

BEFORE THE TRADE REMEDIES AUTHORITY, UNITED KINGDOM (UK).

IN THE MATTER OF

Tariff Rate Quota Review of Developing Country Exception

Case TQ0030

Statement of Intended Final Determination

Comments on behalf of Government of India

Dated: 26th April, 2023

Comments on Behalf of Government of India (GOI) on Statement of Indented Final Determination (SIFD) by Trade Remedy Authority (TRA), United Kingdom (UK).

At the outset, India submits its concerns to the TRA regarding the manner in which safeguard measures have been extended in contravention of the provisions of GATT 1994 and the Agreement on Safeguards, and requests for compensation, under Article 8.1 of the Agreement on Safeguards.

Government of India has, on several occasions, raised its concerns regarding the legal inconsistencies of both the original and the extended measures by the UK particularly with reference to, the evidence of serious injury notified to the WTO, the duration of the safeguard measures exceeding 3 years (Article 7.4 of Agreement on Safeguards), the nature of investigation conducted by the UK on the concerned domestic industry, and the non-review of the pace of liberalization.

The Period of Investigation (POI) for the review to assess the change in circumstances is 1 January 2022 to 31 December 2022. The representative period for assessing traditional trade flow is the calendar years 2017 to 2019. The safeguard on certain steel products originally applied by the European Union. The extensions were notified by the means of the document G/SG/N/6/GBR/1 (dated 8 October 2020), G/SG/N/8/GBR/1 (dated 21 May 2021), G/SG/N/8/GBR/Suppl.1 – G/SG/N/10/GBR/1 – G/SG/N/11/GBR/1 (dated 11 June 2021), G/SG/N/8/GBR/1/Suppl.3 - G/SG/N/10/GBR/1/Suppl.1 - G/SG/N/11/GBR/1/Suppl.1 and the document- G/SG/N/8/GBR/1/Suppl.7-G/SG/N/10/GBR/1/Suppl. G/SG/N/11/GBR/1/Suppl.8 .

SIFD indicates that UK's identification of India as one country that is not eligible for benefit of Developing Country Economy (DCE), is of serious concern and would hamper the Trade relations between the two nations. As per SIFD, UK intends to continue the Trade Measures on India, till Jun 2024.

Government of India will rely on following argument in the present submissions:

- I. The European Commission's Definitive Measure on Steel was itself in Contravention of WTO Agreement on Safeguard. - The EU investigation itself was not on objective and unbiased basis.**
- II. The Reports of TRA was not made available to India, to comment on the serious injury being caused to the UK's domestic Manufacturers, which**

fulfils the criteria of causing or threatening to cause serious injury to the Domestic Industry.

- III. The quotas allocated are against the principle of ‘progressive liberalisation’ provided in Article 7.4 and Article 12.2 of the Agreement on Safeguards**
- IV. The application of safeguard should be in Economic Emergencies**
- V. The proposed Safeguard Measures would affect the bilateral trading relations between India and the UK.**

I. The European Commissions Definitive Measure on Steel was itself in Contravention of WTO Agreement on Safeguard.

The EU investigation itself was not on objective and unbiased. GOI submits that the European Commission's approach for implementing Safeguard measure on 26 category of Steel products was not consistent with WTO principles of Agreement on Safeguard. The Measures were imposed by European Commission on 1 February 2019, and on 11 June 2021 the Trade Remedies Authority (TRA) published its final determination continuing the measures on more than 10 categories of products. On 30 June 2021, the Government passed emergency legislation to enable it to overrule a part of the TRA recommendation. To that effect, other 15 category of products were also brought into ambit of Tariff Quota. The Trade Remedies Notice 2021/03: safeguard measure: tariff-rate quota on steel goods (30 June 2021, last updated on 7 October 2022), extended the tariff rate quota in relation to five other steel product categories, initially until 30 June 2022. The WTO Panel, in *EU –Safeguard Measures on Certain Steel Products (DS595)* has held that the safeguard measures imposed by the EU (which have been consequently adopted by the UK) are in contravention with the Agreement on Safeguards. The Report of the Panel in DS595 has been adopted by the WTO Dispute Settlement Body on 31st May 2022.

Notwithstanding the arguments made above, the Government of India would like to refer to Article XIX:1(a) of the GATT 1994, which provides:

If, as a result of unforeseen developments and of the effect of the obligations incurred by a contracting party under this Agreement, including tariff concessions, any product is being imported into the territory of that contracting party in such increased quantities and under such conditions as to cause or threaten serious injury to domestic producers in that territory of like or directly competitive products, the contracting party shall be free, in respect of such product, and to the extent and for such time as may be necessary to prevent or remedy such injury, to suspend the obligation in whole or in part or to withdraw or modify the concession.

Article XIX:1(a) states that "if" the circumstances and conditions specified therein are met for "any product", a member is free to apply a safeguard "in respect of such product". Under Article XIX:1(a), a safeguard may be applied on a product only if the circumstances and conditions necessary to apply the safeguard have been verified for that same product. GOI submits that in the present review investigation the authority has not explained how the unforeseen developments, which related to product under consideration in general, has resulted in an increase in imports of the specific products under investigation, and that therefore the extension of Safeguard measures on the products given in SFID is inconsistent with Article XIX:1(a).

Similarly, Article 2.1 of the Agreement on Safeguards provides that a member may apply a safeguard "to a product" "only if" that Member has determined that certain conditions are met in respect of "such product". That is, the product on which a safeguard is applied must be the same as the product for which the Member has determined that the conditions for applying a safeguard are met. If a member applies a safeguard measure on a product for which it has not determined that the conditions are met, it acts inconsistently with Article 2.1.

GOI submits that in the present case the TRA has not carried out any individual examination for each category of products on which the measures are extended. Even if the combined import data as published in British Steel Report dated March 14, 2023 (also part of this investigation document) is considered, the imports from India has consistently been miniscule, and there is no significant surge of imports to consider continuation of Safeguard measures on Imports from India.

II. **The Reports of TRA was not made available to India, to comment on the serious injury being caused to the UK domestic Manufacturers, which fulfils the criteria of causing or threatening to cause serious injury to the Domestic Industry:**

The last sentence of Article 3.1 of the Agreement on Safeguards provides “the competent authorities shall publish a report setting forth their findings and reasoned conclusions reached on all pertinent issues of fact and law”. Article 3.1 thus requires authorities to set forth their findings and "reasoned" conclusions on "all pertinent issues of fact and law" in their published reports. The last sentence of Article 3.1 therefore requires authorities to set forth in their published reports what they have found, as the result of searching or enquiry, and the conclusions (outcome, final result) they have reached from their findings. These conclusions must be "based on reasoning", "carefully studied". As to the scope of the necessary findings and reasoned conclusions, the last sentence of Article 3.1 specifies that these must cover "all pertinent issues of fact and law".

GOI submits that Article 3 is a provision on the "investigation" that is required for a member to be able to apply a safeguard measure, and Article 3.1 specifies certain procedural requirements relating to such an investigation. This suggests that the "pertinent", i.e. relevant, issues of fact and law are those that must be established through the investigation, and specifically those that must be established for a Member to be able to apply a safeguard measure.

Paragraph 41 of the SIFD states that TRA has used the import data provided by His Majesty's Revenue and Customs to analyse the trade flows. However, the TRA has not disclosed this data in the SIFD. This has compromised the rights of the interested parties to comment on the alleged increase in imports above the *de minimis* levels, and effects of the trade flows on the domestic industry.

Notwithstanding what is stated above, in paragraphs 25 and 26 it has been stated that import data of a 12 month (1st January 2022 to 31st December 2022) period has been analysed. The Government of India submits that this 12 month period is not a representative period over which the imports volumes can be reasonably assessed.

In present investigation the TRA has failed to provide any documents or submissions of the Domestic Industry and other parties which they have conducted pursuant to the Agreement on Safeguard to extend the application of the measures on India. The TRA has failed to publish the issues of fact and law within the meaning of Article 3.1 which fulfils the criteria to continue to apply a safeguard. This is contravention of not just Article 3 but also Article 2.1 of the Agreement on Safeguards and Article XIX:1(a) of the GATT 1994.

III. **The quotas allocated are against the principle of 'progressive liberalisation' provided in Article 7.4 and Article 12.2 of the Agreement on Safeguards**

Notwithstanding the Government of India's arguments that the present review is unwarranted, the Government of India submits that the quotas proposed to be allocated are against the principle of 'progressive liberalisation'. As per Article 7.4 of the Agreement on Safeguards, if the period of application of the measure exceeds one year, the Member applying the measure must progressively liberalise the measure at regular intervals. The second sentence of Article 7.4 states that a Member may either withdraw or increase the pace of liberalisation. Article 7.4 would

suggests that the Member applying a safeguard measure is required to progressively liberalise the measure. The Member is permitted to increase the pace of liberalisation, but not reduce the pace of liberalisation.

The Government of India is concerned that the Tariff Rate Quotas provided in Annexure 6 of the SIFD are not being progressively liberalised. Rather it is apparent that the measure is more regressive in the year 2024 as compared to 2023. The Government of India submits that the TRQs indicated in the SIFD are in contravention of requirement of progressive liberalisation as provided in Article 7.4 of the Agreement on Safeguards. The Government of India requests the TRA to make a fair assessment of the quotas in a manner that complies with the requirement for 'progressive liberalisation' as provided in Articles 7.4 and 12.2 of the Agreement on Safeguards.

IV. The Application and extension of Safeguard should be in Economic Emergencies.

Safeguard Measures are emergency measures and temporary. Article 7.2 of the Agreement on Safeguard provides that Safeguard Measures may only be applied for such period of time as may be necessary to prevent or remedy serious injury and to facilitate adjustments. In fact, Article 7.1 read with Article 6 provides that the duration of safeguard measures should not exceed four years, however in present case, measures were first adopted by EU in 2019 and were carried forward by UK. The extension of safeguard measures is only possible when the safeguard measures continue to be necessary to prevent or remedy serious injury to the domestic industry and there is evidence that the domestic industry is adjusting. In present review investigation none of the conditions have been satisfied or presented before the members countries. Therefore, the extension of measure against a developing country beyond prescribed time is WTO incompliant.

V. The proposed Safeguard Measures would affect the bilateral trading relations between India and the UK.

The Government of India submits that India and the UK have had a long standing trading relations, spanning over many years. The two countries are in the process of strengthening their trading relations through a Free Trade Agreement, which is likely to be concluded soon. The Government of India is concerned that extending the measures vis-à-vis India would dilute the benefits of the anticipated FTA.

The GOI requests the UK authority to adhere to the disciplines of GATT 1994 and WTO Agreement on Safeguards. Also, the information relevant for this investigation which has not been shared with the GOI may be provided before finalising this investigation and GOI reserves it right to make additional submissions on receipt of such information, apart from these comments.

These comments are being filed within the deadlines stipulated which is 26th April, 2023.

Respectfully Submitted.