵. Such action is also contrary to the principles of natural justice and *audi alteram partem*, whereby administrative bodies must ensure procedural fairness towards the entity that is (likely to be) affected by the decision at issue;⁶ such an entity must be given an opportunity to know of and present its views against the decision⁷. However, this was not done in the present case.

Moreover, neither the Public Notice, nor the Trade remedies notice 2024/07 (to which this Public Notice refers),⁸ provide any concrete information regarding the decision to register US PVC

³ Commission Implementing Regulation (EU) 2024/1896 of 11 July 2024 imposing a provisional anti-dumping duty on imports of certain polyvinyl chloride (PVC) originating in Egypt and the United States of America, C/2024/4791, OJ L, 2024/1896, 12.7.2024, recitals (3)-(5). ("Commission, Provisional PVC Regulation")

⁴ See for example, the discussion on the third ground of judicial review in the seminal GCHQ case: *Council of Civil Service Unions v. Minister for the Civil Service* [1984] UKHL 9; [1985] AC 374.

⁵ See for example: Panel Report, *US – Zeroing (Japan) (DS322)*, para. 7.111, noting that WTO rules regulating the conduct of an investigating authority are "*designed to ensure transparency and due process in the conduct of anti-dumping investigations*". (emphasis added). See also: Appellate Body Report, *Thailand – H-Beams (DS122)*, para. 109.

⁶ See Lord Mustill in *R v. Secretary of State for the Home Department, Ex p Doody* [1994] 1 AC 531, 560.

⁷ Lord Neuberger in *Bank Mellat v. HM Treasury (No 2)* [2014] AC 700 (para 179).

⁸ See: UK Government (Department for Business & Trade), Trade remedies notice 2024/07: registration of imports on suspension poly (vinyl chloride) from the United States of America (Notice), 25 July 2024, available at: <

imports. This is particularly striking given that the registration seems to be done *suo moto*, in that there is no underlying request from the domestic industry for such an action. This is in contrast to *Excavators from China*, where the applicant had expressly requested for registration in its application.⁹ Moreover, in that case, there was at least some explanation for registration that could be found in the open file.¹⁰ Oxy Vinyls notes that in general, when a trade remedial procedure is put into action, not at the behest of the domestic industry, but rather because of an initiative of the investigating authority itself, the standard of proof and evidence that is required to be adduced is (understandably) higher.¹¹

In the present case, the Public Notice merely states that "[d]uring this investigation, the TRA has requested that all imports of Suspension Poly(vinyl chloride) originating from the United States of America be registered"; and that eventually, the Secretary of State "approved the TRA's request and HMRC published Trade Remedies Notice 2024/07, the registration of imports Suspension Poly(vinyl chloride) effective from 26 July 2024".¹² No further details are provided. Trade remedies notice 2024/07, in turn, again speaks of the Secretary of State's approval of the TRA's request, and adds a brief nod towards "regulation 91 and 92 of the Trade Remedies (Dumping and Subsidisation) (EU Exit) Regulations 2019".¹³ However, no details, much less analysis, have so far been provided that would demonstrate that the substantive requirements for registration – as encompassed in UK law (the aforementioned regulations 91 and 92) – have actually been met.¹⁴

The lack of justification for, or explanation of, the TRA's decision to request registration is problematic from the perspective of the TRA as well as that of the interested parties. With respect to the former, the WTO Appellate Body has ruled that one of the duties of a Panel reviewing an anti-dumping measure is to "test whether the conclusions reached by the investigating authority are reasoned and adequate in light of the explanations provided by the investigating authority".¹⁵

<https://www.gov.uk/government/publications/trade-remedies-notice-registration-of-imports-of-suspension-poly-vinyl-chloride-from-the-united-states-of-america/trade-remedies-notice-202407-registration-of-imports-on-suspension-poly-vinyl-chloride-from-the-united-states-of-america> (last accessed 6 August 2024). ("Trade remedies notice 2024/07").

⁹ UK TRA, The Registration of Goods Subject to Investigation, Certain Excavators Imported into the United Kingdom from the People's Republic of China (Case AD0047), 6 March 2024.

¹⁰ *Ibid*, noting, in the very least that: "The Applicant has requested the registration of imports due to the specific nature of the UK excavator market. The Applicant notes that the relatively low number of transactions and the high value per transactions could help UK importers and dealers rapidly build up inventories of excavators. The TRA considered the Applicant's request and determined that the goods should be registered." (emphasis added) In the least, this shows the grounds that were considered by the TRA when suggesting the registration of Chinese excavator imports.

¹¹ Consider, for example, the situation of initiating the investigation. There must exist "*special circumstances*" if an authority seeks to initiate an investigation in the absence of an application from the domestic industry. See to this end: Article 5.6 of the WTO Anti-Dumping Agreement ("ADA").

¹² Public Notice.

¹³ Trade remedies notice 2024/07.

¹⁴ As shown in Section 2.a-c below, these requirements have not, in fact, been met.

¹⁵ Appellate Body Report, *China – HP-SSST (Japan/EU) (DS454/DS460)*, para. 5.255 (emphasis added). See also: Appellate Body Report, *US – Tyres (China) (DS399)*, para. 123.

An authority must explain "*how the evidence on the record supported its factual findings*" and furthermore "*how those factual findings supported the [ultimate decision]*".¹⁶ In other words, an authority is required to explain how "*the evidence supports its conclusions*".¹⁷ As stated by the Appellate Body in *US – Softwood Lumber VI (Article 21.5 – Canada) (DS277)*, the explanations provided by an authority must "*demonstrate that the investigating authority took proper account of the complexities of the data before it, and that it explained why it rejected or discounted alternative explanations and interpretations of the record evidence*"; the reasoning of the authority must take "*sufficient account of conflicting evidence and responds to competing plausible explanations of that evidence*".¹⁸ The decision to subject US PVC imports to registration fails to comport with these legal principles. The TRA has not provided the basis for its factual findings (for example, data to show that there was allegedly a "*massive volume of dumped goods in a short period of time*")¹⁹, and has not demonstrated how these factual findings led to the TRA's ultimate (legal) conclusion that the imports should be registered.

The TRA's failure to notify interested parties of its request to the Secretary of State, and its failure to provide adequate explanations underlying this request, impinges upon the due process rights of the interested parties. Articles 6.1 and 6.2 of the ADA state, respectively, that: "*interested parties in an anti-dumping investigation shall be given ... ample opportunity to present in writing all evidence which they consider relevant in respect of the investigation in question*", and that "[t]hroughout the anti-dumping investigation all interested parties shall have a full opportunity for the defence of their interests". These provisions enshrine "*fundamental due process rights*" to which interested parties are entitled, and the wording of these provisions suggests that authorities should grant "*liberal opportunities*" to the parties to defend their interests.²⁰ In this regard, an interested party's right to provide comments applies not just to the actual factual basis of an authority's decision, but also to the question of how the underlying data was collected and assessed.²¹

By failing to disclose its request to the Secretary of State, and by failing to provide the rationale behind the registration decision, the TRA has taken away the rights of parties like Oxy Vinyls; namely, the right to study and critique the TRA's request and underlying rationale. Oxy Vinyls notes in this regard that authorities are duty-bound to take into consideration views expressed by parties *vis-à-vis* decisions made by the authorities.²² By omitting to provide any indication of its request, or even the basis for such a request, the TRA has effectively shut off the channel for interested parties to communicate their views on this request (and the basis thereof).

¹⁶ Appellate Body Report, *US – Countervailing Duty Investigation on DRAMs (DS296)*, para. 186.

¹⁷ Appellate Body Report, *China – HP-SSST (Japan/EU) (DS454/DS460)*, para. 5.255.

¹⁸ Appellate Body Report, *US – Softwood Lumber VI (Article 21.5 – Canada) (DS277)*, para. 93

¹⁹ See on this point, below, Section 2.b.

²⁰ Appellate Body Report, *US – Oil Country Tubular Goods Sunset Review (DS268)*, para. 241.

²¹ Panel Report, *Korea – Certain Paper (Article 21.5 – Indonesia) (DS312)*, para. 6.80.

²² See: Appellate Body Report, *Mexico – Anti-Dumping Measures on Rice (DS295)*, para. 292 and footnote 350.

On a related note, Oxy Vinyls submits that according to Regulation 44 of UK's Trade Remedies (Dumping and Subsidisation) (EU Exit) Regulations 2019 ("UK Basic Regulation"), the TRA is required to "*establish and maintain a file which is open to the public ... containing information, other than confidential information, which the TRA considers material to the investigation*". Information that is "*material*" is that which is "*important, essential, relevant*".²³ Clearly, the information concerning the need for registration is material since it forms the basis for the TRA's request to the Secretary of State. Moreover, such registration can have a significant impact on exporting producers such as Oxy Vinyls. In a similar vein, Article 6.4 of the ADA requires the TRA to provide parties "*timely opportunities*" to "*see all information that is relevant to the presentation of their cases*"; this provision entails a "*regular and routine*"²⁴ access to an open file that contains all information to the interested parties.

However, in opposition to these legal rules and principles, the TRA did not place on the open file the request it made to the Secretary of State. Moreover, the TRA did not place on the open file adequate information regarding the basis for the registration decision. Thus, parties like Oxy Vinyls have had so far no access to this request and the information (since it is not on the open file), and this completely prevents the parties from engaging, in any real way, with the TRA's request and the Secretary of State's decision. Thus, there is no possibility for the TRA to take the views of Oxy Vinyls onboard. From a procedural point of view, the TRA's actions are therefore unlawful.

2. Substantive error: the conditions for registering US PVC imports have not been met

The fact that the open file does not contain anything evidencing an examination of the substantive conditions for registration is, to Oxy Vinyls, an indication that no such examination may have actually been conducted so far. Respectfully, Oxy Vinyls submits that, had such an analysis of the substantive prerequisites for registration been conducted by the TRA, it would have become crystal clear that there is no basis for registering PVC imports from the US.

The UK Basic Regulation lays down the following prerequisites for registration:

1. "*a history of dumping which caused injury or the importer is, or should have been, aware that the overseas exporter practises dumping and that such dumping would cause injury to a UK industry*";
2. "*the injury caused to a UK industry was caused by a massive volume of dumped goods in a short period of time*";
3. "*in light of the timing and volume of the dumped goods and other circumstances (for example a rapid build-up of inventories of the dumped goods), the application of the anti-*

²³ See in the context of Articles 12.2 and 12.2.2 of the ADA: Panel Report, *EC – Tube or Pipe Fittings (DS219)*, paras. 7.423-7.424; Panel Report, *EU – Footwear (China) (DS405)*, para. 7.844.

²⁴ Panel Report, *Guatemala – Cement II (DS156)*, para. 8.133.

*dumping amount to be applied is likely to seriously undermine the remedial effect of that amount".*²⁵

The same conditions are mirrored in the ADA.²⁶ The TRA has, as yet, not established any of these three conditions. There is thus, as such, nothing to rebut substantively. Nonetheless, Oxy Vinyls will demonstrate below that none of the aforementioned conditions are satisfied in the present case.

a. No history of dumping and no indication that importers were or should have been aware of alleged dumping practices

There is no history of the dumping of US PVC on the UK market. Moreover, there is no evidence that US PVC is being dumped on the UK market at present, either. Oxy Vinyls considers that the application in the present case does not contain adequate evidence supporting its allegation of dumping, particularly since US import prices were increasing prior to the investigation period ("IP") and remained fairly stable during the IP.²⁷ Any minor dip in US PVC (import) prices between 2022 and the IP (2023), tracks with a global drop in PVC prices during this time; indeed, import prices from countries such as Netherlands, Belgium, Mexico, Germany, etc., all evidence such a decrease during this time-period.²⁸

Given that US import prices were increasing and stable, there is no reason to consider that importers believed there was alleged dumping (or that they were "aware" of such a practice)²⁹. There is also no evidence on the open file to show that the TRA "verified whether the importer were aware, or should have been aware"³⁰ of such dumping. In fact, there is nothing on the open file to show that, before making the registration request, the TRA "*allow[ed] importers to submit any evidence they consider[ed] relevant*", as is required by regulation 91(3) of the UK Basic Regulation. In other words, there is nothing on the open file to show that the TRA interacted with the importers on their views on (awareness of) alleged dumping from the US. If importers were indeed granted such an opportunity to provide comments, and if the importers submitted evidence in this regard, this information should have been uploaded on the open file of the investigation.

The first condition for the registration of imports, therefore, has *prima facie* not been met.

²⁵ Regulation 91(2) UK Basic Regulation.

²⁶ Article 10.6 ADA.

²⁷ See: Oxy Vinyls, Comments on the Application and Initiation of the Investigation, Anti-dumping investigation concerning imports of Suspension Poly(vinyl chloride) originating in the United States of America (AD0049), 22 March 2024, Section 4.a.ii. ("Oxy Vinyls, Comments on Application and Initiation")

²⁸ *Ibid.*

²⁹ Obviously, one can only be aware of event 'X' if 'X' actually takes place.

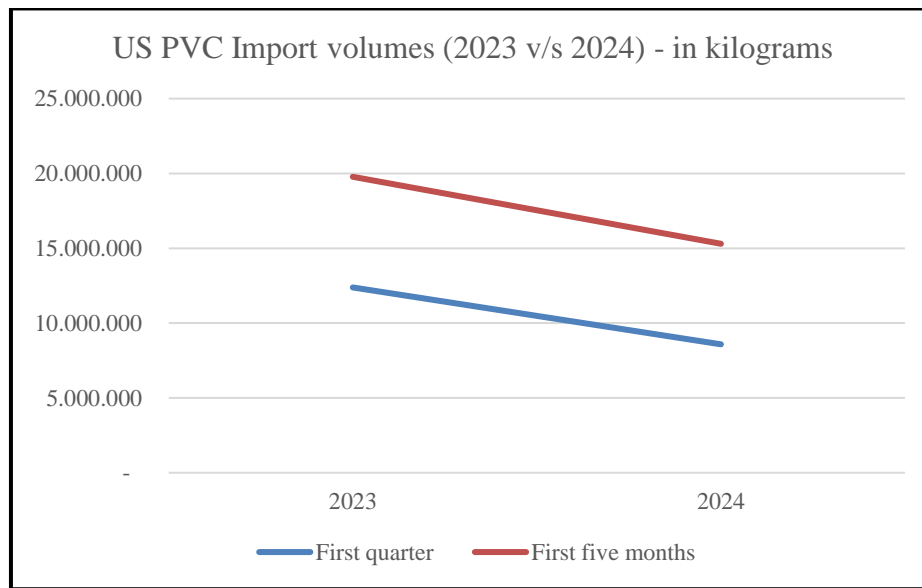
³⁰ See for example: European Commission Implementing Regulation (EU) 2018/671 of 2 May 2018 making imports of electric bicycles originating in the People's Republic of China subject to registration, C/2018/2543, OJ L 113, 3.5.2018, p. 4–9, recital (8). (emphasis added)

b. No evidence of massive imports in short period of time causing injury to UK industry

Oxy Vinyls submits that neither is there a "massive increase" in PVC imports from the US, nor is the UK industry injured. To take these points in turn:

With respect to import volumes, Oxy Vinyls notes that the assessment required in this regard typically involves a comparison of the post-IP import flows with the volumes in an analogous period within the IP.³¹ In the present case, whichever way one looks at the data, it becomes clear that post-IP (*i.e.* after the initiation of the investigation in January 2024), imports from the US have decreased.

Time period/Quantities (in kgs)	2023 (total)	2024 (total)
First quarter	12.382.275	8.580.636
First five months	19.776.543	15.300.134



Source: UK HM Revenue & Customs

³¹ See for example: Regulation (EU) 2016/1036 of the European Parliament and of the Council of 8 June 2016 on protection against dumped imports from countries not members of the European Union, Article 10(4)(d), establishing as a condition precedent for registration that "*in addition to the level of imports which caused injury during the investigation period, there is a further substantial rise in imports which, in the light of its timing and volume and other circumstances, is likely to seriously undermine the remedial effect of the definitive anti-dumping duty to be applied.*" (emphasis added) See also: Commission Implementing Regulation (EU) 2024/1450 of 23 May 2024 making imports of mobile access equipment originating in the People's Republic of China subject to registration, C/2024/3408, OJ L, 2024/1450, 24.5.2024, Section 3.2.

The same post-IP decrease can be seen in terms of monthly averages as well.³²

Time period/Quantities (in kgs)	2023 (monthly average)	2024 (monthly average)	% Change
First quarter	4.127.425	2.860.212	- 30.7%
First five months	3.955.309	3.060.027	- 22.6%

The monthly averages of 2024 were even lower than the monthly average of the IP taken as a whole (3.826.215 kgs). Oxy Vinyls notes in this regard that in a recent EU investigation, the Commission refused to register imports because the post-IP volumes had reduced by a much smaller quanta as compared to the decrease in the present case (specifically: 2% in the first four months in absolute terms; and 15% in terms of monthly averages).³³

There is thus no way in which one can witness a "massive increase" in US PVC import volumes, in a short period of time, no matter how one arranges or designs the data. Rather, post-initiation, PVC imports from the US have decreased, seen any which way. Oxy Vinyls notes that an absence of post-IP increases in volumes was one of the reasons why the Commission refused to register imports in the EU PVC investigation.³⁴

What is more, there is no injury accruing to the domestic industry. In its comments on the initiation of the present investigation and the underlying application, Oxy Vinyls demonstrated how the UK PVC industry was healthy and was not in need of intervention in the form of anti-dumping duties.³⁵ Our position is further confirmed by various parts of the applicant, INEOS Inovyn's ("Ineos") questionnaire response. For example, the total turnover and profitability of the company demonstrated dramatic increases between 2020 and 2022³⁶ (with only a minor dip in 2023, which is attributable to factors other than imports). The fact that some economic indicators exhibit a downward trajectory from the end of 2022 is on account of (i) Ineos' reduced production from that year onwards;³⁷ and this reduced production is quite possibly on account of *force majeure*, which the company was declaring across Europe in that time period,³⁸ and (ii) poor export performance³⁹.

³² This technique is often employed by the European Commission. See for example: European Commission Implementing Regulation (EU) 2024/1608 of 5 June 2024 making imports of erythritol originating in the People's Republic of China subject to registration, C/2024/3598, OJ L, 2024/1608, 6.6.2024, recital (15).

³³ Commission Implementing Regulation (EU) 2023/1444 of 11 July 2023 imposing a provisional anti-dumping duty on imports of steel bulb flats originating in the People's Republic of China and Türkiye, C/2023/4605, OJ L 177, 12.7.2023, p. 63–106, recital (5).

³⁴ Commission, Provisional PVC Regulation, recital (4).

³⁵ Oxy Vinyls, Comments on Application and Initiation, Section 4.b.

³⁶ Ineos questionnaire response, Annex, Slide 11, columns C and J-K.

³⁷ Ineos questionnaire response, Annex, Slide 11, column O.

³⁸ Plastics Information Europe, PVC: Inovyn declares force majeure for Europe, 5 May 2022, available at: <<https://piweb.plasteurope.com/Default.aspx?pageid=199&docid=250230>> (last accessed 8 August 2024).

³⁹ Ineos questionnaire response, Annex, Slide 11, columns F and G.

At the same time, Ineos' employment figures have remained stable and wages have risen.⁴⁰ Investments are 63 percentage points higher in the IP compared to 2022.⁴¹ Post-IP, as well, the company is doing well. It has registered positive results in 2024; for example, Ineos' Q2 2024 report notes an increase in revenue and profit, compared to a similar time-period in 2023.⁴²

Therefore, neither is there any injury to the UK industry, nor is there any massive increase in US PVC imports into the UK (that could be said to be causing any injury). Thus, the second condition for registration has also not been met.

c. No other circumstances justifying registration

No other circumstances, such as a "*a rapid build-up of inventories of the dumped goods*", exist that would prompt an objective and unbiased investigating authority to subject US PVC imports to registration. Indeed, no such evidence has been presented so far by the TRA. No evidence for this was provided by the applicant either. Nor is there any "*overcapacity*" in the US for PVC, as incorrectly averred by the applicant.⁴³ Thus, Oxy Vinyls considers that the third condition for registration of imports remains unfulfilled.

3. Conclusion

Oxy Vinyls regrets the lack of explanation or justification for the registration of PVC imports from the US. It seems that the TRA has not properly looked into available data when assessing whether the conditions for registration have been met. Oxy Vinyls has, in any event, demonstrated above that these conditions have not been fulfilled.

Oxy Vinyls implores the TRA to withdraw its request for registration and to ask the HMRC to stop registering the imports at issue. In case the TRA insists on continuing with the registration process, it should, in the very least, provide the factual basis and legal reasoning behind its decision. In this way, interested parties such as Oxy Vinyls, can understand the rationale behind the registration decision, and, if need be, provide further comments against the reasoning adopted.

Oxy Vinyls thanks the TRA for taking the above views into consideration.

Best regards,

⁴⁰ Ineos questionnaire response, Annex, Slide 11, columns Y and AB.

⁴¹ Ineos questionnaire response, Annex, Slide 12, column C.

⁴² Ineos Group Holdings S.A., Condensed consolidated interim financial statements as of June 30, 2024, available at: <https://www.ineos.com/globalassets/investor-relations/public/quarterly-reports/quarterly-report-blocks/igh-q2-2024-report_final.pdf>, pages 2-3.

⁴³ See our position on this in: Oxy Vinyls, Comments on Application and Initiation, Section 7. Such excess capacity is, at times, considered relevant for registration. See for example: Commission Implementing Regulation (EU) 2024/1617 of 6 June 2024 making imports of titanium dioxide originating in the People's Republic of China subject to registration, C/2024/3666, OJ L, 2024/1617, 7.6.2024, recital (25).

Joris Cornelis

Akhil Raina