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**NON-CONFIDENTIAL**

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**WRITTEN COMMENTS**

ON THE NOTIFICATION OF INTENDED RECOMMENDATION IN

THE FRAMEWORK OF THE RECONSIDERATION OF AN ORIGINAL  
DECISION IN THE TRANSITION REVIEW RELATING TO CERTAIN WELDED  
TUBES AND PIPES OF IRON OR NON-ALLOY STEEL ORIGINATING IN THE  
REPUBLIC OF BELARUS, THE PEOPLE'S REPUBLIC OF CHINA AND THE  
RUSSIAN FEDERATION (TD0001)

**TATA STEEL UK LTD.**

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21 OCTOBER 2022

## 1 INTRODUCTION

On 12 October 2022, the Trade Remedies Authority (TRA) published its Notification of the Intended Recommendation (NIR) in the framework of reconsideration of the original decision in TD0001. The reconsideration process was initiated following an application from Tata Steel UK Ltd (TSUK).

TSUK welcomes the intended recommendation of the TRA to vary the original decision and to re-include commodity code 7306 30 72 in the scope of the measures. As the TRA correctly found, this product is indeed produced domestically in the UK, and the Economic Interest Test for the extension of the measures for the full product scope is clearly met in the present case. The TRA also intends to uphold the original decision as far as the revocation of the measures against Russia is concerned. TSUK strongly disagrees with the findings contained in the NIR in this respect, and submits that the measures against Russia must be extended. In the present submission, TSUK provides its views on a number of TRA's conclusions and further arguments calling for the extension of the measures against Russia.

## 2 THE TRA DID NOT TAKE DUE ACCOUNT OF THE ARGUMENTS AND EVIDENCE RELATED TO LIKELIHOOD OF RECURRENCE OF DUMPING

In the NIR, the TRA rejected the third ground for reconsideration, i.e. that Russia must remain subject to the anti-dumping measures due to high likelihood of recurrence of dumping. In this respect, the NIR states the following:

*“Having reviewed TSUK’s submissions and the approach taken by the original case team, and having reviewed further evidence as appropriate, the TRA agrees with the original decision to exclude Russia from the measures because, on the balance of probabilities, dumping by Russian producers is unlikely to occur”<sup>1</sup>*

TSUK submits that TRA's analysis and findings supporting the above-mentioned conclusion do not take due account of the arguments and positive evidence provided by TSUK in the Application for Reconsideration. They continue to be based on assumptions about the future that not only lack any factual basis, but, in fact, contradict the evidence that was (and remains) available to the TRA before the original decision.

In this respect, TSUK wishes to emphasize the importance of positive evidence which must serve as a basis for any projections made by the TRA for the purpose of the likelihood of recurrence of dumping analysis.<sup>2</sup> As will be demonstrated in the following sub-sections, such positive evidence does not support either the original or reconsidered findings with respect to Russia. To the opposite, it indicates that dumping from Russia is likely to recur should the measures be revoked.

### 2.1 The TRA did not present evidence that Russia's domestic consumption will decrease the likelihood of recurrence of dumping

As part of its holistic analysis of likelihood of recurrence of dumping, the TRA considered a number of factors that may influence the incentive for Russian producers to sell at dumped prices. One of such factors is the future domestic consumption in Russia, which constitutes one of the grounds for the present reconsideration process. In the NIR, the TRA upheld the findings of the original case team in this respect.

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<sup>1</sup> Notification of Intended Recommendation (NIR), para. 86.

<sup>2</sup> Please refer to Section 2.2.1 of TSUK's Application for Reconsideration.

TSUK respectfully submits that the TRA did not address the concerns related to the original case team's analysis regarding domestic consumption in Russia and its impact on likelihood of recurrence of dumping by Russia.

**a) TRA's analysis of domestic consumption in Russia on a stand-alone basis as part of their holistic analysis is incorrect**

First of all, it appears to TSUK that the TRA misunderstood the relevance and importance of domestic consumption in Russia to their analysis. Indeed, domestic consumption is considered separately as an element of TRA's holistic analysis in the section 'Conditions in exporters' home market'. The same approach was clearly taken in the NIR whereby the TRA established a direct link between infrastructure projects in Russia and the incentive for Russian producers to dump.<sup>3</sup> This clearly suggests that, in TRA's view, a hypothetical increase in domestic consumption in Russia directly impacts the incentive for Russian producers to export at dumped prices. This is an erroneous approach, as although domestic consumption may indeed be relevant for the analysis of likelihood of recurrence of dumping, it must be always considered in the context of other factors, such as total production capacity and excess spare capacity. The mere assumption of a potential increase in Russia's domestic consumption even if it were to occur (which is highly unlikely) does not directly result in a lower incentive to dump. In other words, domestic consumption itself, when taken in isolation (whether as part of holistic analysis or not), is irrelevant to likelihood of recurrence of dumping. Instead, it may prove to be useful if it is considered together with other, more relevant factors. For example, in the context of low production capacity and low spare capacity (including the capacity that can be switched from other products), an increase in domestic consumption may be used as additional evidence that Russian producers may have a lower incentive to dump. In this respect, TSUK draws TRA's attention to a highly relevant example of expiry of anti-dumping duties applicable to the product concerned imported from Ukraine to the EU in 2015. In its decision, the European Commission assessed that the following factors and developments as part of its likelihood analysis in the context of production capacity in Ukraine:

1. A significant decrease in total production capacity in Ukraine compared to the previous investigation with two major producers of the product concerned completely stopping their production.<sup>4</sup>
2. The only remaining producer operated at close to full capacity. In addition, that producer also experienced shortage of supply of raw materials.<sup>5</sup>
3. In this context, domestic consumption of WTP was also likely to increase when the security situation normalizes through the construction business that would absorb the existing limited spare capacity.<sup>6</sup>

The above-described approach confirms that domestic consumption may be relevant only in the context of other, more significant factors. This is especially the case when there is no evidence that domestic consumption of the product concerned will increase compared to the current levels (i.e. at the time of the original decision), which will be explained below.

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<sup>3</sup> NIR, para. 77.

<sup>4</sup> COMMISSION IMPLEMENTING REGULATION (EU) 2015/110 of 26 January 2015 imposing a definitive anti-dumping duty on imports of certain welded tubes and pipes of iron or non-alloy steel originating in Belarus, the People's Republic of China and Russia and terminating the proceeding for imports of certain welded tubes and pipes of iron or non-alloy steel originating in Ukraine following an expiry review pursuant to Article 11(2) of Council Regulation (EC) No 1225/2009, recital 108.

<sup>5</sup> Ibid., recitals 109 and 111.

<sup>6</sup> Ibid., recital 112.

**b) There remains no evidence that large-scale infrastructure projects will materialize**

First, as explained by TSUK in the Application for Reconsideration, there remains no positive evidence confirming that any large-scale infrastructure projects in Russia will materialize. Based on the evidence provided by TSUK, the opposite is true as literally every single project referred to by the Russian ministries and the TRA was either severely delayed or canceled. This evidence was considered insufficient *'to counter the original case team's conclusions'*.<sup>7</sup> The TRA explained its decision by the following statement:

*"This is because the additional sources (the US International Trade Administration and GI Hub) identified during the reconsideration investigation support the original case team's conclusions drawn from the information in the original articles."<sup>8</sup>*

In this respect, TSUK notes that the above statement does not explain the reason for treating TSUK's evidence as insufficient. If the original findings are based on general statements of Russian public officials about some future non-specific infrastructure projects and TRA finds additional sources confirming such statements, the latter should not overweight the evidence showing that Russia systemically cancels and delays such projects with very specific examples. However, if the TRA disagrees with this, TSUK respectfully requests the TRA to state the reasons for considering such evidence insufficient.

In addition, the TRA stated that an article by Kommersant (confirming that the Bovanenkovo-Sabetta railway agreement was cancelled) was published after the original decision. This is not true, as the article was published on 1 August 2019. The TRA most likely relied on the date when the article was saved with an English translation, that is on 9 September 2021, but the date of publication is clearly visible at the original link. There are also other sources confirming that the project was canceled, including the construction company itself.<sup>9</sup> As to the Russian Gazette article concerning the Moscow – St. Petersburg or Moscow – Nizhny Novgorod high-speed railway, TSUK acknowledges that it was published after the original decision. However, there are numerous articles available for the period up to 9 July 2021 dated from 2018, 2019, 2020 and 2021 that confirm that this project will be either delayed or will not materialize at all. But before exploring such articles, TSUK emphasizes that the article used by the original case team and mentioned in the NIR itself clearly indicates that the project was far from being well-developed and might have actually lost funding. Indeed, the article states that the project started as a railway between Moscow and Nizhny Novgorod. After that, it was supposed to be changed to Moscow – St. Petersburg. At the moment of the publication of the article, it was unclear which one would actually succeed, if any, hence the title of the section stating *'Moscow-Nizhny Novgorod, or Moscow-St. Petersburg, high-speed railway'*. Finally, the last paragraph in that section states that *'the Finance Ministry offered to reroute 112 billion rubles from the project toward a shipment terminal'*. Therefore, the evidence used by the original case team and confirmed in the NIR itself contradicts the original finding and only confirms that the project is certainly not well-developed and may actually not materialize. As to other sources available to the original case team, TSUK has located numerous reports highlighting the lack of economic viability of the project, the risk of it not being implemented at all, and the fact that Russian

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<sup>7</sup> NIR, para. 69.

<sup>8</sup> Ibid.

<sup>9</sup> VIS Group (available at <https://vis-group.ru/pressroom/news/pravitelstvo-yamalo-nenetskogo-avtonomnogo-okruga-i-gruppa-vis-prinyali-reshenie-o-rastorzhenii-sogl/>). English translation is available in Annex 1.

public officials have been disagreeing on how it should be implemented since the moment it was announced.<sup>10</sup>

The above-described issues with the two projects, combined with other evidence provided in the Application for Reconsideration, once again confirm that every single project from the Moscow Times article was either canceled or severely delayed with no confirmation that they will ever materialize.

In the NIR, the TRA also refers to other projects mentioned in the articles by Reuters, the Wall Street Journal and Bloomberg. TSUK notes that only the Bloomberg article refers to two specific projects, namely the Vostok Oil project and the Moscow – Nizhny Novgorod railway. TSUK provided sufficient evidence with respect to both projects in the Application for Reconsideration and above. The other two articles by Reuters and the WSJ simply refer to a potential government spending on infrastructure projects without any specific examples. In the latter article, the reference to infrastructure investment is limited to one sentence, while the rest of the article is focused ‘de-dollarization’ of Russia’s economy:

*“Separately, Russia will spend as much as 400 billion rubles, or \$5.5 billion, from the National Wealth Fund, on infrastructure and development projects in a bid to boost economic growth, Mr. Belousov said on Wednesday, according to Interfax.”*

TSUK strongly opposes the idea that such general statements can be used to reach a conclusion that Russia’s infrastructure projects are well-developed and that investments will increase, especially relative to the existing investment level at the time. In fact, the Bloomberg article used by the TRA perfectly summarizes the lack of certainty about any of the projects with the last sentence sounding almost ironic given the multi-year delays and cancellations described above:

*“No final decisions yet have been made on how much to spend from the fund this year or which projects will get cash, the people said.”*

*“We need to reevaluate one more time which projects have detailed plans and are ready to start and be decided on,” Putin said last week during a meeting with officials and business executives on boosting investment. “And after such evaluation we need to launch them immediately.”<sup>11</sup>*

As to the additional sources referred to by the TRA, namely the US International Trade Administration and GI Hub, TSUK notes the following. First, it is unclear how the TRA used the GI Hub graph and what, in TRA’s view, it seems to prove. Based on the period from 2015 to 2025 as used by the TRA, at the moment of the original decision, infrastructure investment in Russia amounted to \$39 billion in 2020 and \$40 billion in 2021. Based on the same graph, it could have been expected to remain flat in 2022-2023 and increase to \$41 billion in 2024-2025. TSUK believes that the only conclusion that can be reached based on these figures is that Russia will not significantly increase

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<sup>10</sup> See for example: Does Vladimir Putin doubt the need to build a HSR to Nizhny Novgorod?, 2 November 2018 (available at <https://trans.ru/news/prezident-rossii-zasomnevalsya-v-neobhodimosti-stroitelstva-vsm-do-nizhnego-novgoroda>), English translation is available in Annex 2; Putin did not approve the Moscow – Kazan HSR project, 28 March 2019 (available at <https://www.rbc.ru/business/28/03/2019/5c9cd0a49a7947366db46c69>), English translation is available in Annex 3; Construction of HSR St. Petersburg – Moscow – Nizhny Novgorod: from project to implementation, 22 January 2020 (available at <https://www.gjpernn.ru/zhurnal/tehnologii/stati/stroitelstvo-vsm-sankt-peterburg-moskva-nizhniy-novgorod-ot-proekta-k-realizacii>), English translation is available in Annex 4.

<sup>11</sup> Bloomberg, ‘Russia Considers Spending Wealth Fund Billions on Infrastructure’ (available at <https://www.bloomberg.com/news/articles/2021-03-16/russia-mulls-spending-wealth-fund-billions-on-infrastructure>)

its infrastructure investments in the coming years. TSUK also notes that the marginal \$1 billion increase (which is less than a 3% increase in relative terms) is a projection of GI Hub and not a confirmed increase. Furthermore, based on the second indicator used by GI Hub, that is investment need of Russia, it is also clear that Russia systematically underinvests in infrastructure and that this trend will continue up to 2025 and beyond, as the investment need has always outpaced and will continue to outpace the actual investment trend to Russia according to GI Hub. It goes contrary to the finding of the TRA which states the following:

*However, we consider that it was reasonable to find that Russian producers would have limited incentive to dump because Russian infrastructure projects would increase domestic consumption and demand, and because Russia's infrastructure investment need, as reported at the time of the original decision, outstripped investment rates.*"

In these circumstances, TSUK struggles to understand how the GI Hub data can lead to any conclusion other than it actually contradicts the original findings.

Concerning the information available from the US International Trade Administration, TSUK assumes that the TRA referred to the 'Construction and Infrastructure' section of the 'Russia – Country Commercial Guide' by the USITA.<sup>12</sup> In this case, TSUK notes that a significant part of USITA's analysis is dedicated to the period preceding the original decision, such as the 2018 FIFA World Cup, the 'Housing for Russian Families' program that was supposed to be implemented in 2018-2020, and the final section of the Moscow-St. Petersburg highway that was supposed to be commissioned by 2020. While the USITA does refer to a number of projects that were expected to be implemented by 2030, there is no evidence whatsoever that they will lead to an increase in infrastructure investments, let alone domestic consumption of the product concerned, in Russia compared to the previous years. Indeed, as described by the USITA, Russia did complete a number of large-scale infrastructure projects in a timeframe that corresponds to the injury period and the period before the original decision. This means that infrastructure investments were already high compared to the previous periods (e.g., 2010-2014) and one may argue that they exceeded the normal trends, as the FIFA World Cup project was clearly an extraordinary investment that is not likely to repeat. As a result, such projects were already reflected in the capacity utilization and spare capacity of Russian producers during the IP. It is inappropriate to conclude that Russia's infrastructure investment will increase through other projects without comparing them to the projects implemented during the IP. Indeed, despite any potential future government spending on infrastructure, it may actually be lower than in the previous years, and given the extraordinary nature of investments during the IP, one may argue that Russia will not even sustain the previous level of investments. Moreover, as will be explained in the next sub-section, even if such projects were to actually increase infrastructure investments, there is no evidence that they will result in a higher domestic consumption of the product concerned.

**c) There is no positive evidence that hypothetical infrastructure projects in Russia would increase domestic consumption of the product concerned**

TSUK submits that neither the original decision, nor the NIR contain any evidence that would indicate a potential increase in Russia's domestic consumption of the product concerned. Even if the projects identified by the original case team and in the NIR (e.g., the projects referred to by the USITA) were to materialize, which is highly unlikely as

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<sup>12</sup> Russia – Country Commercial Guide, the US International Trade Administration (available at <https://web.archive.org/web/20220305012647/https://www.trade.gov/country-commercial-guides/russia-construction-and-infrastructure>)

demonstrated above, there is no reason to assume that they would consume a significant volume of the product concerned. In this respect, TSUK wishes to emphasize two points.

First, based on the sources used by the TRA in the original decision and in the NIR, TSUK can identify the following infrastructure projects that qualify for government spending (there is only one other project, namely Vostok Oil, which does not qualify for government spending and in any case is unlikely to impact this analysis):

1. Moscow – Nizhny Novgorod (or St. Petersburg) railway (source: the Moscow Time, Bloomberg)
2. Dzhubga-Sochi motorway (source: the Moscow Time, the USITA)
3. Bovanenkovo-Sabetta railway (source: the Moscow Time)
4. Reconstruction of the Pevek airport (source: the Moscow Time)
5. Reconstruction of two berths at the Beringovskiy port (source: the Moscow Time)
6. The ‘Safe and High-Quality Highways’ (source: the USITA)
7. Fresh railroad tracks (source: the USITA)
8. The Meridian Highway (source: the USITA)

Based on the nature of these projects, it is unlikely that they will consume a significant volume of WTP. Indeed, as 6 out of 8 projects are related to either railroads or motorways, the product concerned will play a very limited role in construction, if any. The other two projects, namely the Pevek airport and the berths at the Beringovskiy port, may indeed consume some WTP, but it must be noted that these are only reconstruction projects and they are unlikely to consume the same volume of WTP as a new construction project. Therefore, it is unclear how the TRA could have reached the conclusion that these projects will increase domestic consumption of WTP.

Second, TSUK wishes to emphasize that domestic consumption of WTP was already high in the period preceding the original decision due to the projects identified by the USITA, namely the FIFA World Cup and the ‘Housing for Russian Families’ program. Unlike the above-mentioned 8 projects, these construction projects were highly likely to consume a very significant volume of WTP. In order to find a potential increase in domestic consumption of WTP, the TRA must have not only found evidence of future infrastructure projects that would consume WTP, but also compared such future projects with the projects undertaken in the period preceding the original decision. Otherwise, the TRA simply cannot conclude that domestic consumption will increase, as the consumption generated by the future projects may as well be significantly lower than the consumption generated in the previous years.

#### **d) Conclusions**

In light of the foregoing, TSUK submits the following:

- Domestic consumption in Russia is irrelevant to the likelihood of recurrence of dumping analysis on a stand-alone basis and must be considered in the context of other, more relevant factors.
- Contrary to TRA’s findings, positive evidence clearly indicates that large-scale infrastructure projects taken into account by the TRA are unlikely to materialize in Russia.
- Even if the above-mentioned projects were to materialize, they will not lead to an increase in Russia’s domestic consumption of WTP.

## 2.2 TRA's use and calculation of likely UK landed price remains incorrect

In the NIR, the TRA did not address the issue of correlation (or lack thereof) between the likely UK landed price of Russian producers and their incentive to dump, as described in the Application for Reconsideration.<sup>13</sup> In this respect, TSUK wishes to provide additional information that was available to the original case team and seems to not be taken into account either in the original decision, or in the NIR.

### a) The likely UK landed price is not 'undumped'

First, the original case team treated the likely UK landed price as '*an undumped price which could gain a market share*'.<sup>14</sup> In this respect, TSUK wishes to emphasize that the TRA did not carry out any analysis to ensure that the likely UK landed price is indeed undumped. In response to TSUK's comments on the methodology used to calculate this price, the original case team stated the following:

*"In their response to the SEF UK Steel and TSUK also regarded this assessment as analogous with a dumping or undercutting calculation. It is important to understand that we have not used this assessment in that way, the only purpose of this assessment is to establish a benchmark price range that helps us to understand the options available to exporters. This assists us in understanding the attractiveness of the UK market as part of a holistic likelihood assessment. We accept that it would not be appropriate to calculate a dumping margin using this methodology."<sup>15</sup>*

TSUK notes that regardless of whether the TRA intended to use this price in a certain way or not, the original case team treated the likely UK landed price as undumped, as confirmed by the above-mentioned quote, and this approach was upheld in the NIR. However, it is impossible to know whether the price is indeed undumped based on the methodology used by the TRA. TSUK draws the TRA's attention to several factors that must have been taken into account before treating this price as undumped:

- 1) Ordinary course of trade test. The TRA must have analysed whether the indicative domestic price was even appropriate to calculate the likely UK landed price, i.e. whether those prices were obtained in the ordinary course of trade. As part of this test, the TRA must have considered whether domestic sales were representative compared to export volume and whether they were profitable. It is TSUK's understanding that such analysis was not carried out for Severstal, and could not have been carried out for the prices available from Metal Expert and MMK. Any domestic sales not made in the ordinary course of trade must have been disregarded for the purpose of indicative domestic price and the likely UK landed price.
- 2) Sales to related companies in Russia. While sales to related companies do not always have to be treated as not made in the ordinary course of trade, it is necessary to investigate such sales with additional scrutiny in order to establish if the prices charged to related companies are representative of usual market prices. As established by the Appellate Body in the *US – Hot-Rolled Steel*, even sales above costs to a related company might not be made in the ordinary course of trade, if they are below the usual market prices.<sup>16</sup> Similarly to the previous point, all such sales must have been disregarded.

<sup>13</sup> Application for Reconsideration, p. 17.

<sup>14</sup> Original decision, paras. 7.202 (for Russia) and 7.256 (for Severstal).

<sup>15</sup> Original decision, para. 7.201

<sup>16</sup> Appellate Body Report, *US – Hot-Rolled Steel*, para. 147.

- 3) Contrary to the TRA's approach to export SG&A, the latter is a crucial element of an export price, whether it is an export price in its traditional meaning or the likely landed price. The TRA itself acknowledged that export SG&A is not included in the likely UK landed price. The approach adopted by the TRA drastically underestimates the importance of this element of the export price, which has been a subject of several notable cases both before the General Court of the EU<sup>17</sup> and before the WTO.<sup>18</sup> In more practical terms, TSUK notes that export SG&A tends to be significantly higher than domestic SG&A, as the former is frequently incurred by a related company located outside of Russia (e.g., in the EU or Switzerland). It seems obvious that employment costs, rent costs, agent costs, etc. will be incomparable in most EU countries, let alone Switzerland, to those in Russia.

TSUK submits that without taking the above-described factors into account and adjusting the likely UK landed price accordingly, the TRA cannot treat this price as undumped. Furthermore, if the TRA does not ensure that the likely UK landed price is undumped, TSUK submits that it cannot be used for any meaningful analysis. Indeed, it would be hardly appropriate to use a potentially dumped price to assess whether it can gain market share and compete with other prices. Therefore, regardless of how the TRA intended to use this price, it is meaningless without ensuring that it is based on an appropriate and reasonable domestic price and takes into account the necessary adjustments.

**b) The likely UK landed price does not decrease the likelihood of recurrence of dumping**

Second, as explained by TSUK in the Application for Reconsideration, even if the likely UK landed price allowed Russian producers to compete in the UK without dumping, it does not in any way confirm that such dumping would be unlikely to recur. Importantly, the TRA did not comment on the arguments related to the economics of steel production either in the original decision, or in the NIR. TSUK wishes to reiterate its position in this respect as explained in the comments to the SEF and in the Application for Reconsideration. Furthermore, TSUK submits that the likely UK landed price is simply not suitable for the purpose attributed to it by the TRA.

Indeed, the TRA used the likely UK landed price to demonstrate that Russian producers would be able to compete in the UK market without dumping. As pointed out above, this assumption is erroneous due to the fact that the current likely UK landed price is not, in fact, undumped. However, if we were to accept that it is indeed an undumped price, it cannot be used to argue that Russian producers will have a lower incentive to dump. Instead, this price should be compared to their price in other third markets to establish whether the UK market is attractive. In case it is indeed attractive in terms of prices, the conclusion must be that it only increases the likelihood of recurrence of dumping, and the fact that Russian producers would be able to gain market share without dumping is irrelevant. This approach is consistent with WTO case law generally and with respect to Russia specifically. For example, in the *EU – Cost Adjustment Methodologies II (Russia)*, the Panel established that the European Commission found that dumping was likely to recur based on three factors, including the following:

**c. the attractiveness of the Union market and other third markets: based on a comparison of the price of sale of the product concerned on the Union market**

<sup>17</sup> E.g., Case T-301/16, *Jindal Saw Ltd and Jindal Saw Italia SpA v European Commission*, Case T-466/12, *RFA International, LP v European Commission*.

<sup>18</sup> WTO Panel Report, *EU – Fatty Alcohols (Indonesia)*.

*with the price of sale on third country markets, the EU authorities concluded that the EU market was attractive for Russian AN exporters.* (emphasis added)

*In light of these factors, the EU authorities concluded that there was a likelihood of recurrence of dumping and of substantial increase of the quantities exported to the Union, should the measures lapse.*<sup>19</sup>

The Panel did not challenge the above-described approach and concluded that the European Commission was correct in establishing a high likelihood of recurrence of dumping based on, among others, the fact the EU market was attractive to Russian producers due to its higher prices compared to other third countries. While TSUK understands why the TRA may want to use the likely UK landed price in the way that it did, TSUK respectfully submits that it is simply not an appropriate application for that price.

### **2.3 Other factors in TRA's analysis**

In this sub-section, TSUK will provide its views on several other points that seem to have been misunderstood by the TRA or require further clarification.

#### **a) Lack of cooperation from Russian producers**

With respect to lack of cooperation from Russian producers, in the NIR, the TRA stated the following:

*"TSUK submits that the lack of cooperation by Russian producers casts doubt on the TRA decision to revoke the Russia measure. The lack of cooperation was not a fault of the original case team, and we identified that multiple producers were notified and encouraged to participate in the review..."*<sup>20</sup>

In this respect, TSUK wishes to clarify that we by no means considered lack of cooperation from Russian producers as a fault of the original case team. To the contrary, only Russian producers are responsible for non-cooperation, especially if they were duly notified and encouraged to participate by the TRA. In this context, TSUK argued that the TRA simply did not have enough evidence from Russian producers to reach a conclusion that dumping is unlikely to recur. The Russian industry for the product concerned is diverse with multiple significant players in the market, whose spare capacity (not to mention total production capacity) significantly exceeds the size of the UK market for the product concerned. In these circumstances, it seems completely inappropriate to revoke the measures against all Russian producers without directly assessing at least several of them in-depth on an individual basis. This is especially relevant due to the fact that country-wide developments, such as decreasing domestic consumption of the product concerned, clearly indicate that all Russian producers, including Severstal, will have a significant incentive to export to the UK at dumped prices.

#### **b) Dumping by Severstal in third countries**

In the Application for Reconsideration, TSUK expressed its frustration as to why the original case team disregarded the fact of dumping by Severstal in other third countries' markets. The original decision stated the following in this respect:

*Our initial analysis based on averages indicated that Severstal may be dumping to some third countries. However, when normal value and export price per PCN were established, it was clear that this apparent dumping was a result of*

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<sup>19</sup> WTO Panel Report, *EU – Cost Adjustment Methodologies II (Russia)*, paras. 7.498-7.499.

<sup>20</sup> NIR, para. 52.

*different PCNs by market. Once this factor was accounted for, there was no dumping identified to any third country export markets by Severstal.*<sup>21</sup>

In the NIR, the TRA upheld the original findings by stating the following:

*The case team had originally identified that there may have been dumping in third countries, but this was driven by the PCN grouping, as export sales were at the lower end of the band, which distorted the average price. We found the case team were transparent in their methodology and provided appropriate reasoning for their initial finding of dumping and subsequent revision of their conclusion.*<sup>22</sup>

TSUK notes that these explanations are inconsistent. Different PCNs by market and export sales at the lower end of a PCN grouping are fundamentally different reasons for dumping, although TSUK does not fully understand what the TRA means by ‘the PCN grouping’. However, regardless of the difference between the two, it remains unclear why this established fact of dumping was disregarded by the TRA. It must be also noted that both scenarios describe a classic example of dumping, whereby PCNs differ in the domestic and export markets, or export price is suppressed by lower-priced types of PCNs in the export market.

Therefore, based on the explanations provided in the original decision and in the NIR, TSUK submits that dumping by Severstal in third countries must be taken into account and that it increases likelihood of recurrence of dumping in the UK.

### **3 THE TRA MUST CONSIDER THE IMPACT OF RUSSIA’S INVASION OF UKRAINE ON THE ORIGINAL FINDINGS**

#### **3.1 The TRA’s approach to disregard any events after the original decision is unjustified**

In the framework of the reconsideration process, the TRA decided to ‘*review whether the original decision made by the TRA was correct at the time it was made*’ and disregard the impact of ‘*Ukraine and subsequent imposition of associated sanctions on imports of Russian steel*’ on evidence pertaining to the reconsideration.<sup>23</sup> This is an unexpected approach to the reconsideration process for a number of reasons.

First of all, as acknowledged by the TRA, the investigating authority ‘*has wide discretion to reconsider an original decision in whatever way it considers appropriate in the circumstances, subject to any contrary provisions in those Regulations.*’ This is in line with the provisions of regulation 13(9) of the Trade Remedies (Reconsideration and Appeals) (EU Exit) Regulations 2019 (the R&A Regulations):

*“Except as otherwise provided by these Regulations, the TRA may reconsider an original decision in whatever way it considers appropriate in the circumstances.”*

Therefore, the R&A Regulations allow the TRA to take into consideration the developments that take place after the original decision was made. The mere fact that the R&A Regulations provide this degree of discretion to the TRA suggests that such an approach may be necessary under certain circumstances. In the present case, not only did the TRA decide to apply the opposite approach, but also did not provide any explanations as to the TRA considered this approach more appropriate. In TSUK’s view,

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<sup>21</sup> Original decision, para. 7.227.

<sup>22</sup> NIR, para. 52.

<sup>23</sup> NIR, pp. 3-4.

the fact that the TRA enjoys a wide margin of discretion in carrying out reconsiderations, in fact, suggests that it is necessary to explain the reasons for choosing a particular approach to reconsideration, i.e. how and why the TRA exercises its discretion.

TSUK submits that in the present case, the events that took place after the original decision was made, i.e. the Russian invasion of Ukraine and the associated sanctions against Russia, have a fundamental impact on the original findings and cannot be ignored. While this impact goes far beyond the factors analysed in the original decision, it is unclear the TRA decided not to take into account the impact at least on the factors and findings that played a key role in the original decision.

In the following sub-sections, TSUK will show that the developments that took place after the original decision are fundamental to the present reconsideration process and how they impact the original findings that were upheld in the NIR with respect to likelihood of recurrence of dumping by Russia.

### **3.2 Russia's domestic consumption will be much lower than expected and will incentivise Russian producers to export at dumped prices to the UK**

Russia's domestic consumption of the product concerned was the one of the key reasons for the TRA to reach the decision that dumping by Russia is unlikely to recur. As explained in the previous sections, the original decision contradicted the positive evidence with respect to the future demand in Russia and overestimated the importance of any positive developments related to large-scale infrastructure projects even if they were to materialize. In this sub-section, TSUK will provide further evidence which is vital for the reconsideration of the original findings and which clearly indicates that Russia's domestic consumption will only decrease in the coming years.

#### **3.2.1 Funding of government spending and the National Wealth Fund**

First of all, in order to understand how the circumstances changed in view of Russia's invasion of Ukraine and the associated sanctions, it is important to understand the basis for any discussions around potential large-scale infrastructure projects that have been reported by the media in the previous years. In the articles quoted by the TRA both in the original decision and in the NIR, all government spending initiatives on infrastructure were reported to be subsidized (either completely or to a great extent) from the National Wealth Fund (NWF), which is mainly formed by excess revenue from oil and gas exports:

*"Government's excess revenues from oil & gas taxes are transferred annually from other state accounts to the NWF. The excess oil & gas tax revenues are defined as the revenues collected on that part of the oil price that exceeds the reference price defined in the NWF savings rule."*<sup>24</sup>

Therefore, when there is no excess revenue from the oil & gas industry, the NWF cannot be increased. Taking into account the EU crude oil embargo that will enter into force in December 2022, as well as the cap price for oil that will be imposed around that time by the G7 Members, Russia will lose a significant share of its revenue that could have been directed to the NWF. In fact, it is estimated that Russia will lose almost EUR 10 billion per month from the partial crude oil ban in the EU alone, not to mention the price cap.<sup>25</sup> Combined with the current deficit of the Russian budget and their increased military spending to support the war against Ukraine, the most obvious conclusion is that the NWF will be used for purposes other than large-scale infrastructure projects in the

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<sup>24</sup> Russia's National Welfare Fund continues to grow, The Bank of Finland Institute For Emerging Economies, 4 February 2022 (available at [https://www.bofit.fi/en/monitoring/weekly/2022/vw202205\\_3/](https://www.bofit.fi/en/monitoring/weekly/2022/vw202205_3/))

<sup>25</sup> Europe's Russian oil embargo: significant but not yet, Bruegel, 1 June 2022 (available at <https://www.bruegel.org/blog-post/europes-russian-oil-embargo-significant-not-yet>)

coming years. If anything, cash from the NWF will be redirected to other immediate needs, such as to provide support to the key sectors of the economy that have been severely affected by sanctions. For example, in April, the Ministry of Finance allocated RUB 1 trillion (GBP 13.8 billion) from the NWF to the stock market to increase the capitalisation of companies affected by sanctions.<sup>26</sup> In June, RUB 17 billion (GBP 235 million) were allocated from the NWF to cover the debts of several air carriers.<sup>27</sup> Another example is the recent purchase of Aeroflot's share for the total amount of RUB 52.5 billion (GBP 725 million).<sup>28</sup> These examples only prove that cash from the NWF is actively used to address the immediate problems caused by sanctions, and certainly not for any long-term projects. While Russia's first deputy economy minister, Mr. Torosov, stated in September that the NWF will be used to allocate RUB 400 billion (USD 6.8 billion) to infrastructure projects, as always, there are no details of when such projects will commence and what projects the NWF will pay for specifically.<sup>29</sup> It must be noted that this is also in line with the general message from the Russian government that tries to preserve the sense of 'normality' in their economic, social and political affairs. Interestingly, the same article by Reuters lists additional expenditures from the NWF that went to support the financial stability of Russia and to support individual companies, such as Russian Railways and Aeroflot. There is still no proof of the NWF being used for any large-scale infrastructure projects that Mr. Torosov might have referred to up to this day.

### **3.2.2 Russia's domestic demand for steel products has already started to decline without any indication of recovery**

TSUK draws the TRA's attention to the fact that Russia's domestic demand for steel products has already dropped significantly. Moreover, there is no evidence that it should recover in the following years, let alone grow rapidly enough to absorb their excessive steel capacity.

The 2022 forecast from the World Steel Association states that Russia's domestic consumption of steel products should decrease by 20% in 2022 compared to the previous year.<sup>30</sup> The same source estimates that it will then remain flat in 2023, however, this current forecast is based on the current data and most likely does not factor in the impact of the oil-related sanctions on the Russian economy for the coming years. Therefore, based on the positive evidence at hand, it is fair to suggest that Russia's domestic demand will continue to decline or, in the best-case scenario, will remain flat after a dramatic decline in 2022.

A similar projection for 2022 is made by the Russian Steel Association, a trade body of Russian steel producers, who estimate that domestic demand will decline by 30% (or about 13 million tonnes) by the end of the year.<sup>31</sup>

TSUK acknowledges that these estimates are related to steel products generally and not the product concerned specifically. However, given the main applications of the product

<sup>26</sup> National welfare will be replenished by banks, Frank RG (available at <https://frankrg.com/64693>), English translation is available in Annex 5.

<sup>27</sup> Recapitalization of airlines (available at [http://government.ru/sanctions\\_measures/measure/129/](http://government.ru/sanctions_measures/measure/129/)), English translation is available in Annex 6.

<sup>28</sup> The recapitalization of Aeroflot so far turned out to be half the planned, Vedomosti (available at <https://www.vedomosti.ru/business/articles/2022/07/13/931213-dokapitalizatsiya-aeroflota-menshe>), English translation is available in Annex 7.

<sup>29</sup> Russia to spend \$6.8 billion from wealth fund on infrastructure projects in 2022, Reuters (available at <https://www.reuters.com/world/europe/russia-spend-68-bln-wealth-fund-infrastructure-projects-2022-2022-09-23/>)

<sup>30</sup> World Steel Association, Short Range Outlook (available at <https://worldsteel.org/steel-topics/statistics/short-range-outlook/>)

<sup>31</sup> Russia's domestic steel consumption down 30% in 2022, forecasts Russian steel, GMK Center, 30 March 2022 (available at <https://gmk.center/en/news/russia-s-domestic-steel-consumption-down-30-in-2022-forecasts-russian-steel/>)

concerned, there is no reason (and indeed no positive evidence) to suggest that the trend will be different and more positive for WTP.

### 3.2.3 The current economic situation in Russia creates additional incentives for Russian producers to export at dumped prices

TSUK notes that several other important factors of the likelihood of recurrence of dumping analysis have also been affected by the sanctions regime against Russia and the current economic situation.

First, due to lower demand in the domestic market and limited export opportunities, Russian steel producers are building up spare capacity as their production output has fallen dramatically. In May, RBC reported that MMK's production fell by 40% and Severstal's output was expected to fall by 20-40%.<sup>32</sup> The Russian Steel Association also stated that their domestic industry expected '*losses and production cuts if the government does not reduce taxes and weaken the ruble*'.<sup>33</sup> Importantly, none of these measure were implemented. It is clear that the rapid decrease in production is structural and not related to any specific event with short-term consequences. Therefore, Russian steel producers are building up a significant level of spare capacities in addition to the existing ones. This is also confirmed by a statement of a Russian public official in August:

*"There is also a significant decline in domestic consumption. As a result, the steel industry's capacity utilization has dropped to 80% from an average of 93%." He added that the capacity utilization rates for Magnitogorsk Iron & Steel Works and for Severstal stood at 62% at 72% respectively."*<sup>34</sup>

Spare capacity is one of the most important factors for the likelihood of recurrence of dumping analysis, as it is spare capacity that forces most steel producers to sell at dumped prices. In the present case, it is clear that Russian producer will be no exception.

Another important factor is the evident increase in the inventories of Russian steel producers even despite the decrease in their production output. There are numerous reports of Russian producers desperately seeking to offload their excessive material on export. As acknowledged by Mr. Sentyurin, executive director of the Russian Steel Association, such sales have zero or negative profitability.<sup>35</sup> However, it seems that it is an understatement. There are at least three countries that have either accused Russia of dumping or are even considering an anti-dumping action against Russian steel producers. First, Turkish producers are suffering from dumping of Russian companies and warned about possible production cuts in October and November.<sup>36</sup> Second, as reported by Bloomberg, Taiwan's China Steel Corp. was preparing an anti-dumping complaint against Russia. Notably, excessive inventories were reported to be the key reasons for dumping:

<sup>32</sup> Russian steelmakers are reducing production by up to 40% (available at <https://gmk.center/en/news/russian-steelmakers-are-reducing-production-by-up-to-40/>)

<sup>33</sup> Russian steel companies expect losses and production cuts (available at <https://gmk.center/en/news/russian-steel-companies-expect-losses-and-production-cuts/>)

<sup>34</sup> Six months of war: How has it changed the global steel market?, Fastmarkets, 5 September 2022 (available at <https://www.fastmarkets.com/insights/six-months-of-war-how-has-it-changed-the-global-steel-market/>)

<sup>35</sup> Russian steel companies expect losses and production cuts (available at <https://gmk.center/en/news/russian-steel-companies-expect-losses-and-production-cuts/>)

<sup>36</sup> Turkish steel exporters warn about work stoppage due to Russian Federation's dumping, GMK Center, 24 August 2022 (available at <https://gmk.center/en/news/turkish-steel-exporters-warn-about-work-stoppage-due-to-russian-federations-dumping/>)

*“Russian steel mills are eager to turn to the Asian market to sell at prices far lower than the international market in order to eliminate excess steel products.”<sup>37</sup>*

Third, Iranian steel producers accused Russia of disrupting the Asian markets with their high export volumes and low prices due to export discounts of 15-20%.<sup>38</sup>

In view of the above, positive evidence available from Russian and international sources clearly indicates that Russian producers will have additional incentives to export the product concerned to the UK at dumped prices if an opportunity arises.

#### 4 CONCLUSIONS

TSUK submits that the above-described factors clearly indicate that Russian producers, including Severstal, will have a strong incentive to export to the UK at dumped prices unless the measures are re-introduced. This is even more evident if the TRA takes into account a number of other factors described by the original case team, which were established to increase likelihood of recurrence of dumping, such as the continuation of the EU measures and the ability of Russian producers to gain a larger market share through lower prices.

In light of the foregoing, TSUK respectfully requests the TRA to re-introduce the measures against Russia, including Severstal, due to a high likelihood of recurrence of dumping based on the following factors:

- Russia’s domestic consumption of WTP will not increase.
- The likely UK landed price confirms attractiveness of the UK market for Russian producers but not the fact they will not be incentivized to dump.
- Lack of cooperation from Russian producers and dumping by Severstal increase the likelihood of recurrence of dumping.
- The TRA should have taken into account the events that took place after the original decision, which have a direct impact on the original findings and confirm that dumping is highly likely to recur.

Yours faithfully,

[redacted]

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<sup>37</sup> Asian Steel Markets Hit by Inflows of Cheap Russian Metal, Bloomberg, 19 July 2022 (available at <https://www.bloomberg.com/news/articles/2022-07-19/asian-steel-markets-unsettled-by-inflows-of-cheap-russian-metal?leadSource=verify%20wall>)

<sup>38</sup> Large Drop In Iran’s Steel Production Blamed On Russia, Iran International, 23 June 2022 (available at <https://www.iranintl.com/en/202206233623>)