

**STATEMENT BY HEAD OF THE CHINESE DELEGATION  
ON THE TRANSITIONAL REVIEW OF CHINA  
TO THE COMMITTEE ON SAFEGUARDS**

The following communication, dated 1 November 2002, has been received from the Permanent Mission of the People's Republic of China.

Statement by Head of the Chinese Delegation on the Transition Review of China by the Committee on Safeguards – 2002-10-28:

Let me first take this opportunity to thank you and the Secretariat for preparations and arrangement for this first review by the Committee on Safeguards at today's meeting pursuant to paragraph 18 of the Accession Protocol of China.

Mr. Chairman, it is the consistent policy of the Chinese government to pursue and uphold a fair and open trading policy. China's accession to the WTO, despite the enormous challenges it poses, is a genuine reflection of our strong quest in this regard. We believe this review by the Committee is important and useful. It gives us an opportunity to look into, and to exchange views on all the commitments that have been made in accordance with the WTO Agreement on Safeguards during the process of China's WTO accession.

Mr. Chairman, in my statement today, I will focus on three aspects. The first is an overview on China's implementation of WTO Agreement on Safeguards since China's accession to the WTO. The second part will be responses to those questions of common concern addressed to us by some members prior to this meeting, and lastly, Mr. Chairman, I would also like to raise China's concerns with regard to safeguard.

Regarding China's implementation of WTO Agreement on Safeguards, Mr. Chairman, in paragraph 154 of the Working Party Report on China's Accession to the WTO, China made the following commitment, "China would implement its Regulations on Safeguards by which the future safeguard measures would be regulated. The contents of this new regulation would be fully consistent with the Agreement on Safeguards." Based on this commitment and in accordance with relevant provisions in the Law of the People's Republic of China on Foreign Trade, China formulated its Regulations on Safeguards, which was adopted by the State Council on 31 October 2001. The regulation was promulgated by the State Council in Decree No. 330 on 26 November 2001 and it went into effect on 1 January 2002.

Apart from this main dedicated regulation, China also enacted two administrative rules on safeguard. They are the Provisional Rules on Initiation of Safeguard Investigation, and Provisional Rules on Hearing in Safeguard Investigation. Both of them were promulgated by the Ministry of

Foreign Trade and Economic Cooperation (“MOFTEC”) on 10 February 2002 and came into effect on 13 March 2002.

China initiated one case of safeguard investigation after accession, which is still in process now. China Iron and Steel Association (“CISA”), together with five major iron and steel companies in China, filed an application with the Ministry of Foreign Trade and Economic Cooperation (MOFTEC) on 19 April this year, requesting safeguards investigation into import of certain steel products and application of provisional safeguard measures.

Based on the preliminary determination made thereafter that there was evidence proving that the import increase had caused serious injury and threat of serious injury to the Chinese iron and steel industry, MOFTEC announced on 20 May 2002 to initiate a safeguard investigation into certain steel products, and that a provisional safeguard measure against certain steel products would be effective from 24 May 2002. The provisional safeguard measure took the form of tariff rate quota and would last 180 days. The safeguard investigating authorities will decide whether to apply a final safeguard measure according to the investigation results.

Regarding these regulations, administrative rules and measures I mentioned above, China has met its obligation to notify WTO and its members.

China notified the existence of the Regulations on Safeguards and the two administrative rules to the WTO on 6 June 2002. Full text of the regulation itself in English was provided later in a second notification on 27 August 2002. The two administrative rules are still in the process of translation and the English texts will be provided once available.

On the safeguard measures regarding certain steel products, China also notified the initiation of the safeguard investigation, pursuant to Article 12.1(a); application of the provisional safeguard measure, pursuant to Article 12.4; and developing member exemption pursuant to Article 9, Footnote 2.

Mr. Chairman, prior to this meeting, questions were put forward by several members to us regarding China’s legislation on safeguard and its enforcement. I would like now to respond to those which are of common concern to members.

#### 1. Function of various government authorities in safeguard investigations

Presently, three government agencies in China are involved in safeguard matters. They are the Ministry of Foreign Trade and Economic Cooperation (MOFTEC), the State Economic and Trade Commission (SETC) and the Tariff Commission of the State Council (TCSC).

According to the Regulations on Safeguards, MOFTEC is in charge of the investigation and determination of increase of imports. If a definitive safeguard measure takes the form of quantitative restriction, a decision shall be made and published by MOFTEC as the foreign trade administrative authority. SETC is responsible for investigation and determination of injury. TCSC is to decide whether to increase tariff level as provisional or final safeguard measure, upon proposal made by MOFTEC on the basis of the investigation findings. The specific provision governing the responsibility of TCSC is found in Article 24 of the regulation. According to the said Article, safeguard measures shall be limited to the extent necessary to prevent or remedy serious injury and to facilitate the adjustment of the domestic industry. The reason that MOFTEC and TCSC decide upon different forms of safeguard measures is to ensure the uniformity in administration of trade laws and regulations, as required by Article 10 of GATT 1994. While MOFTEC is the government agency to formulate and enforce administrative measures concerning trade, TCSC is in charge of matters relating to formulation of customs tariffs.

Other than the above functions carried out by SETC and the Tariff Commission, MOFTEC deals with the other issues related to safeguard, including consultation, notifications, dispute settlement concerning safeguard measures and etc.

2. Implementation of Article 32 of the Regulations on Safeguards

Mr. Chairman, some members are concerned that China may take the “corresponding measures” under Article 32 of the Regulations on Safeguards. I would like to make it clear here that firstly, China has not yet applied Article 32 of the Regulations on Safeguards and therefore has not taken any “corresponding measures”; secondly, being a WTO member, China will first resort to the dispute settlement provisions provided in the Safeguard Agreement and the dispute settlement provisions under Annex II of the WTO Agreement before taking the “corresponding measures”, if the other party is also a WTO member; thirdly, if any rebalancing measures would be taken, China will abide by the provisions of Article 8 of the Safeguard Agreement.

3. On issues related to “developing country members”

Article 23 of the Regulations states that safeguard measures shall be applied to a product irrespective of its origin. However, I would also like to make it clear here that nothing prevents China from enforcing Article 9.1 of the Safeguard Agreement, that is, to exclude those developing members meeting specified conditions from the application of the safeguard measures. In practice, developing members meeting the requirements of Article 9.1 of the Safeguard Agreement had been excluded from China’s provisional measures on certain imported steel products, as has been notified to this Committee. To define and identify a developing member, China will make reference to regulations and practices of other WTO members. In this regard, I would also like to say that it is an undisputable fact that China itself is a developing country. The European Communities and Canada recognized this fact and treated China as a developing member in their recent safeguard measures on certain imported steel products. I would like to take this opportunity to express our appreciations. In this regard we are greatly concerned that the United States did not take a fair and objective approach of treating China as a developing member in its Section 201 investigations against certain imported steel products, despite the fact that China’s developing country status has been recognized by each and every other WTO member and consolidated by China’s WTO accession.

4. Implementation of Article 11 of the Safeguard Agreement

Some WTO members hope that China would clarify that it will not implement the “grey measures” prohibited under Article 11 of the Safeguard Agreement. I would like to confirm here that China will abide by Article 11 of the Safeguard Agreement.

However, I must bring members’ attention to such a fact that some members imposed upon China what are exactly prohibited by Article 11 of the Safeguard Agreement, by inserting paragraph 16 into China’s Protocol of Accession to WTO. With that paragraph, voluntary export restraints on the part of China were provided for as an alternative to product-specific safeguard measures.

Mr. Chairman, apart from my responses above to some common concerns to other members, I would also like to voice our great concerns over the resort to the transitional product-specific safeguard mechanism under paragraph 16 of China’s Protocol of Accession by any other WTO member. The transitional product-specific safeguard mechanism itself goes against the basic WTO principle of non-discrimination, and China took note of the fact that many members of Working Party on China’s Accession expressed that utmost restraints will be exercised in having recourse to the said mechanism and that it will only be applied under very special circumstances where other trade remedy

measures are not effective. We hope that other WTO members will honour this understanding. Frequent recourses to this mechanism of such nature can only damper China's enthusiasm to take an active and constructive role in the multilateral trading system.

Mr. Chairman, China notes with concern that the substantive and procedural requirements intended for due process and fair treatment to China's exports are not fully reflected in implementing legislations of some WTO members. We hope that those substantive and procedural requirements for the imposition of product-specific safeguard measures incorporated in China's Accession Protocol, Working Party Report, as well as the WTO Safeguard Agreement will be observed in conducting the investigations concerned.

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