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**Council for Trade in Goods
Committee on Safeguards**

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**EUROPEAN UNION'S RESPONSE TO BRAZIL'S NOTIFICATION TO THE WTO
CONCERNING THE PROPOSED SUSPENSION OF CONCESSIONS AND OTHER
OBLIGATIONS REFERRED TO IN PARAGRAPH 2 OF ARTICLE 8
OF THE AGREEMENT ON SAFEGUARDS**

EUROPEAN UNION

The following communication, dated 27 February 2019, is being circulated at the request of the Delegation of the European Union.

The European Commission ('the Commission') refers to the document received on 19 February 2019 concerning Brazil's notification to the WTO of suspension of concessions (G/L/1296-G/SG/N/12/BRA/3) ('the Notification'), supposedly under Article 8.2 of the Agreement on Safeguards, following the European Union's imposition of safeguard measures on certain steel products.

In the document, Brazil estimates that, as a result of the safeguard measures, the impact on Brazilian steel exporting producers would be of €180,000,000 (details of the calculation were provided in Annex II to the Notification). Accordingly, Brazil proposes a suspension of substantially equivalent concessions referred to in Article 8.2 of the Agreement on Safeguards in the form of an increase in duties on selected products originating in the European Union (details were provided in Annex I to the Notification).

European Union's views

The European Union rejects Brazil's request to suspend concessions on imported products originating in the EU as a result of its safeguard measures on steel. The European Union finds this request surprising as consultations on the EU measures are still ongoing and the request does not conform to the requirements in Article 8 of the Safeguards Agreement either procedurally or substantively.

Procedural aspects

The European Union deplores that it has only officially learnt about a formal compensation request and the details of the calculation by means of the Notification sent to the WTO, dated 19 February 2019. This approach is all the more surprising given the fact that the European Union and Brazil engaged in (ongoing) bilateral consultations in January 2019 and committed to continuing the dialogue, including discussions regarding potential suspension.

The European Union recalls that in the process of the ongoing consultations, Brazil never engaged in proper discussions about a potential suspension and the details thereof. Only on 18 February 2019, i.e. a day before the publication of the Notification, did Brazil submit a request for compensation, whose content differs from the Notification.

As a result, the European Union considers that both Brazil and the European Union are still in a process of fair consultations in which no finding of disagreement has yet occurred within the 30-day period referred to in Article 8.2.

Moreover, Brazil does not have the right to suspend measures for substantive reasons, as stated below.

Substantive aspects

As it stands, Brazil's intention to exercise the suspension of concessions is illegal and prohibited under WTO rules.

The European Union recalls that for a WTO Member to legally exercise its rights to suspension under Article 8.2 of the Agreement on Safeguards within the first three years of the safeguard measure being in effect, it must be the case, as required by Article 8.3, that: a) the safeguard measures were not taken as a result of an absolute increase in imports, or b) that the safeguard measures do not conform to the provisions of the Agreement on Safeguards.

The measure adopted by the European Union was clearly taken as a result of an absolute increase in imports of the product under investigation, and it was adopted in conformity with the provisions of the Safeguard Agreement. In this respect, Brazil has not provided any evidence to the contrary, nor is the safeguard in non-conformity with the Safeguards Agreement. Article 23 of the DSU expressly prohibits WTO Members from determining by themselves that another Member has acted inconsistently with a covered agreement like the Agreement on Safeguards. Brazil's intention to exercise the suspension of concessions before the first three years that the measures are in effect therefore would be in clear violation of the WTO Agreement on Safeguards and of the DSU.

Should Brazil proceed with its intention to apply, within 30 days from the date of the Notification, the suspension of concessions as notified, and impose additional duties on imported products originating in the European Union, the European Union would take the necessary steps in the WTO against this illegal action.

The European Union hopes that Brazil can reconsider its decision and withdraw its Notification from the WTO. The European Union remains open to discuss Brazil's concerns in the context of the ongoing bilateral consultations.
