Safeguard Measures Regulations of the PRC

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Chapter I — General Provisions

Article 1 — These Regulations are enacted in accordance with the Foreign Trade Law of the People's Republic of China for the purpose of promoting the sound development of foreign trade, safeguarding the order of the foreign trade market, and protecting the lawful rights and interests of domestic industries.

Article 2 — Where the import of a product increases in such quantities and under such conditions as to cause or threaten to cause serious injury to a domestic industry that produces like or directly competitive products, safeguard measures may be taken in accordance with these Regulations.

Article 3 — The Ministry of Commerce (hereinafter referred to as "MOFCOM") shall be responsible for the investigation of safeguard measures and shall determine and implement safeguard measures in conjunction with relevant departments. If the safeguard measure involves an increase in tariff rates, the Customs Tariff Commission of the State Council shall make the decision.

Article 4 — The investigation and determination of a safeguard measure investigation shall be objective, fair and transparent.

Chapter II — Investigation

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Article 5 — MOFCOM shall initiate a safeguard measure investigation upon application by a domestic industry or on its own initiative. An application for a safeguard measure investigation shall be filed by a domestic producer that accounts for or represents a major proportion of the total domestic production of like or directly competitive products.

Article 6 — An application for a safeguard measure investigation shall include the following: (1) a description of the applicant and the domestic industry it represents; (2) a detailed description of the imported product in question; (3) information on the quantity and value of the domestic production of like or directly competitive products; (4) information on the increase in the quantity of the imported product; (5) information on the serious injury or threat of serious injury caused to the domestic industry; and (6) evidence of the causal link between the increase in imports and the serious injury or threat of serious injury.

Article 7 — MOFCOM shall examine the application for a safeguard measure investigation within 60 days from the date of receipt of the application and determine whether to initiate an investigation. MOFCOM shall notify the applicant of the decision in writing. If MOFCOM decides not to initiate an investigation, it shall state the reasons in writing.

Article 8 — Before deciding to initiate an investigation, MOFCOM shall notify the WTO Committee on Safeguards of the initiation of the investigation.

Article 9 — Where MOFCOM decides to initiate an investigation on its own initiative, it shall notify the WTO Committee on Safeguards of the decision to initiate the investigation.

Article 10 — After deciding to initiate an investigation, MOFCOM shall issue a public notice on the initiation of the investigation. The public notice shall specify the product under investigation, the period of investigation, the scope of investigation, and other relevant matters.

Article 11 — MOFCOM may conduct the investigation by means of questionnaires, hearings, on-site verification, and other means. Interested parties shall provide information truthfully and timely cooperate with the investigation.

Article 12 — MOFCOM shall provide interested parties with reasonable opportunities to present their views and arguments. MOFCOM may hold hearings on the application of interested parties. MOFCOM shall hear the views of all interested parties.

Article 13 — Where any interested party fails to provide information within a reasonable time period or seriously impedes the investigation, MOFCOM may make a determination based on the facts available.

Article 14 — MOFCOM shall protect the confidential information provided by interested parties. Without the consent of the provider of the information, MOFCOM shall not disclose such information. If the provider of the information considers that non-confidential summaries of the information are insufficient, it shall state the reasons.

Article 15 — In the investigation of a safeguard measure investigation, MOFCOM shall, based on objective facts and evidence, determine the increase in the quantity of the imported product and the serious injury or threat of serious injury to the domestic industry and the causal link between them.

Article 16 — When examining the increase in the quantity of an imported product, MOFCOM shall consider the absolute increase and relative increase of the imported product compared with the domestic production. When determining the serious injury or threat of serious injury to the domestic industry, MOFCOM shall consider the following factors: (1) the rate and amount of the increase in the imported product; (2) the market share occupied by the increased import; (3) the impact of the increased import on the domestic industry, including the impact on output, sales volume, market share, productivity, capacity utilization, profits and losses, employment, and other indicators; and (4) other factors causing injury to the domestic industry.

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Article 17 — When determining the causal link, MOFCOM shall examine all relevant objective and quantifiable factors affecting the condition of the domestic industry, and shall not attribute injury caused by other factors to the increased import. Factors that may cause injury to the domestic industry other than the increased import include, but are not limited to: (1) changes in market demand; (2) changes in consumption patterns; (3) restrictive trade practices and competition between domestic and foreign producers; and (4) technological developments.

Article 18 — MOFCOM shall make a preliminary determination and publish the determination before making a final determination. The preliminary determination shall specify the basic facts on which the preliminary determination is based and the laws and regulations applied.

Article 19 — Before making a final determination, MOFCOM shall publish the essential facts on which the determination is based and provide interested parties with reasonable opportunities to comment thereon. The final determination shall be announced publicly.

Chapter III — Safeguard Measures

Article 20 — Where the preliminary determination clearly establishes that the increase in imports has caused or threatened to cause serious injury to the domestic industry, provisional safeguard measures may be taken. Provisional safeguard measures shall take the form of an increase in tariff rates.

Article 21 — MOFCOM shall make a recommendation on the taking of provisional safeguard measures and the Customs Tariff Commission of the State Council shall make a decision based on the recommendation of MOFCOM. The decision shall be published by MOFCOM. The customs shall implement the decision from the date specified in the public notice.

Article 22 — Where the Customs Tariff Commission of the State Council decides to take provisional safeguard measures, it shall notify the WTO Committee on Safeguards in advance. The duration of provisional safeguard measures shall not exceed 200 days and shall be counted as part of the duration of the safeguard measures.

Article 23 — Where the final determination establishes that the increase in imports has caused serious injury to the domestic industry, safeguard measures may be taken. The safeguard measures may take the form of an increase in tariff rates, quantitative restrictions, or other forms. Where the safeguard measure takes the form of quantitative restrictions, it shall not reduce the quantity of imports below the average level of imports in the last three representative years, unless a clear justification is given that a different level is necessary to prevent or remedy serious injury.

Article 24 — Where the final determination does not establish that the increase in imports has caused serious injury to the domestic industry, no safeguard measure shall be taken. Where provisional safeguard measures have been taken, the Customs Tariff Commission of the State Council shall, based on the recommendation of MOFCOM, make a decision to terminate the provisional safeguard measures. The additional tariffs collected during the period of provisional safeguard measures shall be refunded.

Article 25 — Safeguard measures shall be applied to a product being imported irrespective of its source. However, the application of safeguard measures to a product originating in a developing country member of the WTO shall be subject to the following conditions: (1) where the share of imports from that developing country member does not exceed 3% of the total imports of the product; or (2) where the collective share of imports from developing country members with less than 3% import share individually does not exceed 9% of the total imports of the product.

Article 26 — The safeguard measure may only be applied to the extent necessary to prevent or remedy serious injury and to facilitate adjustment.

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Article 27 — Where a safeguard measure is taken, MOFCOM shall provide trade compensation to the exporting members. Where the exporting member and China fail to reach an agreement on the trade compensation, the exporting member may not suspend the application of substantially equivalent concessions or other obligations to China for a period of three years from the date the safeguard measure takes effect.

Chapter IV — Duration and Review of Safeguard Measures

Article 28 — The duration of a safeguard measure shall not exceed four years. Where it is necessary to extend the safeguard measure, the total duration of the safeguard measure including the period of provisional safeguard measures, the initial period of application, and any extension shall not exceed eight years.

Article 29 — Where the duration of a safeguard measure exceeds three years, MOFCOM shall conduct a mid-term review of the safeguard measure before the expiry of three years. Based on the review results, MOFCOM shall determine whether to withdraw the safeguard measure or to accelerate the pace of liberalization.

Article 30 — Where the duration of a safeguard measure exceeds one year, the measure shall be progressively liberalized at regular intervals during the period of application. If the measure is extended, it shall not be more restrictive than it was at the end of the initial period.

Article 31 — No safeguard measure shall be applied again to the import of a product that has been subject to a safeguard measure for a period of time equal to the duration of the previous safeguard measure. The period of non-application shall be at least two years.

Article 32 — A safeguard measure with a duration of 180 days or less may be applied again to the import of a product if: (1) at least one year has elapsed since the date of introduction of the safeguard measure on the import of that product; and (2) such safeguard measure has not been applied on the same product more than twice in the five-year period immediately preceding the date of introduction of the measure.

Article 33 — MOFCOM may initiate a mid-term review of a safeguard measure on its own initiative or upon application by an interested party. The review procedure shall be by reference to the investigation procedure of safeguard measures. If, based on the review, MOFCOM determines that the safeguard measure should be withdrawn or relaxed, it shall make a recommendation, and the Customs Tariff Commission of the State Council shall make a decision based on the recommendation.

Chapter V — Supplementary Provisions

Article 34 — Any entity or individual that, in accordance with the provisions of these Regulations, has the right to apply for a safeguard measure investigation may apply to MOFCOM in accordance with these Regulations. MOFCOM shall make a review and respond within the prescribed time limit.

Article 35 — Where an interested party is dissatisfied with the final determination or decision on whether to apply a safeguard measure, or is dissatisfied with the decision on the mid-term review, it may apply for administrative reconsideration or bring an administrative lawsuit in accordance with law.

Article 36 — These Regulations shall come into force as of June 1, 2004.

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