

Prehearing brief from the Government of Brazil

1. SUBJECT

1.1. The Government of Brazil (GoB) refers to the safeguards investigation, initiated by the United States of America (USA) on May 17, 2017, on imports of crystalline photovoltaic (CSPV) cells, classified under items 8541.40.60, 8541.40.6020, 8541.40.6030, 8501.61.00 and 8507.20.80 of the Harmonized Tariff Schedule of the United States (HTSUS).

1.2. Regarding this matter, the GoB would like to highlight below the relevant aspects that, in its view, should be considered by the USA investigating authority in the on-going safeguard investigation. The GoB requests that the content of this document be presented as a statement of the Brazilian government in the process.

2. ON THE VOLUME OF IMPORTS FROM BRAZIL

2.1. The GoB would like to underscore that Article 9.1 of the Agreement on Safeguards states that Safeguard

measures shall not be applied against a product originating in a developing country Member as long as its share of imports of the product concerned in the importing Member does not exceed 3 per cent, provided that developing country Members with less than 3 per cent import share collectively account for not more than 9 per cent of total imports of the product concerned.

2.2. Estimates based on the USITC Interactive Tariff and Trade Dataweb indicate that the Brazilian exports of the product under investigation to USA, despite having reached US\$ 4,057,566 (four million, fifty-seven thousand, five hundred and sixty-six US dollars), in the period from January 2012 to December 2016, accounted for only 0.01% of the total value imported by the USA in the same period. Considering only the year 2016, imports originating in Brasil accounted for only 0.004% of the total value imported.

2.3. The notice of initiation does not disclose any statistics of the US imports of the product under investigation by country of origin. Without data in this regard, it is impossible for Brazil to verify the compliance with Article 9.1 of the Agreement on Safeguards. As a way to ensure more transparency in the process, the GoB understands that the investigating authority in the USA should fully disclose the data concerning imports from developing countries and should explicitly indicate countries that will not be subject to a possible application of safeguard measures.

3. REQUESTS

3.1. As already pointed out in this document, the investigating authority in the USA should disclose the data concerning imports of the product under investigation by country of origin, so as to ensure compliance with Article 9.1 of the Agreement on Safeguards. Therefore, in the case that the imports from Brazil represent themselves less than 3% of the total U.S. imports and less than 9% when added to the imports from other developing countries in the same situation, the imports from Brazil should be excluded from any provisional or final duty that may be applied.

3.2. The GoB therefore respectfully requests that the arguments here presented be taken into consideration by the US authorities and be fully addressed to in the process. Brazil is certain that the US authorities are aware of the high injury standards that should apply in a safeguard investigation and is confident that these standards, including transparency of data and rights of participation of interested parties, will be observed throughout the investigation.