

# WORLD TRADE ORGANIZATION

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Committee on Safeguards

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## NOTIFICATION OF LAWS, REGULATIONS AND ADMINISTRATIVE PROCEDURES RELATING TO SAFEGUARD MEASURES

THE PEOPLE'S REPUBLIC OF CHINA

The following communication, dated 27 August 2002, has been received from the Permanent Mission of the People's Republic of China.

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With regard to Article 12.6 of the Agreement on Safeguards and further to my letter dated 6 June 2002 (G/SG/N/1/CHN/1), I have the honour to provide the Committee on Safeguards with the English translation of *The Regulations of the People's Republic of China on Safeguards*. English translations of other Rules as notified in my letter dated 6 June 2002 are still in preparation and will be provided once they are available.

Please note that the Regulations are authentic only in Chinese and that the English translation of the Regulations are for reference only by WTO Members.

## REGULATIONS OF THE PEOPLE'S REPUBLIC OF CHINA ON SAFEGUARDS

(Adopted at the 46<sup>th</sup> Executive Meeting of the State Council on 31 October 2001, promulgated by Decree No. 330 of the State Council of the People's Republic of China on 26 November 2001, and effective as of 1 January 2002)

### CHAPTER I - GENERAL PROVISIONS

**Article 1.** These Regulations are formulated in accordance with the Foreign Trade Law of the People's Republic of China for the purpose of promoting the sound development of foreign trade.

**Article 2.** When a product is imported in increased quantities and such increase has caused or threatens to cause serious injury to a domestic industry that produces like or directly competitive products, an investigation shall be initiated and safeguard measures applied in accordance with provisions of these Regulations.

### CHAPTER II - INVESTIGATION

**Article 3.** Any natural person, legal person or other organization (hereinafter collectively referred to as "the applicant") related to a domestic industry may, in accordance with the provisions of these Regulations, make a written application to the Ministry of Foreign Trade and Economic Cooperation (hereinafter referred to as "MOFTEC") for applying safeguard measures.

MOFTEC shall promptly examine the application submitted by the applicant and decide whether or not to initiate an investigation.

**Article 4.** If MOFTEC does not receive a written application for applying safeguard measures, but has sufficient evidence of injury to a domestic industry due to the increase in quantity of an imported product, it may decide to initiate an investigation.

**Article 5.** MOFTEC shall publish the decision to initiate an investigation.

MOFTEC shall promptly notify the Committee on Safeguards of the World Trade Organization (hereinafter referred to as "the Committee on Safeguards") of the decision to initiate an investigation.

**Article 6.** MOFTEC shall be responsible for the investigation and determination of the increase in quantity of an imported product.

The State Economic and Trade Commission (hereinafter referred to as "SETC") shall be responsible for the investigation and determination of injury. The safeguards investigation of injury to a domestic industry involving agricultural products shall be conducted by SETC jointly with the Ministry of Agriculture.

**Article 7.** The term "increase in quantity of an imported product" means an absolute or relative increase in quantity of an imported product compared with domestic production.

**Article 8.** The following relevant factors shall be examined in the determination of injury to a domestic industry caused by the increase in quantity of an imported product:

- (1) the rate and amount of the increase in the imported product in absolute and relative terms;

- (2) the share of the domestic market taken by the increased imports;
- (3) the impact of the imported product on the domestic industry, including the impact on the production, the level of sales, market share, productivity, capacity utilization, profits and losses, and employment of the domestic industry; and
- (4) other factors caused injury to the domestic industry.

The determination of threat of serious injury shall be based on facts and not merely on allegation, conjecture or remote possibility.

When determining the injury caused by the increase in quantity of an imported product to a domestic industry, injuries that are caused by factors other than the increase of imports shall not be attributed to the increase of imports

**Article 9.** During the period of an investigation, MOFTEC shall promptly publish a detailed analysis of the case under investigation and the relevant factors.

**Article 10.** The term “domestic industry” means the domestic producers as a whole of the like or directly competitive products within the People’s Republic of China or 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.

**Article 11.** MOFTEC and SETC shall, on the basis of objective facts and evidence, determine whether or not there exists a causal link between the increased imports of the product concerned and the injury to the domestic industry.

**Article 12.** MOFTEC and SETC shall provide opportunities for importers, exporters and other interested parties to present their views and supporting arguments.

The investigation may be conducted by means of sending questionnaires, holding public hearings, or other appropriate means.

**Article 13.** MOFTEC and SETC may treat the information collected during an investigation as confidential, if the information provider deems it necessary.

If the request for confidentiality is justifiable, the information submitted by the information provider shall be treated as confidential, and the information provider shall be requested to furnish non-confidential summaries thereof.

The information treated as confidential shall not be disclosed without permission of the information provider.

**Article 14.** The explanations to the findings of an investigation on the increase in quantity of imported products, injuries and the reasons therefor shall be published by MOFTEC.

MOFTEC shall promptly notify the Committee on Safeguards of the findings and the relevant information.

**Article 15.** MOFTEC and SETC shall, on the basis of the findings of their investigations, make a preliminary determination which shall be published by MOFTEC.

**Article 16.** In the case where a preliminary determination establishes the existence of an increase in quantity of an imported product, an injury, and a causal link between the two, MOFTEC and SETC shall continue their investigations, and shall, on the basis of the findings of such investigations, make a final determination which shall be published by MOFTEC.

### CHAPTER III - SAFEGUARD MEASURES

**Article 17.** In critical circumstances where there is clear evidence of increase in quantity of an imported product, and would cause injury to a domestic industry which would be difficult to remedy without the application of safeguard measures, a preliminary determination may be made and provisional safeguard measures applied.

Provisional safeguard measures shall take the form of tariff increases.

**Article 18.** The proposal for adoption of provisional safeguard measures shall be put forward by MOFTEC, and on the basis of such a proposal the State Council Tariff Commission shall make a decision which shall be published by MOFTEC. The Customs shall implement the decision from the effective date set forth in the public notice.

MOFTEC shall notify the Committee on Safeguards of the relevant information prior to the application of a provisional safeguard measure.

**Article 19.** The duration of application of a provisional safeguard measure shall not exceed 200 days from the effective date set forth in the public notice regarding the decision on safeguard measures.

**Article 20.** If a final determination establishes the existence of increase in quantity of an imported product and the injury caused to a domestic industry, safeguard measures may be applied.

Safeguard measures may take the forms of tariff increases or quantitative restriction, etc.

**Article 21.** If a safeguard measure takes the form of a tariff increase, the measure shall be proposed by MOFTEC, and on the basis of such a proposal the State Council Tariff Commission shall make a decision which shall be published by MOFTEC. If a safeguard measure takes the form of quantitative restriction, a decision shall be made and published by MOFTEC. The Customs shall implement the decision from the effective date set forth in the public notice.

MOFTEC shall promptly notify the Committee on Safeguards of the decision on the application of a safeguard measure and the related information.

**Article 22.** Where a quantitative restriction is applied, the quantity of imports after restriction shall not be less than the average quantity of imports in the last three representative years, unless clear justification is given that a different level of quantitative restriction is necessary to prevent or remedy serious injury.

Where a quantitative restriction is applied and it is necessary to allocate quantity among exporting countries (regions) or countries (regions) of origin, MOFTEC may consult with the exporting countries (regions) or countries (regions) of origin concerned in the allocation of quantity.

**Article 23.** Safeguard measures shall be applied to a product being imported irrespective of its source country (region).

**Article 24.** Safeguard measures shall be applied to the extent necessary to prevent or remedy serious injury and to facilitate the adjustment of the domestic industry.

**Article 25.** Prior to the application of a safeguard measure, MOFTEC shall provide adequate opportunities for consultations with those governments of countries (regions) having substantial interests as the exporters of the products concerned.

**Article 26.** Where a final determination establishes that no safeguard measures shall be applied, the provisional duty that has been levied shall be refunded.

#### CHAPTER IV - DURATION AND REVIEW OF SAFEGUARD MEASURES

**Article 27.** The period of application of a safeguard measure shall not exceed four years.

The period of application of a safeguard measure may be properly extended if the following conditions are met:

- (1) it has been determined in accordance with the procedures set forth in these Regulations that the safeguard measure continues to be necessary to prevent or remedy serious injury;
- (2) there is evidence that the domestic industry concerned is adjusting;
- (3) the obligations of foreign-related notification and consultations have been fulfilled; and
- (4) the extended safeguard measure is not more restrictive than the initial ones.

The total period of application of a safeguard measure and any extension thereof shall not exceed eight years.

**Article 28.** Where the period of application of a safeguard measure exceeds one year, the measure applied shall be progressively liberalized at regular intervals during the period of application.

**Article 29.** Where the period of application of a safeguard measure exceeds three years, MOFTEC and SETC shall conduct a mid-term review of the measure during the period of application.

The substance of the mid-term review shall include, among other things, review of the effect of the safeguard measure on domestic industry, and the adjustment of domestic industry.

**Article 30.** Where a safeguard measure takes the form of a tariff increase, MOFTEC shall, on the basis of the findings of the review, put forward in accordance with provisions of these Regulations a proposal for retention, repeal or acceleration of the liberalization of the tariff increase, and in light of such a proposal the State Council Tariff Commission shall make a decision which shall be published by MOFTEC; if a safeguard measure takes the form of quantitative restriction or other forms, MOFTEC shall, on the basis of the findings of the review and in accordance with the provisions of these Regulations, make a decision on whether or not to retain, repeal or accelerate the liberalization of the quantitative restriction and publish it.

**Article 31.** Where a safeguard measure is applied again to the same imported product, the interval between the current measure and the previous safeguard measure shall not be less than the period of application of the previous safeguard measure, and shall be at least two years.

Notwithstanding the foregoing provision, a safeguard measure with duration of 180 days or less may be applied to the product if following conditions are met:

- (1) at least one year has elapsed since the date of introduction of a safeguard measure on the import of the said product; and
- (2) such a safeguard measure has not been applied on the same product more than twice in the five year period immediately preceding the date of introduction of the measure.

#### CHAPTER V - SUPPLEMENTARY PROVISIONS

**Article 32.** Where any country (region) discriminatorily applies safeguard measures on exports from the People's Republic of China, the People's Republic of China may, based on the actual situations, adopt corresponding measures toward that country (region).

**Article 33.** MOFTEC is responsible for the foreign-related consultations, notification and dispute settlement concerning safeguard measures.

**Article 34.** MOFTEC and SETC may, in accordance with these Regulations, formulate specific implementing measures thereof.

**Article 35.** These Regulations shall be effective as of 1 January 2002.

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