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## Memorandum

**Date:** 30 July 2024

**Delivery:** By Trade Remedies Service

**To:** Trade Remedies Authority

**From:** Mayer Brown Europe-Brussels LLP

**Subject:** **TD0057 - Certain Aluminium Foil in Rolls from China - Comments on the definition of the UK industry of aluminium foil by CeDo Limited**

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## 1. BACKGROUND

- (1) On 20 May 2024, the Trade Remedies Authority ("**TRA**") initiated a transition review of anti-dumping measures on certain aluminium foil in rolls ("**good subject to review**") originating in the People's Republic of China ("**China**").<sup>1</sup> On 4 June 2024, CeDo Limited ("**CeDo Ltd.**") submitted the pre-sampling questionnaire in order to register as a domestic producer in this transition review. CeDo Ltd. registration was approved by the TRA on 25 June 2024.
- (2) CeDo Ltd. is part of the CeDo Holdings Limited ("**CeDo group**"), which also includes a producer of aluminium foil based in the European Union ("**EU**"), CeDo Poland Sp.z.o.o ("**CeDo Poland**"). In this respect, CeDo group has been involved in the EU anti-dumping investigation into imports

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<sup>1</sup> Notice of initiation, Transition Review No. TD0057 Initiation of a Transition Review of Anti-Dumping Measures on Certain Aluminium Foil in Rolls originating in the People's Republic of China ("**Notice of Initiation**"), available at:

<https://www.trade-remedies.service.gov.uk/public/case/TD0057/submission/1b1016b5-0b6a-4c32-98a0-c6c8ac12532e/>

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of certain aluminium foil from China, which resulted in the imposition of an ad valorem anti-dumping duty ranging between 14,2% and 35,6%.<sup>2</sup>

- (3) Further to the departure of the UK from the EU, [REDACTED – COMMERCIALLY SENSITIVE INFORMATION], [REDACTED – COMMERCIALLY SENSITIVE INFORMATION].
- (4) The good subject to review is produced through a process of rewinding, cutting and packaging of aluminium foil on jumbo rolls onto smaller rolls. The main raw material for the production of aluminium foil is primary aluminium. The raw aluminium is then processed to produce foil stock, which in turn is further worked into aluminium household foil in rolls weighing more than 10 kilograms (“**jumbo rolls**”) and small rolls (weighing 10 kilograms or less), which are subject to review.
- (5) Given the fact that there is no UK production of jumbo rolls, the good subject to review is typically produced in the UK by rewinding jumbo rolls sourced directly from other third countries, [REDACTED – COMMERCIALLY SENSITIVE INFORMATION]. This model of production is also widely spread across the EU, which maintains anti-dumping duties on imports of aluminium foil in small rolls.
- (6) Whether the main input used in the production of the good subject to review is of the UK or third country origin, all producers of certain aluminium foil in the UK shall be considered as forming part of the UK domestic industry. This approach is, in fact, fully consistent with the WTO and UK anti-dumping rules, which provide for no value added limitation for the purpose of the definition of the domestic industry or of the like product (2).
- (7) Should, however, the TRA consider the contrary, its position would set a dangerous precedent which would not only leave the UK industry of aluminium foil with no legal protection from unfair imports, but would also have an impact on other UK producers not necessarily strictly fulfilling origin threshold but still having an economic interest in the UK (3).

## 2. **ORIGIN RULES DO NOT APPLY FOR PURPOSES OF THE DEFINITION OF THE DOMESTIC INDUSTRY**

- (a) Origin rules do not apply for purposes of the definition of the domestic industry under the WTO rules

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<sup>2</sup> Council Implementing Regulation (EU) No 217/2013 of 11 March 2013 imposing a definitive antidumping duty and collecting definitively the provisional duty imposed on imports of certain aluminium foils in rolls originating in the People’s Republic of China, OJ L 69, 13.3.2013, p. 11, available at: <https://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2013:0690011:0020:EN:PDF>

- (8) At the outset, it is necessary to observe that nothing in the text of Article 4.1 of the Anti-dumping Agreement (“ADA”)<sup>3</sup> providing for the definition of the term “domestic industry” gives support to the notion that there is any circumstance related to the origin of inputs of the like product that would exclude certain categories of producers.
- (9) To the contrary, Article 4.1 of the ADA sets out circumstances in which some producers of the like products may be left out of the domestic industry. These circumstances include no value added limitations that should be considered by the investigating authority. In fact, Article 4.1(i) of the ADA provides for exclusion of producers related to the exporters or importers, or producers who are themselves importers of the allegedly dumped product. Article 4.1(ii) of the ADA provides that, in the exceptional circumstances of two or more competitive markets within the territory of a WTO Member, producers within each market may be regarded as a separate industry if certain conditions are satisfied.
- (10) Furthermore, the WTO Agreement on Rules of Origin Article 1(2), footnote 1, states explicitly that Article 1(2)<sup>4</sup> is without prejudice to determinations made for purposes of “domestic industry” definition:

“It is understood that this provision is without prejudice to those determinations made for purposes of defining “domestic industry” or “like products of domestic industry” or similar terms wherever they apply.” (emphasis added)

- (11) In other terms, WTO Agreement on Rules of Origin explains that investigating authorities such as the TRA are authorised to ignore rules of origin in qualifying producers as “domestic”. This provision is fully understandable in light of the fact that, as far as trade remedies are concerned, country of origin determinations are typically relevant in the context of administration of anti-

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<sup>3</sup> Article 4.1 of the ADA reads “For the purposes of this Agreement, the term “domestic industry” shall be interpreted as referring to the domestic producers as a whole of the like products or to those of them whose collective output of the products constitutes a major proportion of the total domestic production of those products, except that: (i) when producers are related to the exporters or importers or are themselves importers of the allegedly dumped product, the term “domestic industry” may be interpreted as referring to the rest of the producers; (ii) in exceptional circumstances the territory of a Member may, for the production in question, be divided into two or more competitive markets and the producers within each market may be regarded as a separate industry if (a) the producers within such market sell all or almost all of their production of the product in question in that market, and (b) the demand in that market is not to any substantial degree supplied by producers of the product in question located elsewhere in the territory. In such circumstances, injury may be found to exist even where a major portion of the total domestic industry is not injured, provided there is a concentration of dumped imports into such an isolated market and provided further that the dumped imports are causing injury to the producers of all or almost all of the production within such market.”

<sup>4</sup> Article 1(2) of the WTO Agreement on Rules of Origin reads: “Rules of origin referred to in paragraph 1 shall include all rules of origin used in non-preferential commercial policy instruments, such as in the application of: most-favoured-nation treatment under Articles I, II, III, XI and XIII of GATT 1994; anti-dumping and countervailing duties under Article VI of GATT 1994; safeguard measures under Article XIX of GATT 1994; origin marking requirements under Article IX of GATT 1994; and any discriminatory quantitative restrictions or tariff quotas. They shall also include rules of origin used for government procurement and trade statistics.”

dumping measures rather than for purposes of defining “domestic industry” or “domestic like product”.

- (12) In the *Salmon (Norway)* case, the WTO panel provided an important clarification on the definition of the domestic industry. In this case, the European Communities (“EC”)<sup>5</sup> included various successive presentations of salmon (from whole fish to fillet) in an investigation, but did not include firms engaged in one stage only (filleters) in the domestic industry. The EC argued that enterprises engaged in filleting are not “producers” as “fillets do not result from a process of “production”, but merely transformation of one presentation to another presentation”.<sup>6</sup>
- (13) The panel disagreed with the EC position that filleting-only undertakings did not produce the like product and concluded, based on the ordinary meaning of the verb “to produce”, that any enterprise “producing” any form of the like product should be considered a producer of the like product:

*“7.114 (...) The verb “to produce” is defined, inter alia, as “[b]ring (a thing) into existence” and “bring into existence by mental or physical labour (a material object)”. There can be no doubt, in our view, that an enterprise engaged in, as the EC puts it, “gutting, beheading, and filleting” is engaged in “producing”, that is, bringing into existence, by physical labour, salmon fillets. We do not dispute that undertakings that only engage in filleting operations, as opposed to operations engaged in growing live salmon, and selling them whole, and/or beheaded, and/or gutted, and/or filleted, and/or fresh, and/or frozen, or any combination thereof, may have different economic interests. Thus, an investigation concerning a domestic industry comprising enterprises with more than one of these various economic interests may well involve complicated questions regarding data collection and analysis. Such complications cannot, however, override the plain meaning of the text of Article 4.1.*

*7.115 There is no dispute that filleted salmon is within the scope of the like product identified by the EC in this case. Thus, based on our interpretation of the plain language of Article 4.1, we consider that any enterprise that produced any form of the like product should be considered, at least in the first instance, a “producer” of the like product, and as such, part of the domestic industry.”<sup>7</sup> (emphasis added)*

- (14) It is noteworthy that in its assessment of the “production” of the like product, the panel did not account for the added value in the EU of filleting salmon in comparison to producers growing and filleting salmon. It rather based its findings on “the plain language of Article 4.1” of the ADA, which, as explained above, includes no reference to the degree of transformation necessary for the domestic industry consideration.<sup>8</sup>

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<sup>5</sup> Previous form of the EU.

<sup>6</sup> Panel report *EC – Salmon (Norway)*, para. 7.113.

<sup>7</sup> Panel report *EC – Salmon (Norway)*, para. 7.114-7.115.

<sup>8</sup> Panel report *EC – Salmon (Norway)*, para. 7.111.

(15) By analogy, it should be considered that UK producers of aluminium foil rewinding jumbo rolls from all sources should be considered as forming part of the domestic industry since there is no doubt that they “produce”, i.e. bring into existence by physical labour, the good subject to review.

(b) Origin rules do not apply for purposes of the definition of the domestic industry under the UK legislation

(16) In light of WTO rules, it is thus understandable that the WTO Members typically do not employ origin rules for purposes of the definition of the domestic industry. In fact, no definition based on the value added threshold may be identified in various third-country legislations.

(17) An exception is Australia, which, however, sets forth reference to the origin rules in its definition of the domestic production in a clear and explicit manner. By analogy to Australian origin rules, Australian customs law from 1901 provides that an Australian producer must add at least 25% value in Australia in order to qualify as a domestic producer.<sup>9</sup>

(18) Further to the examination of the UK rules on trade remedies, it should be recognised that they include no provision allowing for exclusion of UK producers based on rules of origin.

(19) In fact, Schedule 4 of the Taxation (Cross-border Trade) Act 2018<sup>10</sup> defines UK industry as:

*“6(1)For the purposes of this Schedule, a “UK industry” in particular goods means—  
(a)all the producers in the United Kingdom of like goods (see paragraph 7), or  
(b)those of them whose collective output of like goods constitutes a major proportion of the total production in the United Kingdom of those goods.  
(2)Regulations may make provision for the purposes of sub-paragraph (1)—  
(a)about what constitutes or does not constitute—  
(i)a producer in the United Kingdom of like goods;  
(ii)such a producer's output of like goods;  
(iii)the total production in the United Kingdom of like goods;  
(iv)a major proportion of that total production;  
(b)about how any of those matters are to be determined.”*

(20) Furthermore, the Trade Remedies (Dumping and Subsidisation) (EU Exit) Regulations 2019<sup>11</sup> complements this definition by providing a limitative list of circumstances when a producer

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<sup>9</sup> Paragraph 269D(1)(b) of the Australian Customs Act 1901 requires that in order for goods to be regarded as “produced in Australia” the sum of the value of Australian labour, Australian materials and factory overhead costs must not be less than 25% of the factory costs of the goods.

<sup>10</sup> Taxation (Cross-border Trade) Act 2018, available at:  
<https://www.legislation.gov.uk/ukpga/2018/22/schedule/4?view=plain>

<sup>11</sup> The Trade Remedies (Dumping and Subsidisation) (EU Exit) Regulations 2019, available at:  
<https://www.legislation.gov.uk/uksi/2019/450?view=plain>

should not be considered as a UK producer. Similar to the aforementioned Schedule 4, this however includes no reference to the country of origin.

*“29.—(1) This regulation applies where the TRA is considering whether a producer is a “producer in the United Kingdom of like goods” (“UK producer”) for the purpose of the definition of a “UK industry” in paragraph 6 of Schedule 4 to the Act.*

*(2) The TRA may determine that a producer is not a UK producer where that producer is—*

*(a) an importer of the goods concerned;*

*(b) related to an overseas exporter of the goods concerned in the exporting country or territory; or*

*(c) related to an importer of the goods concerned in the United Kingdom.*

*(3) For the purpose of paragraph (2), a producer is “related” to another person (“P”) if—*

*(a) the producer controls directly or indirectly, or is controlled directly or indirectly by, P; or*

*(b) the producer and P together control the same third party directly or indirectly or are controlled directly or indirectly by the same third party.*

*(4) The TRA may only determine that a producer is not a UK producer where the producer is related to P and the TRA considers that the effect of the relationship is such as to cause that producer to behave differently to the other unrelated producers of the like goods in the United Kingdom.*

*(5) For the purpose of this regulation, one entity is considered to control another entity, directly or indirectly, where it is legally or operationally in a position to exercise restraint or direction over the other.”*

- (21) In sum, the UK legislations relating to the trade remedies mirrors the WTO provisions and thus does not include any additional exclusions that should apply to the definition of the domestic industry. As a result, there is no reason to apply rules of origin for purposes of the definition of the domestic industry in the ongoing transition review of anti-dumping measures on certain aluminium foil in rolls since such extensive interpretation would go beyond the legal framework of the UK rules on trade remedies.

### **3. UK INDUSTRY MUST BE PROTECTED FROM UNFAIR DUMPING**

(a) UK industry of aluminium foil is a domestic industry pursuant to the applicable rules

- (22) The main driver behind [REDACTED – COMMERCIALY SENSITIVE INFORMATION].
- (23) Given the absence of the domestic production of jumbo rolls, [REDACTED – COMMERCIALY SENSITIVE INFORMATION].
- (24) These operations and [REDACTED – COMMERCIALY SENSITIVE INFORMATION] should be considered sufficient given the fact that rules of origin are not applicable for the purpose to the determination of the UK industry.

- (25) CeDo Ltd. currently employs over 300 people in the UK<sup>12</sup> and [REDACTED – COMMERCIALY SENSITIVE INFORMATION]. Finally, CeDo Ltd. as well as CeDo group maintain their headquarters in the UK. [REDACTED – COMMERCIALY SENSITIVE INFORMATION].
- (26) Considering UK producers of aluminium foil as part of the UK domestic industry for the purposes of anti-dumping proceeding would be also consistent with the practice of other investigating authorities. In fact, the latter have not assessed the value added by the producers of aluminium foil, although it is a general practice that this product is manufactured from jumbo rolls sourced from third countries.<sup>13</sup>
- (27) Moreover, the US International Trade Commission (“US ITC”) acknowledged in its findings concerning anti-dumping and countervailing duties on imports of aluminium foil from China<sup>14</sup> that is considered as part of the domestic industry any producer of aluminium foil, including companies operating under tolling agreements, i.e., engaging in processing and paid a fee proportional to the work performed.

*“In defining the domestic industry, the Commission’s general practice has been to include in the industry producers of all domestic production of the like product, whether toll produced, captively consumed, or sold in the domestic merchant market.”*

- (28) It is also noteworthy that the US ITC definition includes no reference to the value added limitations.
- (29) In light of [REDACTED – COMMERCIALY SENSITIVE INFORMATION], and finally absence of value added threshold in the UK rules on trade remedies, [REDACTED – COMMERCIALY SENSITIVE INFORMATION].
- (b) UK extensive interpretation of the domestic industry accounting for rules of origin would set a dangerous precedent
- (30) Should the TRA consider that rules of origin apply for purposes of the definition of the domestic industry under the UK legislation, such approach would significantly limit the number of domestic industries that are entitled to seek protection under UK’s trade remedy laws.
- (31) Companies in the UK operate under various business models, including tolling arrangements, where a company processes raw materials owned typically by a company located in a third

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<sup>12</sup> Please refer for example to CeDo Ltd. most recent available financial statement for 2022, at page 22, available at:

<https://find-and-update.company-information.service.gov.uk/company/00934776/filing-history>

<sup>13</sup> See in particular the European Commission practice in the anti-dumping proceeding concerning imports of aluminium foil in small rolls from China.

<sup>14</sup> United States International Trade Commission, Investigation Nos. 701-TA-570 and 731-TA-1346 (Review), Aluminum Foil from China, September 2023, available at:

[https://www.usitc.gov/publications/701\\_731/pub5459.pdf](https://www.usitc.gov/publications/701_731/pub5459.pdf)

country and receives a processing fee for the conversion of the raw material into final production, or assembly lines. Introduction of the value added threshold would result in some of these business falling out of the scope of trade remedies discipline despite having major manufacturing presence and a significant employment in the UK.

- (32) Furthermore, a number of sectors in the UK economy are highly dependent on imports of raw materials and components, with the value added in the UK being less than 20%. That concerns in particular Electronics, Textiles, Apparel, Footwear and Furniture manufacturing. Excluding those sectors and their significant employment based on an arbitrary origin criteria would be improper.

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We look forward to hearing from you and, in the meantime, are available for any question you may have.

Yours sincerely,

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