

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

Questions Posed by JAPAN Regarding the Notification of the  
PEOPLE'S REPUBLIC OF CHINA<sup>1</sup>

The following communication, dated 7 October 2002, has been received from the Permanent Mission of Japan.

Upon instructions from my authorities, I hereby submit to you Japan's comments to the Committee on Safeguards, regarding the Transitional Review Mechanism in connection with Paragraph 18 of the Protocol on the Accession of the People's Republic of China. In addition, upon instructions from my authorities, I would like to request that the answers therein be submitted in writing.

**I. QUESTIONS ON THE PRC'S SAFEGUARD LEGISLATION**

**1. Notification of the Relevant Domestic Legislation**

1.1 As indicated in the recent notification of the PRC's new safeguard regulation to the WTO (G/SG/N/1/CHN/2), and to our knowledge at this point, the Government of China (hereinafter referred as "GOC") has not yet notified the full translated text of the two domestic rules as required by Article 12.6 of the Agreement on Safeguards. When does the GOC intend to notify the full text of these remaining rules to the WTO? Furthermore, will there be any implementing rules or regulations other than those already mentioned in China's past notifications?

**2. Determination of Like or Directly Competitive Products**

2.1 Article 10 of the Safeguard Regulations of the People's Republic of China (hereinafter "Regulations") defines a "domestic industry" based on the notion of "like or directly competitive products". What are the concrete criteria for "like or competitive direct products" determination in China's safeguard investigations? Is there any relevant domestic rule that provides such criteria? If so, please provide the text.

**3. Initiation of and Procedures for an Investigation**

3.1 Article 12 of the Regulations provides that interested parties shall have the opportunity to submit their views but does not refer to an opportunity to respond to the views of other parties. Specific procedures for the hearing seems to be provided in the Provisional Rules on Hearing in

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<sup>1</sup> G/SG/N/1/CHN/2

Safeguard Investigations (hereinafter, "Rules"), which is yet to be notified. In light of Article 3.1 of the Agreement on Safeguards (SGA), please answer the following questions:

- (a) Do the Rules or any other domestic regulation specify that the competent authority shall provide interested parties with an opportunity to respond to the views presented by other interested parties?
- (b) Do the Rules or any other domestic regulation provide that both questionnaires and hearings are required in every investigation or are they alternative means?
- (c) Do the Rules or any other domestic regulation define what are the "other appropriate means" of conducting the investigation and explain in what circumstances it would be appropriate to use such alternative means?

3.2 Article 9 of the Regulations provides that the MOFTEC shall promptly publish a detailed analysis of the case and the relevant factors during the period of investigation. What is the relationship of this publishing obligation and that under Article 14 of the Regulations?

#### **4. Treatment of Confidential Information**

4.1 Article 3.2 of the SGA provides that investigating authorities shall treat appropriate information as confidential "upon cause being shown". The article also provides for furnishing by parties of non-confidential summaries of such information, and for circumstances where such information could be disregarded by the competent authorities. Article 13 of the Regulations, in implementing these provisions, provides that if a request for confidentiality is "justifiable", confidential treatment is given.

- (a) Does/will China set forth further implementing rules or regulations that explain in detail the process for requesting and obtaining confidential treatment of particular information?
- (b) Do/will such rules or regulations explain in what circumstances or under what criteria such a request will be considered to be "justifiable"?
- (c) Does/will the interested parties be permitted, if they choose, to withdraw from the record of the proceeding any information for which confidential treatment is denied?
- (d) Does/will China develop protective procedures whereby legal counsel for interested parties may view confidential information submitted by other parties?

#### **5. Determination of Injury and Causation**

5.1 Article 4.2(a) of the SGA provides that in making its injury determination, the investigating authorities must evaluate "all relevant factors of an objective and quantifiable nature having a bearing on the situation of the industry". There are small but potentially important differences in the wording of the corresponding provisions of the Regulations.

- (a) Please clarify that as China administers the Regulations "all" other relevant factors shall be considered by the competent authorities, despite the omission of the word "all" in Article 8(4).

- (b) The use of the term "caused" rather than "having a bearing on" in Article 8(4) may be interpreted that a causal analysis is necessary before a factor may be considered. Please clarify that a causal link for each factor need not be established before the "other factors" are considered in the injury analysis?

## **6. Provisional Safeguard Measures**

6.1 Neither Article 19 nor Article 27, which provides conditions on the duration of the safeguard measure, of the Regulations makes clear, as required by Article 6 of the SGA, that the duration of any provisional measure must be counted as a part of the period of the definitive safeguard measure.

- (a) Please clarify that the duration of any provisional measure must be counted as part of the overall duration of a definitive measure if taken, in the context of Article 27 of the Regulations.
- (b) Does/will it be stated in any other domestic rules or regulations?

6.2 Articles 15 and 16 of the Regulations refer to the "preliminary determination" to be made before the "final determination". Is this "preliminary determination" the same terms as that appear in Article 17 of the Regulations? When the provisional measure is taken, will the MOFTEC's proposal be made at this stage? Do the competent authorities always take this two-step approach in their investigations regardless of whether or not to take provisional measures?

## **7. Definitive Safeguard Measures**

7.1 Article 20 of the Regulations states that safeguard measure "may take the forms of tariff increases or quantitative restrictions, etc.".

- (a) What forms other than tariff increases or quantitative restrictions could be taken as a safeguard measure under Chinese law?
- (b) Please clarify that measures that are prohibited under Article 11 of the SGA will not be applied.

7.2 With regard to the different roles of MOFTEC and SCTC in making the final determinations on taking the safeguard measure under Article 21 of the Regulations:

- (a) Why does the agency responsible for the final determination differ according to the form of the remedy?
- (b) Does this difference affect the substantive standards for determining whether or not to impose a safeguard measure?

7.3 Under Article 5.2 of the SGA, where the safeguard takes the form of a quota, the imposing Member may consult with all other Members having a substantial interest regarding the allocation of the quota. Where this is not reasonably practicable, the quotas must be allocated based on the proportions supplied by other Members during a previous representative period. Article 22 of the Regulations states that if a quota must be allocated among exporting countries, MOFTEC may consult with the exporting countries, but does not address how the quota is to be allocated if this is not practicable.

- (a) How will MOFTEC allocate quotas in the event that it is not practicable to consult with other Members?
- (b) Please clarify that quotas will be allocated based on shipments during a previous representative period.

## **8. Treatment of Imports from Developing Country Members**

8.1 Under Article 9.1 of the SGA, all WTO members, including developing country members, shall exclude imports originating in developing country members from the safeguard measure which they take if the conditions under this article are met. However, there is no provision concerning exclusion of imports from developing country members in the Regulations.

- (a) Please clarify that imports from developing country members will be excluded from safeguard measures if the conditions as required in the provision of Article 9.1 of the SGA are met.
- (b) If so, what is the definition or criterion of "developing countries" for implementing this obligation?

## **9. Duration and Review of Safeguard Measures**

9.1 Article 24 of the Regulations uses slightly different language compared with Article 5.1 of the SGA, providing that safeguards shall apply "to the extent necessary" to prevent or remedy injury or to facilitate adjustment, thereby omitting the word "only". Article 27 of the Regulations provides that the period of a safeguard shall not exceed four years, but does not directly refer to the lesser period of time contemplated by Article 7.1 of the SGA. Please clarify that safeguards measures shall apply "only" to the extent necessary and "only for such period of time" as necessary to prevent or remedy serious injury or to facilitate adjustment.

## **10. Miscellaneous**

10.1 Article 32 of China's Safeguard law states that "[w]here any country (region) discriminatorily applies safeguard measures on the 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)".

- (a) Please explain the meaning of the term "region". Is the term intended to cover "separate customs territories"?
- (b) How would the GOC determine whether any safeguard measures in force are "discriminatorily" applied?
- (c) What kind of measures would be the "corresponding measures"? Please explain in a specific manner.
- (d) How could China justify taking such "corresponding measures", which apparently has a retaliatory nature, should this Article mean to allow China to take such measures without following relevant procedures under the WTO Agreement such as those for dispute settlement.

## **II. QUESTIONS ON THE SAFEGUARD MEASURES TAKEN BY THE PRC**

Below are the questions concerning the provisional safeguard measures on certain steel products, taken by the Government of China ("GOC") since 24 May 2002, as well as the related investigation, as notified in G/SG/N/6/CHN/1, G/SG/N/7/CHN/1 and G/SG/N/11/CHN/1.

### **1. Countries Excluded from the Measures**

1.1 Imports from Kazakhstan, Ukraine and Belarus are excluded from the provisional safeguard measures. Did the GOC exclude these imports from the scope of the products under investigation in accordance with parallelism requirement under Article 2.1 and 2.2 of SGA?

### **2. Critical Circumstances**

2.1 In the above mentioned notifications, the GOC identified the trade diversion caused by the US and EC safeguard measures as contributions to the critical circumstances. On what ground and data did the GOC find that the trade diversion is resulting in the critical circumstances to each domestic industry which produces respective steel products subject to the measures?

2.2 In the above-mentioned notifications, data on import volume until the end of year 2001 was provided. How did the GOC determine an existence of the trade diversion caused by the US and EC safeguard measures, which actually entered into force from March 2002?

### **3. Investigation**

3.1 Did the GOC conduct any investigations before the introduction of the measures? If so, please explain concretely the contents of the investigation, the procedures the GOC adopted in investigation and the chronology.

### **4. Unforeseen Development**

4.1 Given the fact that the GOC had maintained quantitative import restrictions until January 2002 and that in practice the GOC could control steel imports during that period, increase in imports must have been a natural consequence of the abolition of the restrictions. How did the GOC separate increase in imports caused by the abolition of the restrictions from the increase by the US and EC safeguard measures and identified the latter as an unforeseen development?

### **5. Like Products**

5.1 How did the GOC analyze like or directly competitive relationships between the products produced by the relevant domestic producers and the imports covered by the measures?

### **6. Imports Increase**

6.1 According to the information provided in the MOFTEC Public Notice No.30, Annex I, table 2, the GOJ considers that in terms of several products, such as non-alloy plate (Product no. 2.1 in the said table 2 (same applies to the rest)), tin-mill products (2.2.3), non alloy wires (2.6), non alloy bars and rebars (2.7), non-alloy sections (2.8), imports are decreasing for considerable part of the period of investigation (POI) and therefore increasing trend over the entire POI is difficult to recognize. Furthermore, imports of non-alloy bars and rebars (HTS: 72142000, 72151000, 72155000, 72159000) substantially decreased to one-seventh from 1997 to 2001. As the market share also decreasing

constantly during the POI, both absolute and relative increase cannot have been found. Please explain the GOC's view on this.

6.2 Please provide the GOC's criteria adopted in finding the said increase in imports.

## **7. Serious Injury or Threat Thereof**

7.1 According to the information provided in the MOFTEC Public Notice No. 30, Annex I, table 2, data on sales prices, profit margins, and profits and losses in the coated steel industry, for instance, are missing. In spite of such imperfection of data, how could the GOC make reasoned injury findings in the industry?

7.2 Furthermore, the data in the said Public Notice indicates that almost all the factors on the non-alloy plates and non-alloy sections industry have been stable or even ameliorated. In addition, for the latter product, domestic production and domestic sales were increasing constantly from 1997 through 2001, indicating a lack of factors supporting the existence of the injury in the industry. How did the GOC reach a preliminary determination that there is a clear evidence of serious injury to these domestic industries?

## **8. Causation**

8.1 The notification (G/SG/N/7/CHN/1) states that factors such as the economic recession over the world, the terrorists attack on the US, and the safeguards measures taken by the US were evaluated as factors other than increased imports to which injuries to the domestic industries may be attributable. It also states that the preliminary analysis find that import increase has been the substantial cause of the injury. Please explain the concrete method of investigation the GOC adopted, including how the GOC did "separate and distinguish" the injurious effect caused by different factors as well as a detailed basis for this preliminary finding.

8.2 It needs to be demonstrated that increase of imports coincided with the deterioration of injury factors in order to meet the necessary test of causation according to past WTO jurisprudence. On the other hand, a difference is found between the periods of investigation in Annex 2 and Annex 3 of the MOFTEC Public Notice No.30. How could the GOC demonstrate that there has been a causal relationship between increased imports and injury generation in this case?

## **9. The Extent Necessary to Which The Measures are Applied**

9.1 Please show a basis on how the GOC decided the level of each additional duty (7%-26%) for the individual "like" product, which is imposed on imports whose amount has exceeded the tariff quota.

9.2 In particular, in light of the "non-attribution rule" as defined in Article 4.2(b) of the SGA and the past WTO jurisprudence, it should be demonstrated that the GOC has separated the injurious effect by increased imports and by other factors, and that the GOC applies the measures to the extent necessary to prevent and remedy only the injury caused by the former cause. Please explain how the GOC complied with this obligation in determining the measures.

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