

**NOTIFICATION OF LAWS AND REGULATIONS UNDER
ARTICLE 12.6 OF THE AGREEMENT**

Questions Posed by the UNITED STATES
Regarding the Notification of the PEOPLE'S REPUBLIC OF CHINA¹

The following communication, dated 13 September 2002, has been received from the Permanent Mission of the United States.

Questions to China from the United States in the context of the Transitional Review Mechanism pursuant to Section 18 of the Protocol of Accession of the People's Republic of China

1. The United States thanks China for its recent notification of its new safeguard regulations.² As referenced in its notification, China also implemented provisional rules regarding the notified regulations which, to our knowledge, have not yet been notified to the Committee on Safeguards as required by Article 12.6 of the Agreement on Safeguards (“SGA”).³ When does China intend to notify these provisional rules?
2. Article 1 of the notified regulations specifies that they are “formulated in accordance with the Foreign Trade Law of the People’s Republic of China...”. Does “Foreign Trade Law” refer exclusively to Law 19-586 Adopted 12 May 1994 by the Seventh Session of the Standing Committee of the Eighth National People’s Congress? If not, what other laws apply to the notified regulations?
3. Article 8 of the notified regulations identifies certain relevant factors that its competent authorities shall examine in making the determination of injury. Are the factors listed in Article 8 the only factors that China’s competent authorities will examine in their injury determination? How will China’s competent authorities ensure that “*all* relevant factors of an objective and quantifiable nature having a bearing on the situation of [the] industry” are evaluated, as required by SGA Art. 4.2(a)? Also, because Paragraph 4 of Article 8 requires the authority to examine other possible causes of injury, there is a clear relationship between this article and Article 11 of the notified regulations. Shouldn’t Articles 8 and 11 of the notified regulations cross-reference one another to clarify this relationship?

¹ G/SG/N/1/CHN/2

² G/SG/N/1/CHN/2, 28 August 2002

³ “Provisional Rules for Placing a Case on File for Safeguards Investigation” and “Provisional Rules of the People’s Republic of China for Hearings on Safeguards Investigations”, implemented by MOFTEC on 13 March 2002 (the “Provisional Rules”). Because these rules have not yet been formally notified to the WTO, our questions concerning these provisional rules are based on an unofficial translation that we have obtained.

4. Article 12 of the notified regulations provides opportunity for importers, exporters and other interested parties to state their opinions and arguments. Procedures for implementing this provision are described in the *Provisional Rules of the People's Republic of China for Hearings on Safeguards Investigations*. With regard to these Rules,

Please define the meaning of "other interested organization or person" as used in Article 7.

Article 17 states that the purpose of the hearing is to allow parties to state their positions and submit supporting materials, but that "no debate shall be held." This last statement appears to conflict with SGA Art. 3 which requires that parties be given "...the opportunity to respond to the presentations of other parties." How does China propose to provide parties an opportunity to rebut arguments raised by other parties, consistent with SGA Art. 3?

5. How will China implement the provisions specified in Article 13 of the notified regulations regarding the treatment of confidential information and the provision of non-confidential summaries?

6. Under Article 14 of the notified regulations, does MOFTEC (or any other relevant competent authority) intend to publish a report setting forth its findings and reasoned conclusions reached on all pertinent issues of fact and law, as required by SGA Arts. 3.1 and 4.2(c)?

7. Will the "preliminary determination" referenced in Article 15 of the notified regulations and the "final determination" referenced in Article 16 include the competent authority's recommendation for, or application of, relief, or will they only refer to an affirmative or negative determination as to an increase in the quantity of the product in question and as to whether such increased imports cause or threaten serious injury to the domestic industry?

8. Unlike Article 17 of the notified regulations referencing provisional measures, Article 20 states that "safeguard measures may take the forms of tariff increases or quantitative restriction, etc." Is there any clear recitation in Chinese law or regulation of all of the possible types of final safeguard relief available for application by the competent authority(ies)? Are raising tariffs and/or applying a quota the only types of safeguard relief available under Chinese law and regulation?

9. Article 21 of the notified regulations indicates that if, in determining final safeguards relief, MOFTEC decides to limit the quantity of imports, MOFTEC shall make and publicize that decision. However, if MOFTEC "proposes" that the final safeguards relief be increased tariffs rather than a quota, this type of relief must be proposed by MOFTEC to the State Council Tariff Commission, which is charged with making the final determination of whether to impose higher tariffs. The Council's decision is then publicized by MOFTEC. On what basis do the competent authorities treat these two types of relief differently?

What rules govern the final safeguard determinations by the State Council? Are these rules set forth in Chinese law or regulations? If so, where?

Please answer these questions with respect to Article 30 of the notified regulations, as well.

10. Articles 22, 23 and 25 of the notified regulations refer to "regions" as well as "countries." By "regions," does China intend to encompass anything other than the term "[WTO] Member(s)" as used, e.g., in SGA Art. 5.2? Please explain.

11. To ensure consistency with SGA Arts. 7, 8 and 12, the third condition in Article 27 of the notified regulations should more clearly reflect conformity with the SGA's multiple requirements regarding the extension of a safeguard measure. While the third condition listed in Article 27 confirms that "foreign-related" notification and consultation obligations must be fulfilled prior to

extending a safeguards measure, the language is ambiguous with respect to exactly what is required of the Member seeking the extension. For example, consistent with SGA Art. 8.1, the Member must endeavour to maintain a substantially equivalent level of concessions and other obligations to that existing under GATT 1994. Similarly, consistent with SGA Art. 12.3, the Member must provide adequate opportunity for *prior consultations* with Members having a substantial interest as exporters of the product concerned. How does China intend to comply fully with all of the requirements of the SGA with respect to extending a safeguards measure in view of the ambiguous wording of this article of the regulation?

12. Article 32 of the notified regulations, like Article 7 of China's Law 19-586, states that if any country or region discriminatorily applies safeguard measures against Chinese exports, the People's Republic of China may retaliate or, in the words of Article 32, take "corresponding measures." What, in China's view, would constitute "discriminatorily apply[ing] safeguard measures?" Based on what authority in the SGA would Chinese authorities take such "corresponding" measures, and what sort of measures would they take?
