

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 third 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 25 October 2004.
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/198.
3. Japan and Chinese Taipei submitted questions in the context of the transitional review. Japan's questions can be found in document G/SG/Q2/CHN/7, and Chinese Taipei's questions can be found in G/SG/Q1/CHN/19.
4. The statements made at the meeting of 25 October 2004, at which the transitional review was Item G of the agenda, are reflected in the minutes of the meeting, which will be circulated as document G/SG/M/26. The relevant paragraphs which reflect the statements made and the discussion at the meeting are annexed.

ANNEX [EXTRACT FROM DOCUMENT G/SG/M/26]

G. 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 recently submitted a notification, circulated as G/SG/W/198.

3. The representative of China stated that in terms of China's legislation on safeguards, since the review of last year, the Chinese Government made persistent efforts to improve the Chinese legal system on safeguards. The State Counsel of China issued Decree number 403 of the year 2004, which amended the Regulations of the People's Republic of China on Safeguards, issued on 26 November 2001.

4. This amendment reflected WTO rules in regard to implementation of safeguard measures. For example, Article 19 was added with the requirement that application of safeguard measures shall be in the public interest. This amended Regulation came into effect on 1 June 2004, and the full text of it has been notified to the Committee on Safeguards on 18 October 2004. The new provisions published in the form of Ministry Decree were one of the implementing rules for the Regulations of the People's Republic of China on Safeguards. The representative of China stated that China would notify the provisions to the Safeguards Committee once its translation was accomplished.

5. With regard to China's implementation of safeguard measures, the representative of China stated that no new safeguard investigation has been initiated by China since the review of last year, and so far China has initiated one safeguard investigation in total. On 26 December 2003 the Ministry of Commerce issued Decree number (2003)76, which conveyed the decision to terminate the definitive safeguard measures and to stop levying additional duty on steel products. China has notified details to the Committee on Safeguards.

6. In conclusion, the representative of China stated that its legislation and implementation of safeguard measures were consistent with the Safeguards Agreement, as well as its relevant commitments.

7. The representative of Chinese Taipei noted that their submission of questions was delayed, and that they were afraid that they would not be able to receive a full reply, but that they would appreciate if China would be able to address some of the questions. He stated that their questions were basically regarding the notifications of the amended Foreign Trade Law and the two other regulations on which they have just heard the explanation from the representative of China. In

addition, he stated that they did have substantive questions on the revised Foreign Trade Law, as it adapted a trade diversions provisions, and they were quite interested in knowing more detail about it.

8. The representative of China stated that with regard to the questions under the transitional review, as far as he knew, China only had questions from Japan, and that he was surprised to hear that the representative of Chinese Taipei also had questions for China. He understood that questions should be delivered to the Member concerned with copies to the Secretariat and in this regard, up to now his delegation have not received any questions from Chinese Taipei, nor have China been reminded in anyway that there was a question. With that said, he responded to the questions raised by Japan as follows.

9. On the question regarding "unforeseen developments", when dealing with safeguard cases, the competent authorities in China did consider whether there were unforeseen developments. China believed that these practices, which were conducted according to the Regulations of the People's Republic of China on Safeguards, were in line with the requirement of the Agreement on Safeguards.

10. On the question relating to "public interest", Article 19 of the newly amended Regulations of the People's Republic of China on Safeguards stipulated that adoption of a safeguard measure shall be in line with public interest. Article 12 stipulated that the Ministry of Commerce of China shall provide opportunities for importers, exporters and other interested parties to present their views and supporting arguments. In the implementing regulations, there were also provisions according to which interested parties could provide the information and submit comments. These were the channels through which public interest could be fully reflected.

11. On the question on "other appropriate means" as contained in Article 12 of the Regulations on Safeguards of China, the representative of China explained that they included on-the-spot verification, consulting experts, investigating and collecting evidence from other government or departments or institutes, etc.

12. On the question relating to the "domestic industry", Article 10 of the newly amended Regulations of the People's Republic of China on Safeguards provided a clear definition to "domestic industry", which was the producers as a whole of the like or directly competitive products within the territory of the People's Republic of China, or was those of them whose collective output of the like or directly competitive products constitutes a major proportion of the total domestic production of those products. When investigating specific cases, the competent authorities would determine that certain firms could represent domestic industry only when their total output made up a major proportion of the total domestic production.

13. On the issue of "compensation", Article 24 of the newly amended Regulations of the People's Republic of China on Safeguards stipulated that prior to the application of a safeguard measure, the Ministry of Commerce of China shall provide adequate opportunities for consultations with those governments of countries or regions having substantial interest as exporters of the products concerned. In these consultations, relevant WTO provisions would be referred to, and they were also the basis for specific compensation measures. Therefore, the compensation to other Members as a result of safeguard measures was, in practice, dealt with through consultations according to WTO Rules and Practices.

14. On the question regarding "provisional measures", although Article 16 of the newly revised Regulations of the People's Republic of China on Safeguards and Article 6 of the WTO Agreement on Safeguards were different in wording, they were not conflicting with each other. In fact, the competent authorities would consider both increase in imports and injury when determining to take provisional safeguard measures. Article 8 of the Regulations on Safeguards and relevant provisions of the Provisions on Investigation of Industry Injury in Safeguard Measures provided details or factors to be considered in determining injury or threat of injury.

15. On the question regarding Article 16 of China's Regulations on Safeguards and Article 6 of the WTO Agreement on Safeguards, they meant the same thing. The "critical circumstances" contained in Article 16 of China's Regulations on Safeguards was the same as the one contained in Article 6 of the WTO Agreement on Safeguards.

16. On the question regarding Article 31 of China's Regulations on Safeguards, "discriminatory safeguards" meant unfair and discriminatory safeguard practices/measures not consistent with WTO rules and principles, taken by others against China. According to Article 31 of China's Regulations on Safeguards, China may take appropriate measure against such practice to uphold its right or interest. That being said, the representative of China emphasised, it should be clarified that there had not been any invocation of Article 31 of China's Regulations on Safeguards up to now.

17. On the question regarding corresponding measures in Article 31 of China's Regulations on Safeguards, it was different from the rebalancing measures in the WTO Agreement on Safeguards. These corresponding measures in China's Regulations on Safeguards were targeted at discriminatory safeguards applied by others against China, as mentioned earlier.

18. The representative of Japan stated that his delegation put great importance in this process because it enhanced the transparency and predictability of the implementation of Members' commitments.

19. He clarified that Japan's questions were based on the latest regulations as amended by the Chinese authorities at the end of March which was, at the time of the submission of the questions, not yet notified.

20. He stated that he has listened to the responses by the Chinese delegation with great interest and he would basically report back these responses to his capital. One follow-up question he had was about the last two items, which were related to Article 31 of the Chinese Regulation. The response by the Chinese delegation was that it was different from the rebalancing measures, but he wanted to clarify: if this was not the same as rebalancing measures, what did these measures correspond to in the Safeguards Agreement or any Agreements in the WTO?

21. The representative of China responded that with regard to Article 31 of China's Regulations on Safeguards, he has made it very clear that until now, there have not been any invocation of this Article, and therefore, there were no practices which he could refer to. But, he stated, when taking safeguard measures, the WTO rules and practices would be taken into consideration and in this regard, China would be WTO-consistent when taking safeguard measures according Article 31 of the Regulation on Safeguards.

22. The representative of Korea asked one follow-up question regarding the "discriminatory safeguards". As the Chinese delegation's answer was very quick, he was not sure if he understood correctly. He asked the Chinese delegation to clarify if China could take unilateral retaliation action against other countries' discriminatory safeguard measures. That is, without referring the matter to the DSB.

23. The representative of Japan stated that the Chinese delegation made it clear that China would adhere to the WTO Rules. He also stated that he would like to hear more explanation about this specific issue -- how it is related to the rebalancing measures sanctioned by the Safeguards Agreement and so on. He also stated that he would very much appreciate if the Chinese delegation could provide some form of written version of its responses, so that he could report the responses to his capital as accurately as possible.

24. The representative of the United States thanked the Chinese delegation for the written information they provided last week as well as for the information they provided at this meeting, and

that they welcomed this TRM Annual Review. He stated that the United States would be looking at this legislation very closely, and would be following up as part of the regular committee process regarding legislative notification in the next meeting.

25. The representative of the United States stated that given the absence of new safeguard investigations since the review last year, there was not really a whole lot to discuss, but he did want to reiterate in general terms some of the concerns the United States raised last year that would remain concerns as things go forward. He stated that the United States would obviously be continuing to look at any further safeguard proceedings by China with respect to these kinds of issues. As the United States have noted in the past, they had some concerns about the transparency in China's decision-making process with respect to steel safeguard measures and with respect to some aspects on the implementation of those measures, for example, how quotas for the measures were allocated. Some of their exporters have raised some concerns about that.

26. The United States also had a concern about 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 Safeguards Agreement, particularly whether those criteria were clear and transparent. The United States had concern about China's treatment of non-WTO members under Article 9.1, which provides for 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 that were not WTO Members.

27. The United States had a concern about how confidential data submitted during the course of a safeguard investigation would be protected, especially when outside experts were employed. There were also concerns regarding access to non-confidential information from safeguard investigations by interested parties, by the general public, in terms of the procedural requirements for and limitations on that access. The United States raised the concern earlier about the issue of refunding of safeguard duties collected for provisional measures, when definitive measures were not imposed. The United States was also interested in the issue regarding the terms and conditions governing extension of a safeguard measure.

28. These were the concerns the United States raised in the past and, and he was just noting them again, and the United States would be looking at these issues as there were any developments going forward.

29. The representative of the European Communities stated that they also might come back on some of the issues discussed today with further questions. He would simply for the moment like to express EC's particular interest in the issue of Article 31, which was discussed earlier, and the possibility that China adopts some kind of counter-measure or however they can be called, in the case they were subject to discriminatory safeguards. This was an issue of concern, and he thought that this was an issue that required to be clarified, even in the absence of specific actions taken by China. The mere existence of a law allowing for these measures to be invoked was in itself a matter of concern, and the EC wished that further discussion take place to clarify exactly under what circumstances and based on which conditions such measures would be possible. The EC intended, therefore, to come back on these issues with more questions in the future.

30. The representative of China took note of the comments made by other delegations, and thanked them for all the comments. He stated that China was also looking forward to exchanging views with Members within the frame of this Committee, and that he would rather encourage Members to exchange views with China through the normal procedures of exchange of views, rather than TRM, because China's position with regard to TRM was very clear: China was not in a position to provide written documents or responses to the questions raised by Members.

31. 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.

32. The Committee agreed that the Chairman should prepare the same type of report in respect of the 2004 transitional review.
