

中 华 人 民 共 和 国 商 务 部

MINISTRY OF COMMERCE OF THE PEOPLE'S REPUBLIC OF CHINA
2, DONG CHANG'AN STREET, BEIJING, CHINA 100731

Non-Confidential

Comments Regarding the Transitional Review of the Safeguard Measures on Certain Steel Products(TF0006)

The Government of the People's Republic of China ("GoC") would like to extend its compliments to the UK Trade Remedies Investigations Directorate("TRID").

By this submission, GoC would like to express its concerns and position regarding the transition review of the safeguard measures on certain steel products(the Safeguard measures). The submission contains the following issues:

- The UK is not entitled to maintain or continue to apply the EU's trade remedy measures ("EU measures") including the Safeguard measure after the Brexit transition period.
- The Application of the Safeguard measures by UK without WTO-compliant investigation after the Brexit transition period is inconsistent with the WTO rules;
- If the TRID were to extend the Safeguard measure beyond June 30th, 2021, it would trigger further violation of WTO rules;
- GoC's Position.

1. The UK is not entitled to maintain or continue to apply the EU measures including the Safeguard measures.

- There is no valid legal basis for the UK to maintain or continue to apply the EU's measures. The very act of exit from the EU by the UK released the UK from all relevant rights and obligations as a former member state of the institution. The unilateral act or legislation cannot grant the UK the right to apply the EU's measures.

- As the EU has stated in its Commission Implementing Regulation (EU) 2020/2037(L416/32), "Pursuant to the Withdrawal Agreement between the Union and the United Kingdom as of 1 January 2021, the UK will no longer be part of the Union customs territory. Therefore, as of that date the territorial scope where safeguard measures are applicable will change".
- From then on, the UK steel products are subjected to quotas and tariffs when entering the EU. Thus, the UK, as the party negatively affected by the Safeguard measures, cannot at the same time rely on such measure to restrict the export of steel products to the UK.
- Moreover, the Safeguard Agreement specifies that a customs union may apply a safeguard measure as a single unit, but the determination of serious injury or threat thereof shall be based on conditions existing in the customs union as a whole. The current Safeguard measures were implemented by the EU as a customs union. After the UK leaves the EU, the UK cannot unilaterally continue to apply the measures imposed as by a customs union as a single unit on the grounds that the UK was once a member State of the said customs union.

2. The application of the Safeguard measures by UK without WTO-compliant investigation after the Brexit transition period are inconsistent with the WTO rules.

- Due to the lack of legal basis for the continued application of EU Safeguard measures, the UK's current Safeguards measures could only be regarded as measures taken directly without an investigation, which is inconsistent with Article 3 of the Safeguards Agreement. The UK authority has only conducted a public consultation process to collect information. Based on that, the decision has been made to maintain the Safeguard measures and initiate a transitional review without formal investigation procedures required by WTO rules. Thus, the interested parties have been deprived of the basic rights guaranteed by WTO rules such as reasonable public notice, public hearings, opportunities to present their evidence and views, etc before the implementation of the measures.
- In addition, due to the lack of proper investigation before the implementation, the Safeguards measures is also inconsistent with the Article 5 of the Safeguard

Agreement by failing to implement only to the extent necessary to prevent or remedy serious injury and to facilitate adjustment. The inconsistency has been showed in the transition review process when TRID could not obtaining evidence in time from domestic producers about the production of non-alloy wire in UK, which means that the implementation of Safeguard measure on that particular product could not meet the requirements of “only to the extent necessary”.

3. If the TRID were to extend the Safeguard measures beyond June 30th, 2021, it would trigger further inconsistency with the WTO rules.

- It would be further inconsistent with the WTO rules for the UK to extend the Safeguards measures beyond the expiration date of the original EU measures. According to the Article 7 of the Safeguards Agreement, to extend the safeguard measures, the investigating authority needs to conduct an investigation in accordance with the requirements of Article 2-5 and determine that the safeguard measures are still necessary to prevent or remedy serious injury and that there is evidence that the industry is adjusting.
- TRID is not the original investigating authority of the measures, and its current transitional review lacks opportunity for prior consultations, disclosure and and other basic procedural guarantees ensured by WTO rules. Thus, such review could not be treated as investigations in line with the requirements of WTO rules, and the conclusions reached in such transition reviews could not be the basis for extending the Safeguard measures.

4. GoC's Position.

- Currently, the global economy still experiences a sharp contraction due to the impact of the COVID-19 pandemic. As pointed out in Leaders' Declaration of the 15th Group of 20 (G20) Summit, at this critical stage, it is important to drive forward international economic cooperation and take steps to support the recovery and achieve strong, balanced and inclusive growth. Thus, the adoption of trade restriction measures should be with caution and restrain to ensure the stability of the global supply chain and promote the recovery of economy.
- UK downstream companies and associations have also made clear in their comments submitted that it would be detrimental to the UK's economic interest to

ignore the demands from board and important downstream users simply because the need of the steel industry.

- In conclusion, the UK's continued implementation of EU steel Safeguard measures lacks legal and factual basis, is inconsistent with the relevant articles of the Safeguards Agreement, and is not in the UK's economic interest. The GoC takes notice that the TRID has recently disclosed in the transitional review of the anti-dumping duties on PSC wire and strands that it intends to terminate the measure. The GoC welcome such disclosure and urges the TRID to take similar actions to stop the implementation of all EU trade remedies such as the Safeguard measures in the UK, and terminate all the ongoing transition reviews.