**Extensão britânica das SGs comunitárias ao aço. Minuta de manifestação aos autos da análise de reconsideração da recomendação da AI.**

The Government of Brazil presents its compliments to the Government of the United Kingdom (the UK) and thanks for the opportunity to submit its views on the current process of reconsideration of the Trade Remedies Authority's (TRA) recommendation to the Secretary of State for International Trade (the SSIT) in the transition review of the safeguard on certain steel products originally applied by the European Union (the EU).

1. **Inconsistencies of the original measure with the WTO rules**

First, Brazil recalls that the measure subject to the reconsideration process violates various multilateral trading rules, which should lead to its immediate extinction.

Brazil has repeatedly pointed out, since the beginning of the investigation, the technical inconsistencies of the safeguard. At the present moment, the original measure is under scrutiny by a Panel at the WTO, in which Brazil expressed, as a Third-party participant (Appendix 1), several concerns regarding conformity with the Agreement on Safeguards (hereinafter, the AS) and the GATT 1994. Brazil briefly recalls below the main inconsistencies of the safeguard with the pertinent WTO rules.

According to paragraph 52 of the Commission Implementing Regulation (EU) 2019/159 of 31/01/2019 (Appendix 2) the global steel overcapacity was an unforeseen development in the sense of Article XIX of the GATT 1994. Brazil disagrees. As stated by Brazil in its Third-party submission in the DS595 procedures (Appendix 1), the causal nexus between the structural problem of steel excess capacity and the increase in imports cannot be simply presumed. Instead, it requires a reasoned and detailed analysis by the investigating authority. In the present case, the arguments put forth by the European Union did not take into account the complexity of the situation. Furthermore, as the Global Forum on Steel Excess Capacity (GFSEC) stated in its 30/11/2017 Report (paragraph 116) (Appendix 3), global steel overcapacity has been a global problem since the 70’s. Hence, even if the causal nexus between the steel industry overcapacity and the injury had been demonstrated, it still would not be possible to say that it constituted an unforeseeable cause.

The EU initiated the safeguard investigation that resulted in the present measure based on the possibility that Section 232 measures imposed by the United States would lead to an eventual trade diversion of the goods subject to such measures into the EU market, which would cause an increase in the imports into the EU (*see* point 2, second paragraph of the document Notice of initiation of a safeguard investigation concerning imports of steel products (2018/C 111/10) – Appendix 4).

Once again, the imposition of a safeguard measure requires thorough investigation and demonstration of the increase in imports and the causal nexus between such increase and the serious injury or threat thereof to the domestic industry. The presumption about the U.S. 232 measure does not fulfill this requirement. Article 2 of the Agreement on Safeguards 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 original EU’s investigation is flawed.

Furthermore, the alleged surge was not, as determines the WTO jurisprudence, "sudden, sharp, significant and recent enough", and there was even a decrease in imports for certain categories. Moreover, for some categories, the surge was not absolute, but relative, which reinforces the legal basis for the suspension of concessions before the first three years of application of the measure to which Brazil reserved its right in the WTO, when the original safeguard was imposed. Since the measures were imposed by category, the surge analysis should also have been analyzed according to the same criterium.

Regarding the alleged injury, Brazil understands that, in several product categories, there was a positive evolution in the indicators of the domestic industry. Therefore, there has been no injury or threat thereof in certain categories, like hot-rolled and cold-rolled steel. Moreover, the non-attribution analysis was not conducted adequately for some of the categories. According to Article 4.2 of the AS, “[w]hen factors other than increased imports are causing injury to the domestic industry at the same time, such injury shall not be attributed to increased imports.”

A measure with these many significant unconformities with the WTO rules on safeguards should not have been subject to a recommendation of extension, not even a partial one (for some categories only, as in the present case). Such a recommendation must be urgently reviewed to determine the termination of the safeguard .

1. **Inconsistencies of the prolonged measure with the WTO rules and specific arguments concerning category 7**

Regarding the current process of reconsideration, Brazil would like to express its views particularly on category 7. Brazil strongly believes that not only the TRA should maintain its recommendation to extinguish the measure for non-alloy and other alloy quarto plates, but also that the SSTI must respect the TRA’s recommendation in such regard.

The most basic and the only possible criteria established by the WTO for imposing or extending safeguard measures are surge in imports, injury to the domestic industry and causal nexus between these two elements. For category 7, TRA’s investigation has found no serious injury (according to the document “TRA’s Recommendation to the Secretary of State”, Appendix 5). In this context, TRA has, correctly, recommended the termination of the measure for this category.

The SSTI has, however, against all applicable WTO rules, extended the measure for this category alleging that this would provide TRA with time to assess possible reconsideration requests. However, under the AS, to have the opportunity for analyzing hypothetical appeals is not a valid basis for extending a measure. TRA should, therefore, maintain its recommendation to the SSTI and the latter must observe it, thus extinguishing the safeguard for category 7.

The decision to extend the measure is flawed not only because it runs against what the investigating authority has found on the basis of an objective process, but also because it violates the obligation under Article 12.3 of the AS to provide opportunities for consultations prior to the application of the measure. WTO jurisprudence determines that such opportunities must be offered before the extension of the measure and after the notification of the decision to do it. The UK's decision notification to the WTO, with instructions for requesting consultations, was circulated after July 1, the date when the prolongation came into effect.

Furthermore, TRA must maintain its recommendation for revocation in category 7 also because Article 7.4 of the AS determines that extended measures cannot be more restrictive than they were at the end of the original application period, a rule reinforced by the jurisprudence in the "Argentina - footwear" case, which established that the only possible changes, in prolonged measures, under Article 7, are those that make the safeguard less restrictive. Brazil was not subject to the measure in category 7 at the end of the original EU remedy. The inclusion of the country in this category by the UK in the present extension, therefore, represents a clear violation of article 7 of the AS.

If, however, against all legal grounds, TRA reverses its recommendation regarding category 7, Brazil urges it to, in line with the pertinent WTO rules, recommend that Brazil be excluded from it.

1. **Final remarks**

Considering the measure is vitiated by numerous breaches of WTO rules as pointed out in item 1 above, Brazil respectfully requests that the TRA reconsiders its recommendation to determine the immediate complete termination of the measure. Alternatively, in case it is maintained, Brazil respectfully requests to be excluded from the application on category 7, in light of the blatant violations demonstrated in item 2 above.