

**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 CHINA'S SAFEGUARD MEASURES
ON CERTAIN STEEL PRODUCTS)**

The following communication, dated 19 September 2003, has been received from the Permanent Mission of Japan.

1. Japan welcomes that, in the second year after accession, implementation by China of its commitments on Market Access has progressed and is entering into a cruising phase. It appreciates efforts by China for developing and improving necessary regulatory framework and smoothly implementing phase-in commitments. 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 the 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 meeting of the Committee on Safeguards responses and relevant information to the following questions and comments:

- (1) With regard to the provisional safeguard measures in May 2002 as well as the definitive measures in November the same year on certain steel products both taken by the People's Republic of China, we are not yet satisfied with its explanation on the legality of the measures provided by the Government of the People's Republic of China at last year's Transitional Review Mechanism and the bilateral consultations held under Article 12 of the Agreement on Safeguards. The Government of Japan will continue to request the Government of the People's Republic of China to provide a more detailed explanation and its schedule aiming at totally repealing these measures.

- (2) In particular, in "the Final Result of Investigation on Injury" published in November 2002 by the State Economic and Trade Commission (SETC), SETC made a determination that there exists no injury in some of the products subject to the safeguard measures. However, there is no decision of the Government of the People's Republic of China to repeal the measures to these products to date. In this regard,
- (i) Article 6 of the *Regulations of the People's Republic of China on Safeguards* provides that "The State Economic and Trade Commission (SETC) shall be responsible for the investigation and determination of injury". Also Article 11 of *the Regulations* provides that "MOFTEC and SETC shall, on the basis of objective facts and evidence, determine whether or not exists a causal link between the increased imports of the product concerned and the injury to the domestic industry", and Article 16 provides to the same effect. Given that the SETC is responsible for making a determination of injury and that the measures to these products are still retained in spite of the above-mentioned SETC's determination concerning injury, what is the legal basis under *the Regulations* to enable the Government to retain the measures to those measures?
 - (ii) The measures to those products on which SETC made a determination that there exists no injury to the domestic industry should be immediately repealed, or otherwise we would like to know at least the Government's concrete plans of mitigating the measures and the concrete schedule aiming at ultimately repealing the measures.
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