

Committee on Safeguards

**CHAIRMAN'S REPORT TO THE COUNCIL FOR TRADE IN GOODS
ON TRANSITIONAL REVIEW OF CHINA**

1. The Committee on Safeguards undertook the second transitional review of China's implementation of the Agreement on Safeguards pursuant to Paragraph 18 of the Protocol on the Accession of the People's Republic of China (WT/L/432) at its meeting on 20 October 2003.
2. Annex 1A to the Protocol requires China to submit information regarding the implementation of its Regulation on Safeguards. The information provided by China for the 2003 transitional review is contained in document G/SG/W/195.
3. Japan submitted questions in the context of the transitional review relating to safeguard action taken by China against imports of certain steel products. Japan's questions can be found in document G/SG/Q2/CHN/2.
4. The statements made at the meeting of 20 October 2003, at which the transitional review was Item H of the agenda, are reflected in the minutes of the meeting, which will be circulated as document G/SG/M/24. The relevant paragraphs which reflect the statements made and the discussion at the meeting are annexed.

ANNEX [EXTRACT FROM DOCUMENT G/SG/M/24]

H. TRANSITIONAL REVIEW UNDER PARAGRAPH 18 OF THE PROTOCOL OF ACCESSION OF THE PEOPLE'S REPUBLIC OF CHINA TO THE WORLD TRADE ORGANIZATION.

1. The Chairman noted that Paragraph 18 of China's Protocol of Accession provided that all subsidiary bodies, including the Safeguards Committee, "which have a mandate covering China's commitments under the WTO Agreement or [the] Protocol shall, within one year after accession, review, as appropriate to their mandate, the implementation by China of the WTO Agreement and of the related provisions of [the] Protocol." China was to provide relevant information in advance of the review, including information specified in Annex 1A to the Protocol. China could also raise issues relating to any reservations under Section 17 or to any other specific commitments made by other Members in the Protocol, in subsidiary bodies which have a relevant mandate.

2. The Chairman stated that the Committee must report the results of the review promptly to the Council for Trade in Goods. Review was to take place after accession in each year for eight years, with a final review in year 10 or at an earlier date decided by the General Council. He added that there were no procedures set out for the conduct of the transitional review in the Protocol, except that China was to provide relevant information in advance of the review. In accordance with section IV.6 of Annex 1A to the Protocol, China was required to notify the Committee of its implementation of its Regulation on Safeguards. The Chairman informed the Committee that China had sent a fax on 17 October 2003 concerning the implementation of its safeguards legislation. He stated that China's fax was forwarded to Members on the same day. He also noted that Japan had submitted a number of questions to China in the context of the transitional review mechanism, as set forth in document G/SG/Q2/CHN/2.

3. The representative of China stated that, concerning the implementation of the Agreement, no new investigation had been initiated by China since the last transitional review. Thus, China had only initiated one safeguard investigation since becoming a WTO Member. That investigation concerned imports of certain steel products, and was initiated by the Ministry of Foreign Trade and Economic Cooperation ("MOFTEC") on 20 May 2002, upon petition by domestic steel industries. The representative of China stated that the progress of that investigation had been addressed during the 2002 transitional review. Subsequently, the investigating authority of China continued the investigation according to law and issued a notice on 19 November 2002, announcing the decision to apply safeguard measures for a duration of three years, including the implementation period of the provisional safeguard measure, on five imported steel products such as non-alloy hot-rolled sheets and coils etc. China had notified the findings of the investigation, and the application of safeguard measures, to the Committee.

4. In response to Japan's questions, the representative of China asserted that first, on the legality of the safeguard measures on certain steel products, China's safeguard investigation on certain imported steel products had been carried out in full compliance with the WTO Agreement on Safeguards and in strict conformity to China's safeguards laws. Regarding the provisional and definitive safeguard measures on certain imported steel products, China had notified the Committee on Safeguards of the findings with regard to serious injury and the threat thereof caused by increased imports, as well as the authority's decisions to apply such measures, thus having fulfilled its notification obligations under the Agreement on Safeguards. China's investigating authorities also made adequate information disclosures regarding findings of the investigation, and notified disclosed information to Members having a substantial interest, including Japan. Moreover, pursuant to the rules set out in Articles 12.3 and 12.4 of the Agreement on Safeguards, China had held consultations with those Members having substantial interest, including Japan, furnished the relevant information, and exchanged views on the measures. China's safeguard measures on certain imported steel

products had been, and would continue to be, applied according to the timetables stipulated in China's Official Bulletin on definitive measures.

5. Second, on the result of the investigation of injury, the Chinese delegate stated that Article 16 of China's safeguards regulations provided that in a case where a preliminary determination established the existence of an increase in the quantity of an imported product and injury and a causal link between the two, MOFTEC and the State Economic and Trade Commission ("SETC") should continue with their investigations and, on the basis of the findings of such investigations, make a final determination which should be published by MOFTEC. Accordingly, a final determination was published by MOFTEC on 19 November 2002.

6. The representative of China also reiterated China's position with regard to the transitional product-specific safeguard mechanism contained in paragraph 16 of China's Accession Protocol. China considered that the mechanism was discriminatory in nature, and contrary to the basic principles of the WTO. Experience over the years had revealed the fact that injury suffered by domestic industries was attributable in most cases to imports from several exporting Members, rather than a single one. Thus, invoking the product-specific safeguard mechanism - which targeted solely imports originating in China - was not only discriminatory, but also failed to counteract the injury suffered by domestic industries. In that spirit, it was China's belief that trade remedies within a framework of the WTO should always be the resort of priority in the case of domestic injuries. China sincerely hoped that all Members would abide by the fundamental principles of the WTO and exercise maximum caution in considering the application of the transitional product-specific safeguard mechanism.

7. The representative of Japan made some preliminary remarks on China's statement. First, on the legality of the measures by the PRC, he noted that this issue had been discussed in last year's transitional review mechanism, and during bilateral consultations held under Article 12 of the Safeguards Agreement. However, Japan was still of the view that China's measures were not in conformity with the Safeguards Agreement, and would seek more detailed explanations from China about the legality of those measures. In connection with China's response to Japan's second question, he sought clarification regarding the status of China's safeguard measure in respect of products which were subject to the provisional measure, but which were subsequently found not to have caused serious injury to domestic producers. He stated that there was no basis for maintaining measures on those products, and asked when measures on those products would be repealed.

8. The representative of China stated that China was more than pleased to continue its cooperation under the process of providing more information to Japan concerning the legality of its safeguard measures. Regarding the additional clarification sought by Japan, he stated that the relevant information could be found in the Official Notice published by the Ministry of Foreign Trade and Economic Cooperation, now the Ministry of Commerce.

9. The representative of Japan expressed the hope that he could find the necessary information in the document referred to by China.

10. The representative of the United States asserted that, as China's second year of WTO membership came to a close, the United States appreciated the transitional review mechanism, as it provided a venue to conduct a thorough and meaningful review both to highlight China's successes and to identify areas where more work needed to be done. As China was already applying its safeguards law, it was important that its practices conformed to its WTO commitments. As could be seen by the questions that the United States and other Members had raised, both in the TRM and under the other agenda items for the Committee meeting, there were some serious concerns about China's safeguard practices and its progress at meeting some of its commitments. The United States appreciated China's prompt written responses to the questions it had submitted, and the United States

viewed this as an important indication of China's efforts to play a constructive role in this Committee. Once it had reviewed those responses in detail, the United States expected to follow up with additional questions in the Committee so it could better understand China's rules and practices. The United States recognized and applauded China's effort to promulgate implementing rules. The United States noted that additional rules were notified to the WTO both in February and April 2003, and thanked China for the responses to the questions that it had submitted with respect to those notifications. Nonetheless, the United States was concerned about the delay in China notifying these and other rules to the WTO in light of China having undertaken a safeguard investigation before all the necessary rules had been issued and notified. According to the United States, such a delay could have caused confusion and uncertainty for the parties affected by the safeguard proceedings.

11. The US representative recalled that last year the United States had raised some concerns about a lack of transparency in China's decision-making process for the safeguard measure, and such lack of transparency appeared to have carried forward into some aspects of China's implementation of the measure. For example, some US exporters complained that China's process for allocating quotas under the measures was unclear, making it very difficult for them to gain a fair share, if any share at all, of the available quotas. The United States also had concerns about such issues as, first, the criteria China had used in determining which WTO Members would be accorded the status of a developing country or region for purposes of Article 9.1 of the Agreement, and in particular whether those criteria were clear and transparent. Second, the United States had concerns about China's treatment of non-WTO Members under Article 9.1. That provision required non-application of safeguard measures to developing country WTO Members where the import share criteria were met, but it did not provide for exclusion of countries which were not WTO Members. Third, the United States was concerned about how confidential data submitted during the course of a safeguard investigation would be protected, especially when outside experts were employed. Fourth, there was a concern as to access to non-confidential information from safeguard investigations by interested parties and by the general public, in terms of the procedural requirements for and limitations on such access. Fifth, there was a concern as to the refunding of safeguard duties collected pursuant to provisional measures when definitive measures were not imposed on the relevant products. Sixth, the United States was concerned about the terms and conditions covering China's extension of safeguard measures.

12. The US representative explained that, whereas the United States did not take issue with China's use of safeguard remedies, it did have concerns about certain aspects where there had been a lack of transparency that had accompanied China's implementation to that point. As noted, the United States expected to follow up with additional questions in the Committee to better understand China's rules and practices on these and other issues. The United States looked forward to continued cooperation with China, and appreciated the opportunity to participate in the transitional review.

13. The representative of the European Communities stated that the European Communities shared most of the views expressed by Japan and the United States, and had several concerns about China's steel safeguard measures. He noted that the European Communities had expressed those concerns on several occasions in the past, including in the context of Article 12.3 consultations, and therefore did not consider it necessary to repeat them all at that meeting. The European Communities still believed that there were a number of inconsistencies in China's measures, and would ideally like China's measures to be repealed as soon as possible. However, at the meeting the European Communities wanted to focus on the possibility that China might review its measures before their three-year expiry. The European Communities accepted that the mid-term review provision of the Agreement only provided for a mandatory mid-term review if the measure lasted for more than three years, which was not the case for the Chinese measures on steel. However, according to Article 7.1 of the Agreement, a Member should apply safeguard measures only for such a period of time as may be necessary to prevent or remedy serious injury. There was, therefore, at least a possibility that China could carry out a review before the expiry of these measures. The European Communities believed that the circumstances in the Chinese market had changed very substantially and very rapidly over the

last one and a half years since the Chinese measures were first introduced, and these changed circumstances could give China cause to carry out a review to see whether its measures were still necessary. The European Communities asked whether China was ready to consider that option. Alternatively, since China had explicitly stated that their measures were taken in response to the US and EC measures, the European Communities asked whether China would at least be ready to consider a review in the event that the US and EC steel safeguard measures were revoked in the coming months.

14. The representative of China stated that China had always faithfully and sincerely implemented the commitments and obligations that it undertook upon its accession to the WTO, and this has been reflected not only in the legislation drafted by China, but also in the practices that China has so far been engaged in. Concerning any delay in the submission of China's legislative notifications, that was attributable to government restructuring which China has been engaged in starting from March or April 2003. China considered that it was only appropriate for it to make the necessary modifications and changes to the original legislations because of the restructuring of the Chinese government departments.

15. With regard to the specific issues raised by the United States, such as the standards or criteria that China had used for defining developing countries, at least for the purpose of China's safeguard investigations, and other issues such as the treatment of non-WTO Members, these were already covered by China's written replies to written questions. The EC questions concerning the review of China's safeguard measures would be referred to capital for further consideration.

16. The Chairman noted that China's Protocol of Accession contained no guidelines for reporting to the Council for Trade in Goods on the Committee's transitional review of China's implementation of the Agreement. He proposed that the Committee follow the same reporting procedure as last year, whereby the Chairman, acting on his own responsibility, would prepare a brief, factual report, with references to the documents concerned, and attaching the portion of the minutes of the meeting which relate to the transition review.

17. The Committee agreed that the Chairman should prepare the same type of report in respect of the 2003 transitional review.
