

**QUESTIONS AND COMMENTS OF JAPAN WITH
REGARD TO THE TRANSITIONAL REVIEW
MECHANISM IN CONNECTION WITH PARAGRAPH 18
OF THE PROTOCOL OF ACCESSION OF THE
PEOPLE'S REPUBLIC OF CHINA
(REGARDING THE IMPLEMENTATION BY CHINA OF ITS
COMMITMENTS ON THE COMMITTEE ON SAFEGUARDS)**

The following communication, dated 27 September 2004, is being circulated at the request of the Delegation of Japan.

1. Japan welcomes that, in the third year after accession, implementation by China of its commitments on the Committee on Safeguards has progressed and entered into a cruising phase. In a transitional period of evolving regulations, the importance of regulatory transparency, predictability, stability and consistency is paramount; the value of market access commitments and the efforts to implement them could be easily clouded out by a shortness of such elements either in regulations themselves or in their application. The transitional review mechanism could be useful for making those transitional efforts more efficient and productive, and it is a pleasure for Japan to contribute to this process.

2. In this context, China is further invited to take necessary steps to ensure regular and effective application of public comments procedures, well-in-advance publication of laws and regulations, avoidance of abrupt regulatory change, clear demarcation of departmental responsibilities, improvement in inter-departmental and central-provincial coordination and consistency, etc.

3. In accordance with Paragraph 18 of the Protocol on the Accession of the People's Republic of China, which states that "China shall provide relevant information to each subsidiary body in advance of the review" and in the spirit of cooperation to render the TRM process most efficient and effective, Japan requests China to provide in advance of the Committee on Safeguards responses and relevant information to the following questions and comments;

- (a) As we understand it, China's domestic regulations on safeguards (*The Regulations of the People's Republic of China on Safeguards*) do not have the requirement of "as a result of unforeseen developments", which is contained in article XIX of GATT, and the WTO Appellate Body's jurisprudence clarifies that it is one of the requirements to be considered when a Party applies a safeguard. Therefore, we would like to be advised how this requirement is implemented under the laws and regulations of China.
- (b) Article 3.1 of the Agreement on Safeguards stipulates that, during the investigation process, all interested parties may submit their views as to whether or not application of a certain safeguard measure would be in the public interest. How do China's domestic regulations

guarantee the element of “publicity” as set out in Article 3.1 of the Agreement on Safeguards during the investigation process?

- (c) Article 12 of The Regulations of the People’s Republic of China on Safeguards states that the investigation may be conducted by means of sending questionnaires, holding public hearings, or “other appropriate means”. We would like to ask you for a more concrete explanation on what “other appropriate means”. means
- (d) In order to meet the requirements of “domestic industry”, to what degree does China consider it necessary to offer a “reasoned conclusion” (referred to in Article 3.1 of the WTO Agreement on Safeguards)? For example, do you believe that relevant data should be disclosed to interested parties? (This issue relates to the definition of “domestic industry”: Article 10 of The Regulations of the People’s Republic of China on Safeguards almost exactly corresponds to Article 4.1 (c) of the WTO Agreement on Safeguards. However, in the case of China’s safeguard measures on steel, the SETC reported that the 8 domestic producers of certain hot-rolled steel products which were subject to its investigation could represent domestic industry, because the total production of these 8 domestic producers constituted a major proportion of the total domestic production of those products. Nevertheless concrete information -- such as the data on which this conclusion was based -- was not provided to us, therefore we were in a difficult position to decide the reasonableness of the above SETC’s report.)
- (e) Article 8.1 of the WTO Agreement on Safeguards specifies provision of compensation, and therefore China should also include these provisions concerning compensation in its domestic regulations, as other parties do. We would like to have your comments on this point. We would also like to know at present under which laws or regulations such compensation will be provided.
- (g) With regard to provisional safeguards, although the provisions of Article 16 of The Regulations of the People’s Republic of China on Safeguards is not clear, the terms “clear evidence of increase in quantity of an imported product” in this Article seem to be one of the requirements to be fulfilled in applying provisional safeguards. On the other hand, Article 6 of the Agreement on Safeguards requires “clear evidence that increased imports have caused or are threatening to cause serious injury”. These two requirements are different. In applying provisional safeguards, evidence required under the Agreement on Safeguards needs to be provided. Therefore, we are of the view that China’s laws and regulations should be clear in such point as corresponding to the Agreement on Safeguards. What comments do you have regarding this point?
- (h) Please explain what kind of circumstances you envisage “in critical circumstances where it would cause injury to a domestic industry which would be difficult remedy without the application of safeguard measures”, contained in Article 16 of The Regulations of the People’s Republic of China on Safeguards. Is this provision different from “in critical circumstances where it would cause damage which would be difficult to repair” contained in Article 6 of the Agreement on Safeguards?
- (i) What are the “discriminatory safeguards” referred to in Article 31 of The Regulations of the People’s Republic of China on Safeguards? Are “Transitional Product-Specific Safeguards” classified as “discriminatory safeguards”?
- (j) Article 8.2 of the WTO Agreement on Safeguards specifies that re-balancing measures shall be “substantially equivalent” to safeguard measures, while Article 31 of The Regulations of the People’s Republic of China on Safeguards specifies “corresponding measures”. What is “corresponding measures”? Does China believe it is possible to apply re-balancing measures

which exceed “substantially equivalent” to safeguard measures referred to in Article 8.2 above?
