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Non-Confidential

Comments regarding the reconsideration of an original decision in transition review of the Safeguard measure on certain steel products Submission of GOC

On 7th December, 2021, the Trade Remedy Authority(TRA) released the public notices to initiate a reconsideration of an original decision in transition review of the safeguard measure on certain steel products(the SF). The Government of the People's Republic of China (GOC) would like to submit the following comments.

1. The maintenance or application of the EU measures by the UK lacks legal and factual basis.

The very act of exit from the EU by the UK released the UK from all its rights and obligations as a former member state. According to the Commission Implementing Regulation (EU) 2020/2037(L416/32), after the Brexit transition period the Safeguard measure on certain steel products was only applicable to 27 member states, the UK steel products are subjected to quotas and tariffs when entering the EU. Moreover, as recognized by UK, EU trade agreements with other countries do not apply to the UK. Thus, to the UK needs to resign the treaties if the UK wants to maintain them. For example, after Brexit, the UK has to sign the Canada-UK Trade Continuity Agreement as the EU-Canada Comprehensive Economic and Trade Agreement no longer applies to the UK.

The EU Safeguard measure on certain steel products (the EU SF) is conducted by the EU after the investigation based on the overall situation of the customs union. The UK is neither the original the investigator nor the successor of the EU. Therefore, The UK is not entitled to maintain or continue to apply the EU SF directly through domestic legislation. The UK investigation authority only relied on the Call for Evidence to collect information and decided to maintain the EU SF and initiated the transitional review, which can not complete the transformation from the EU SF to the UK measure, but should initiated an *ab initio* investigation the investigation according to the WTO rules. The UK legislation does not rule out the possibility of initiation of an *ab initio* investigation, but

provides a basis. In addition, the Call for Evidence also failed to ensure the basic rights of stakeholders such as reasonable understanding of information and defense on their interests. Therefore, the relevant UK practices are inconsistent with the basic principles of international laws and do not meet the requirements of WTO rules and UK's domestic laws. The GOC urges the UK to terminate the application of all the EU measures including the SF in the UK and all the on-going transition reviews.

2. The comments regarding the transition review and extension determination on the SF.

Without prejudice to the above position, the GOC would like to submit the following comments regarding the transitional review and extension determination on the SF.

2.1 The transition review on the SF is invalid from the beginning.

Based on the above reasons, the UK is not entitled to maintain and continue to apply the EU SF after Brexit. The initiation of the transition review of the SF is inconsistent with the WTO rules, is invalid from the beginning and should be revoked.

2.2 The UK is not entitled to make the extension determination on the SF.

According to Article 7.2 of the Agreement on Safeguards, the importing Member making the extension decision shall be the original member that had initiated the case, investigated and taken the safeguard measure. The EU and the UK are separate members of the WTO, so the UK cannot make a decide to extend the period of a safeguard measure of another member. Therefore, the UK's decision to extend the SF period is inconsistent with Article 7.2 of the Agreement on Safeguards.

2.3 The transition review is not an investigation procedure under the Agreement on Safeguards.

In the transition process, the transition review not only investigated the absolute or relative increase in the import quantity of the import products and the serious injury to the domestic industry that needs to be considered in the original investigation, but also investigated "the safeguard measure continues to be necessary to prevent or remedy the serious injury" and "there is evidence that the industry is adjusting". Therefore, the investigation is neither the original investigation under the Agreement on Safeguards, as the original investigation does not need to investigate "the safeguard measure continues to be necessary to prevent or remedy the serious injury" and "there is evidence that the industry is adjusting", nor does it fulfill the relevant procedures of the original investigation. Moreover, it is not an review under the Agreement on Safeguards,

because the review does not need to investigate the absolute or relative increase in the volume of the import products. The transition review is an investigation procedure outside the WTO rules created by the UK and is inconsistent with the Agreement on Safeguards.

2.4 The representativeness of domestic industry does not meet the requirements of the WTO rules.

2.4.1 The WTO requirements of the representativeness of domestic industries were not met when the UK maintained the EU SF and initiated the transition review.

In the Call for Evidence, although the UK investigation authority asked for information regarding the representativeness of the domestic industry, it did not disclose whether the UK producers met such standards. The initiation of the transition reviews on the basis of the information collected by the Call for Evidence did not disclose whether the UK investigation authority has reviewed the representativeness of domestic industry. The investigation findings of the transition review showed the SF maintained and applied by the UK has no relevant producers under the product category 28 and some HS codes under product categories 4B and 19 in the UK, which directly shows that the UK producers who required to maintain the EU measures do not meet the requirements for domestic industry representatives set by the UK investigation authority and WTO rules, and does not meet the requirements of the domestic industry representativeness to initiate an investigation.

2.4.2 When conducting the injury analysis, it is not clear whether the sampled domestic producers can represent the domestic industry

The UK investigation authority collected information through sampling domestic producers and questionnaires to analyze and determine the serious injury of domestic industry. However, the disclosure of basic facts does not show the specific data on which the sampling was based, nor did it disclose whether the overall and specific product ratios to domestic production of the five sampled enterprises and the four enterprises that identified and submitted available data. Therefore, it is not possible to determine whether these sampled enterprises could meet the requirements Article 7.2 and Article 4.2 of the Agreement on Safeguards.

2.5 There is no injury analysis at each product category level.

When conducting injury analysis at each product category level, the UK investigation authority sorted these product categories under each injury elements to determine whether the overall situation supports the existence of serious injury. This analysis method did not make injury analysis to the UK domestic industry at each product category. Thus, the UK

investigation authority can not determine whether a specific category of imported products has caused serious injury to the UK domestic industry, and can not assess whether the safeguards measures applicable to such products are still necessary to prevent and remedy serious injury, which is inconsistent with Articles 4 and 7 of the Agreement on Safeguards.

2.6 Extending the period of the SF for 5 categories of the imported steel products is inconsistent with the Agreement on Safeguards

According to the investigation findings, the UK investigation authority suggested to revoke the SF for 9 categories of steel products in product categories 6, 7, 12, 14, 15, 16, 17, 27 and 28. The Secretary of State did not accept the UK investigation authority's suggests and finally decided to extend the SF period for one year on 5 categories of steel products in product categories 6, 7, 12, 16 and 17.

2.6.1 No injury investigation was carried out for the 5 categories of steel products for which the measure period was extended

When conducting injury investigation, the analysis for product category 7 could not be conducted due to the lack of usable data, so the UK investigation authority only focused on the product categories 1, 2, 4, 5, 13, 15, 19, 20, 21, 25A, 25B and 26 in the injury analysis, and did not conduct the injury investigation on the product categories 6, 7, 12, 16 and 17, that is, there is neither investigation nor evidence to show that product categories 6, 7, 12, 16 17 have caused injury to the UK domestic industries and/or the safeguard measure continues to be necessary to prevent or remedy the serious injury rising from the product categories 6, 7, 12, 16 17. Therefore, the determination of the Secretary of State to extend the period of the SF for above 5 product categories without any investigation and investigation findings is inconsistent with Articles 4 and 7 of the Agreement on Safeguards.

2.6.2 The extension decision is inconsistent with the investigation findings

The UK investigation authority reach the investigation findings that there is no evidence that the absolute and relative import volume of product categories 6, 12, 16 and 17 has increased, and only the likelihood of recurrence of importation and serious injury to U K producers of goods in increased quantities had been assessed. The UK investigation authority determined that there is no likelihood of recurrence that product categories 6, 12, 16 and 17 would be imported in increased quantities and product categories 6, 7, 12, 16 and 17 would caused injury to the UK domestic industry. On the basis of such findings, the UK investigation authority recommended to revoke the SF applicable to 9 product categories and some HS codes under other 10 product categories. The

Secretary of State overturned the UK investigation authority's recommendation and decided to extend the SF period for the above 5 product categories for one year. This decision is completely contrary to the investigation conclusions and basic facts and is inconsistent with Article 7.2 of the Agreement on Safeguards.

2.6.3 The period extension of the SF for 5 product categories did not provide adequate opportunity for prior consultation with the exporting members

In the document notified by the UK to the WTO on June 11, 2021, the UK preliminarily disclosed the intention to extend the SF for 10 product categories and revoke the SF for the 9 product categories and some HS codes under above the 10 product categories, and provided the exporting members with the opportunity of prior consultation. On June 30, 2021, the UK suddenly decided to extend the SF period for 5 product categories for which the preliminary notification had indicated to revoke. On July 2, 2021, the UK informed the WTO of relevant decisions and invited the affected members to conduct consultations under article 12.3 of the Agreement on Safeguards. For the SF applicable to the above 5 product categories, the UK did not inform the WTO before making the final decision, nor did it provide the opportunity for prior consultation with the exporting members, but provided the opportunity for consultation after the decision. This is post consultation rather than prior consultation, which is inconsistent with Article 12.3 of the Agreement on Safeguards.

3. The reconsideration process could not remedy the deficiencies of the transition review and the final decision.

Without prejudice to the above position, the GOC would like to remind the UK investigation authority, the current reconsideration process cannot remedy the inconsistencies of the transition review and the final decision with the WTO rules. Moreover, there are some additional points the GOC would like to make:

3.1 The reconsideration can not make up for the problems existed when the UK authority notified to extend the SF period for 5 product categories on July 2, 2021.

According to Article 7.2 of the Agreement on Safeguards, the extension of safeguard measures require the investigating authority to "have determined" the need for the extension, that is, the investigating authority needs to determine the relevant conditions are met before extending the safeguards. However, from the whole process of transition review and the final decision, the UK investigation authority was not able to determine the necessity of extending the safeguard measures on the 5 product categories when it announced the extension. Rather, until overturned by

the Secretary of State, the UK investigation authority had concluded that there was no need to extend safeguards for these 5 categories of products. In the absence of the necessary explanation and supporting evidence, the Secretary of State overturned such conclusion and the UK announced the extension of the safeguard measures on the 5 categories of products for one year, which directly violates Article 7.2 of the Safeguard Agreement regarding the time limit.

Therefore, the GOC would like to remind the UK investigation authority that the current reconsideration could not remedy such procedural issue.

3.2 The review should not further expand the product categories and application time frame of the final decision.

The GOC notes that the current reconsideration covers the product categories for which the safeguard measures have been revoked in the final decision of the transition review. For these product categories, since they are no longer covered by the safeguard measures by the UK authority's final decision, the authority cannot re-impose safeguard measures on them in violation of the time limit of Article 7.5 of the Safeguard Agreement. In addition, in accordance with the Article 7.2 of the Safeguard Agreement, the UK authority cannot meet the requirements of "have determined" the need to extend measures on these products when the original safeguards expired on June 30th, 2021.

4. Conclusion.

The maintenance or application of the EU measures by the UK lacks legal and factual basis. The application of the EU SF, the initiation and final determination of the transition review on the SF are inconsistent with the Safeguard Agreement. The reconsideration process could not remedy the deficiencies of the transition review and the final decision as well. The GOC urges the UK to take note of all the comments submitted by the GOC, and take actions to terminate the application of all the EU's measures and on-going transition reviews, and refund the paying firms all duties collected since 1 January 2021. The GOC reserves all its rights under the Agreement Establishing the World Trade Organization and its Annexes including the Agreement on Safeguards and the Understanding on Rules and Procedures Governing the Settlement of Disputes.

The global economy is still recovering from the serious impact of COVID-19. In this critical period, the GOC hopes that the UK will be more cautious and restrained in the application of trade restrictions, and conduct the investigation in a fair and impartial way. China and the UK need to work together to strengthen dialogue and cooperation, develop the healthy China-UK economic and trade relations, promote free trade and jointly safeguard the multilateral trade system.