

Revisão britânica das SGs comunitárias ao aço. Minuta de manifestação sobre a tencionada decisão preliminar.

The Government of Brazil presents its compliments to the Government of the United Kingdom and thanks for the opportunity to present its views regarding the Statement of Intended Preliminary Decision, in the context of the transition review of the safeguard measure on certain steel products (TF0006).

As stated in several occasions, Brazil understands that the present safeguard corresponds to that of the European Union (EU). The United Kingdom (UK) itself has indicated so.

Brazil has been arguing that the European measure bears several inconsistencies with the WTO rules. To begin with, the European Commission (EC), in our view, failed in accomplishing its obligation to prove that the supposed surge in imports resulted from unforeseen developments and from the obligations incurred by the EU under GATT/1994.

The EU alleged that global steel overcapacity was an unforeseen development in the sense of Article XIX of GATT/1994. Brazil disagrees. Steel overcapacity has been a global problem since the 70's. Moreover, the EU, in our view, failed to demonstrate properly the causal link between overcapacity and the alleged surge.

The EU initiated the safeguard investigation that resulted in the present measure on the basis of the possibility that US' Section 232 measures would lead to an eventual trade diversion of the goods subject to investigation into the EU market, which would cause an increase in imports.

Article 2 of the WTO Agreement on Safeguards (AS) clearly determines that the product subject to the investigation must be "being imported (...) in such increased quantities (...)". The surge of imports, therefore, must be actual, not a hypothesis. In this sense, the very basis of the EU's investigation is flawed.

A measure with such significant inconsistencies with the WTO rules should not be extended in the UK. It should, in fact, be immediately terminated.

The UK has indicated, however, that it intends to extend the safeguard for certain products, which raised Brazilian concerns.

Brazil recalls that extending the measure beyond 30 June could entail suspensions of concessions to the trade of the UK by all Members adversely affected by the measure. The implementation of those suspensions would be both legal and facilitated, under Article 8 of the Safeguards Agreement.

Brazil also believes that the immediate termination of the measure is the best option in light of our shared objective of strengthening the multilateral trading system. Extending a safeguard that violates important WTO rules and, consequently, leaving the door open to a spiral of retaliatory measures could weaken the rules-based trading system and boost protectionism.

If, however, the UK still decides to extend the safeguard, Brazil calls the UK attention to the fact that Brazil must be excluded from all categories, due to the fact that its exports are “de minimis”, within the meaning of Article 9.1 of the AS.

In this sense, Brazil thanks the UK for having stated that it intends to exempt Brazilian trade from the safeguard in nine categories (1, 4, 5, 13, 15, 19, 20, 21 and 26).

Brazil must, however, also be excluded from the measure in category 2, under which its exports were also “de minimis”, be it during the period of investigation (2013–2017), be it during the whole period 2013–2019. According to both Eurostat and HMRC’s data, the volume of Brazilian exports under category 2 represented 2,3% and 0,6% of total British imports, during the periods of 2013-2019 and of 2013-2017, respectively (see Appendix).

If, however, the UK still applies the measure to Brazil in category 2, at odds with Article 9.1 of the AS, Brazil requests a specific quota for its products that reflects its alleged market share of 4,5%. Article 7.4 of the AS states that any extension cannot result in a measure that is more restrictive than it was at the end of the initial period. Since the safeguard is the same as the European, and since there is a specific quota for Brazil in the European measure under category 2, Brazil must be granted a specific quota in the extended safeguard under category 2. Alternatively, as a second-best option, Brazil suggests that the UK applies the measure under category 2 without country-specific quotas, that is to say, by the means of a sole “all-countries” quota.