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**Non-Confidential**

## **Comments regarding the final determination on the transition review of the Safeguard measure on certain steel products**

### **Submission of GOC**

On 30<sup>th</sup> June, 2021, the Secretary of State released the public notices to extend the period of the Safeguard measure on certain steel products (the SF) from 1<sup>st</sup> July 2021. 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.

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 its own legal requirements.

Without prejudice to the above position, the GOC believes that in the absence of and substantive investigation and relevant disclosure, the UK investigation authority directly adjusted the product scope of Safeguard measure from 26 categories to 19 categories, which is inconsistent with Article 5 of the Agreement on Safeguards .

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 under section 1, 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**

From the investigation contents, the transition review of the SF 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, because 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; Nor is it 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 does not belong to the investigation procedure under the

Agreement on Safeguards which 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 investigation findings show that the representativeness of domestic industries does not meet the requirements of the WTO rules when the UK maintained the EU SF and transition review are initiated**

In the Call for Evidence, although the UK investigation authority made a request for the representativeness of the domestic industry, it did not disclose whether the UK producers who required to maintain the EU's trade remedy measures met the representativeness of the domestic industry. 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 proves 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 indicate whether the proportion of the production of the sampled producers in the UK production can meet the requirements of "domestic industry" in Article 3.1 (c) of the Agreement on Safeguards.

#### **2.5 There is no overall individual product category level assessment on the injury analysis**

When conducting individual product category level injury analysis, the UK investigation authority distinguished product categories under each injury assessment index to determine whether the assessment index supports the conclusion of serious injury. This analysis method did not make an overall individual product category level assessment of the injury caused by each category product to the UK domestic industry, 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 measure 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, partly analysis for product category 7 was not conducted due to a lack of usable data, so actually 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 overall analysis and individual product category level 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 investigated. That is, 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 have caused injury to the UK domestic industry. On the basis of this investigation findings, the UK investigation authority suggested to revoke the SF applicable to 9 product categories and some HS codes under other

10 product categories. The Secretary of State amended the UK investigation authority's suggests 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 measures suggested by the UK investigation authority 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 decided 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 finally decided to extend the SF period for 5 product categories for which the notification preliminarily decided to revoke the SF. 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 making the decision. This is post consultation rather than prior consultation, which is inconsistent with Article 12.3 of the Agreement on Safeguards.

### **2.7 The UK's determination has aroused concerns about the trend of the UK trade policy and its commitment to abide by multilateral trade rules**

Based on undisclosed domestic policy factors, the UK made a determination contrary to the investigation conclusions and measures suggested by the UK investigation authority to extend period of the SF, which is inconsistent with the UK government's position on free trade and fair trade.

Despite the opposition of other WTO members, the UK maintained and continued to apply the EU trade remedy measures including the steel Safeguard measure after Brexit, which is inconsistent with WTO rules. The procedures and contents of the final determination and the initiation of the transitional review on the SF is inconsistent with WTO rules.

### **3. 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

ADA. The GOC urges the UK to seriously consider the comments submitted by the GOC this time and last time, to terminate the Safeguard measure on certain steel products, 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, restrained and appropriate in the application of trade restrictions, and the investigation and measures should be fair and impartial. 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.