

Committee on Safeguards

Original: English

**NOTIFICATION OF LAWS, REGULATIONS AND
ADMINISTRATIVE PROCEDURES RELATING
TO SAFEGUARD MEASURES**

THE PEOPLE'S REPUBLIC OF CHINA

Supplement

The following communication, dated 14 February 2003, has been received from the Permanent Mission of the People's Republic of China.

With reference to Article 12.6 of the Agreement on Safeguards, I have the honour to notify the Committee on Safeguards the full text in English of the following provisional rules of China, P.R. on Safeguards. They are:

1. Provisional Rules for Initiation of Safeguards Investigations;
2. Provisional Rules conduct of Public Hearing in Safeguards Investigations.

Please note that the provisional rules are authentic only in Chinese, and the English translations of the provisional rules are for reference by WTO Members.

PROVISIONAL RULES ON INITIATION OF SAFEGUARDS INVESTIGATIONS

CHAPTER 1 - GENERAL PROVISIONS

Article 1. These Rules are formulated in accordance with “the Regulation of the People’s Republic of China” to standardize the procedure for application and initiation of investigations.

Article 2. The Ministry of Foreign Trade and Economic Co-operation (hereinafter referred to as MOFTEC) appoints the Bureau of Fair Trade for Imports and Exports to implement these Rules.

Article 3. MOFTEC may initiate a safeguards investigation upon an application by the applicant or upon its own initiative.

CHAPTER 2 – APPLICATION

Article 4. Any natural person, legal person or other organizations relating to the domestic industry (hereinafter referred to as “the applicant”) may file an application for a safeguards investigation.

Article 5. An application for safeguards investigation shall be filed in written form. The written application shall contain a formal request to MOFTEC expressing the applicant’s wish to initiate a safeguards investigation, and shall be sealed or signed by the applicant or by its legally authorized representative.

Article 6. The application shall contain the following information:

1. the identity of the applicant;
2. a description of the imported product, the domestic like product and the directly competitive product;
3. the known exporting countries (regions), exporters, producers and importers of the imported product;
4. a description of the domestic industry;
5. a description of the increase in quantities of the imported product;
6. a description of injury;
7. a description of the causal link between the increase in imports and the injury;
8. a description of the remedy requested;
9. other information which the applicant considers relevant to the request.

Article 7. With respect to the identity of the applicant, the applicant shall provide the following information:

The applicant's name, its legal representative, address, telephone number, postal code, facsimile number, contact person, etc;

If an attorney is appointed by the applicant, the attorney's name, his identity and other information shall be specified and the power of attorney provided.

Article 8. In respect of the imported product, the domestic like product and the directly competitive product, the applicant shall provide the following supporting information:

1. a full description of the imported product, including product name, types, specification, uses, market situation, and the Customs code of the People's Republic of China, etc.
2. for the domestic like product or the directly competitive product, its product name, types, specification, uses and market situation, etc;
3. description of similarities and differences between the imported product and the domestic like product or the directly competitive product, including physical characteristics, chemical properties, production technology, uses and substitutes, etc;
4. any other supporting materials requested by MOFTEC.

Article 9. The applicant shall provide the name of the exporting country (region) of the imported product, the name of the country (region) of origin, the names, addresses and means to contact the known exporters, producers and importers of the imported product.

Article 10. In respect of the domestic industry, the applicant shall provide the following supporting materials:

1. the names, addresses and means to contact the known domestic producers and relevant associations or chambers of commerce;
2. the total quantity of annual domestic production of the like product or the directly competitive product produced by all producers in the last five years prior to the submission of the application;
3. the annual production quantity of the like product or the directly competitive product produced by the applicant and its market shares of the total quantity of domestic production in the last five years prior to the submission of the application;
4. other supporting materials requested by MOFTEC.

Article 11. In respect of the increase in quantities of the imported product, the applicant shall provide the following supporting materials:

1. the annual import quantity and value of the product in question for at least the last five years prior to the submission of the application which is to be demonstrated by using graphs.
2. the absolute export quantity of the imported product from every exporting country (region) and its percentage of the total import quantity of the imported product for at least the last five years prior to the submission of the application;
3. an explanation showing the market shares, in quantity and in value, of the total domestic consumption, represented respectively by the imported product, the domestic like product and

the directly competitive product for at least the last five years prior to the submission of the application;

4. analysis of reasons for the increase in imports in the last five years, taking into consideration factors including, but not limited to, the import duty rates imposed on the product in question, information about the duty reduction or preferential treatment that the imported product could have enjoyed, the export price of the imported product, etc;
5. other supporting materials requested by MOFTEC.

Article 12. Where the application is filed on the basis that the increased imports have caused serious injury to the domestic industry, the applicant shall provide the following evidence:

1. all relevant factors and indices of an objective and quantifiable nature having a bearing on the situation of the domestic industry, in particular: the rate and quantity of the increase in imports of the imported product in absolute and relative terms; the share of the domestic market held by increased imports; and changes in the level of sales, production, productivity, capacity utilization, profits and losses, and employment;
2. evidence concerning the impact of prices of the imported product on the price of the domestic like product or the directly competitive product;
3. other supporting materials requested by MOFTEC.

Article 13. Where the application is filed on the basis that increased imports threaten to cause serious injury to the domestic industry, the applicant shall provide the following evidence:

1. evidence of the capacity to export and inventories of the imported product in the exporting country and evidence that such imports may continue to increase;
2. evidence of changes in circumstances related to the factors and indices listed in paragraph 1 of Article 12 of these Rules are clearly foreseen and imminent.

Article 14. The applicant's allegation concerning the impact of the imported product on the domestic industry and the relevant evidence to be submitted shall be determined separately in relation to the production of the domestic like product or the directly competitive product. If such separate identification of that production of the domestic like product or directly competitive product is not possible, the allegation shall be determined in relation to the production of the narrowest group or range of products which include the domestic like product or the directly competitive product.

Article 15. With regard to the causal link between the increase in imports and injury, the applicant shall analyze the submitted information, and explain the causal link between the increase in import and injury caused to the domestic industry.

In demonstrating the causal link between the increase in imports and the injury caused to the domestic industry, in addition to the increase in imports; the applicant shall analyze factors in addition to that have concurrently caused injury to the domestic industry. These factors shall include, but not be limited to, contraction in demand or changes in the patterns of consumption, trade-restrictive practices and competition between foreign and domestic producers, developments in technology, and the export performance and productivity of the domestic industry. If the applicant considers that certain factors, as above-mentioned, are inapplicable, an explanation shall be provided.

Article 16. The applicant shall describe the requested measures in the application, and may allege the form, detailed substance, duration and reason for the requested measures.

Article 17. If applying for the imposition of immediate provisional safeguards measures, the applicant shall provide evidence that the increased imports have caused serious injury or threatened to cause serious injury and that irreparable damage would occur if the measures are delayed, and the applicant shall also demonstrate the margin by which the Customs duty is to be raised.

Article 18. The applicant shall identify the sources of its evidence when providing supporting documents specified in this Chapter.

Article 19. The Applicant shall request confidential treatment for any confidential materials contained in the application; the applicant shall furnish a non-confidential summary for those confidential materials to permit other interested parties in the case to have a reasonable understanding of the confidential materials; if the applicant cannot provide such non-confidential summary, the reason therefor should be provided.

Article 20. The application for a safeguards investigation and supporting materials shall be submitted in Chinese type. Standardized terms shall be used where standardized terminology has been adopted by the State .

If the supporting documents submitted by the applicant are in a foreign language, the applicant shall provide a full text copy of the document in the original foreign language and a Chinese translation of the relevant part of the text.

Article 21. The application and the attached supporting documents shall include a confidential version (where the applicant requests confidential treatment) and a public version. One original and six copies of the confidential version shall be submitted. For the public version, in addition to submitting one original and six copies, additional copies equal to the number of exporting countries (regions) from which the imported product originate shall be submitted. In its discretion, MOFTEC may limit the number of additional copies required, but to no less than five.

Article 22. The applicant shall submit the application and supporting materials in an electronic version in accordance with the computer software program required by the Bureau of Fair Trade for Imports and Exports.

Article 23. The applicant shall send the written application and supporting materials by mail or by hand delivery to the Bureau of Fair Trade for Imports and Exports.

Article 24. Upon receipt, the Bureau of Fair Trade for Imports and Exports shall mark the application and supporting materials which are formally submitted by the applicant as so received. The date of receipt shall be the date upon which the Bureau of Fair Trade for Imports and Exports receives the written application and supporting materials.

Article 25. MOFTEC shall maintain the confidentiality of the documents and materials submitted by the applicant prior to the decision of initiation of the investigation and to the publication of the public notice.

CHAPTER 3 - INITIATION

Article 26. The Bureau of Fair Trade for Imports and Exports may conduct an investigation by means of questionnaires or on-the-spot verification of the issues contained in the written

application and supporting materials, including the standing of the applicant and the imported product, etc.

Article 27. MOFTEC shall make a decision on whether to initiate an investigation within 60 days after receipt of the written application for a investigation; in particularly complicated cases, an appropriate extension may be given to the time limit for examination.

Article 28. The Bureau of Fair Trade for Imports and Exports may require the applicant to amend or provide supplemental information to the application for safeguards investigation within the period specified in Article 27 of these Rules. If the applicant does not amend or provide supplemental information, or if it fails to make the amendment or to provide supplemental information in conformity with the requirements specified and within the specified time limits, MOFTEC may reject the application with notice to the applicant.

Article 29. If MOFTEC decides not to initiate an investigation, it shall notify the applicant of its decision and its reasoning.

Article 30. A public notice shall be published if MOFTEC decides to initiate an investigation.

The public notice shall contain the following information:

1. the name and description of the imported product;
2. the exporting country (region) of the imported product;
3. a summary of the information on which the decision to initiate is based;
4. the schedule for the investigation;
5. the time limits for interested parties to comment;
6. ways to contact the investigating authorities.

Article 31 MOFTEC shall notify the Committee on of the World Trade Organization within 7 working days after the decision to initiate the investigation has been made.

Article 32. The date of initiation of the safeguards investigation shall be the date of publication of the public notice of the decision to initiate the investigation.

CHAPTER 4 - INITIATION ON ITS OWN INITIATIVE

Article 33. Even if no written application for safeguards measures is received, MOFTEC may decided to initiate an investigation on its own initiative on the basis of sufficient evidence showing that the increase in quantities of the imported product causes or threatens to cause serious injury to the domestic industry, .

Article 34. Where MOFTEC decides to initiate a investigation on its own initiative, the evidence and materials available to MOFTEC shall be consistent with the pertinent provisions of Chapter 2 of these Rules.

CHAPTER 5 SUPPLEMENTARY PROVISIONS

Article 35. MOFTEC shall have authority to interpret these Rules.

Article 36. These Rules shall enter into force on 13 March 2002.

PROVISIONAL RULES FOR PUBLIC HEARINGS IN SAFEGUARDS INVESTIGATIONS

Article 1. With a view to ensuring a fair and equitable investigation for safeguard measures and to protecting lawful interests of the interested parties, these Rules are formulated in accordance with the pertinent provisions of “the Safeguards Regulation of the People’s Republic of China”.

Article 2. These Rules apply to hearings held by MOFTEC in the conduct of safeguards investigations to determine the increase in quantities of the imported article and the existence of a causal link between such increase and the injury.

Article 3. The Bureau of Fair Trade for Imports and Exports of Ministry of Foreign Trade and Economic Co-operation (hereinafter referred to as “Bureau of Fair Trade for Imports and Exports”) shall be in charge of organizing the hearings referred to in these Rules.

Article 4. The hearings referred to in these Rules shall be publicly held. In cases involving State secrets, business secrets or where personal privacy is concerned, the Bureau of Fair Trade for Imports and Exports may hold such hearings by other means.

Article 5. The Bureau of Fair Trade for Imports and Exports shall hold a hearing upon request of the interested parties. When warranted, the Bureau of Fair Trade for Imports and Exports may also hold a hearing on its own initiative.

Article 6. Where the Bureau of Fair Trade for Imports and Exports holds a hearing on its own initiative, it shall notify the interested parties in advance, and apply the relevant provisions of these Rules.

Article 7. The interested parties specified in these Rules include the applicant for the safeguards investigation, the government of the exporting country (region), the government of the country (region) of origin, exporters and importers, and other organizations or individuals having interests in the case.

Article 8. Where an interested party requests a hearing, a written application requesting such hearing shall be submitted to the Bureau of Fair Trade for Imports and Exports.

The written application shall include the following contents:

1. Name, address and relevant information of the applicant requesting the hearing;
2. Purposes for which the hearing is requested;
3. Reasons the hearing is requested.

Article 9. The Bureau of Fair Trade for Imports and Exports shall decide whether to hold a hearing within 15 days of receipt of a written application from interested party, and shall promptly notify its decision to the relevant interested parties.

Article 10. The notice of the decision to hold a hearing by Bureau of Fair Trade for Imports and Exports shall include the following information:

1. the decision for holding the hearing;

2. the reasons for holding the hearing;
3. the time for registration, address, and relevant requirements to be known by the interested parties before the hearing;
4. other matters relevant to the hearing.

Article 11. After receiving notice of the decision to hold a hearing, each interested party shall register with the Bureau of Fair Trade for Imports and Exports, submit a summary of the written presentation at the hearing, and relevant evidence in accordance with the elements and requirements specified in the notice.

Article 12. The Bureau of Fair Trade for Imports and Exports shall determine the time, location, presiding official for the hearing and hearing agenda within 20 days after the expiry date of registration for the hearing specified in the notice of decision to hold a hearing and shall notify the registered interested parties thereof.

Article 13. The presiding official for the hearing shall exercise the following functions and powers:

1. to preside over the hearing;
2. to ascertain identity of hearing participants;
3. to maintain the hearing order;
4. to question the interested parties;
5. to decide on whether to allow interested parties to provide additional evidence and whether to determine the authenticity of the evidence which has been presented;
6. to decide whether to suspend or terminate the hearing;
7. to decide other matters necessary at the hearing.

Article 14. Interested parties may be represented at the hearing by their own representative or not more than 2 attorneys on their behalves.

Article 15. The interested parties shall assume the following obligations to participate in the hearing:

1. to arrive on time at the designated place to attend the hearing;
2. to abide by disciplines of the hearing and to follow instructions of the hearing's presiding official;
3. to answer the presiding official's questions according to the facts.

Article 16. The hearing shall be conducted according to the following procedures:

1. announcement of the commencement of the hearing and disciplines of the hearing;
2. ascertainment of the identity of the hearing participants;

3. presentation by the interested parties;
4. questioning of the interested parties;
5. final presentation by the interested parties;
6. announcement of the adjournment of the hearing.

Article 17. The purpose of the hearing is to allow the investigating authorities to have an opportunity to collect further information and to allow the interested parties to present their views and to submit evidence; however, there is no procedure for debate.

Article 18. The hearing shall be recorded in writing. The presiding official, recorder and the interested parties attending the hearing shall sign or affix their seals then and there. Where the interested parties refuse to sign or affix seal, the presiding official shall record it in the notes of the hearing.

Article 19. The hearing may be postponed or cancelled by the Bureau of Fair Trade for Imports and Exports under any one of the following circumstances:

1. where by reason of an event or an event due to force majeure, the applicant requesting the hearing has submitted a written request to cancel or postpone the hearing;
2. where the safeguards investigation is terminated;
3. where other matters make it necessary to postpone or cancel the hearing.

Article 20. After the grounds for postponing the hearing no longer exist, the Bureau of Fair Trade for Imports and Exports shall immediately re-schedule the hearing and notify the registered interested parties.

Article 21. The form of notification referred to in these Rules is the public notice of MOFTEC. Under special circumstances, the Bureau of Fair Trade for Imports and Exports may adopt other forms.

Article 22. The working language used in the hearing shall be Chinese.

Article 23. MOFTEC shall have the authority to interpret these Rules.

Article 24. These Rules shall enter into force on 13 March 2002.
