

Notice on the application of Article 10a of Council Regulation (EEC) No 3030/93 concerning a textiles specific safeguard clause

(2005/C 101/02)

1. INTRODUCTION — OBJECTIVE OF THE GUIDELINES

The provisions of the textiles specific safeguard clause (hereafter 'TSSC') contained in the Protocol of Accession of China to the WTO were incorporated into EU law by Council Regulation (EC) No 138/2003 ⁽¹⁾, in the form of a new Article 10a inserted in Council Regulation (EEC) No 3030/93 ⁽²⁾. The new Article 10a is almost a literal transcription of the language contained in China's Protocol of Accession to the WTO, the main addition being the establishment of the internal EU decision-making procedure, according to which decisions are adopted following what is called 'comitology procedure' (cf. description further below).

Since its adoption, the provision has raised a number of questions of interpretation, and concerns have also been expressed regarding the need for the greatest possible transparency to be introduced in the procedures and for more predictability regarding the Commission policy on its implementation. The Commission, in response to these concerns, indicated in its communication on 'Textiles and clothing after 2005' of 13 October 2004 ⁽³⁾ that it would make available 'guidelines containing procedures and criteria that the Commission intends to follow, in conformity with the relevant Regulations adopted by the Council, for the application of safeguard clauses, in particular for the textiles-specific safeguard clause established in China's Protocol of Accession to the WTO'. This communication contains an indication (hereafter called the 'guidelines') of the way the Commission intends to apply the TSSC. Its purpose is therefore to inform interested parties of:

- (a) the criteria for the application of the TSSC that the Commission considers should apply;
- (b) the procedures for a diligent handling and examination of requests for the application of the TSSC, providing an opportunity for any interested parties to be involved in the process, that the Commission intends to apply.

The guidelines also explain the 'early warning system', which the Commission intends to use to guide it in deciding whether to open an enquiry and consult intensively with China if certain 'alert levels' are reached. This will be without prejudice to the actual application of the TSSC, which will depend on the conditions specified therein.

⁽¹⁾ OJ L 23, 28.1.2003, p. 1.

⁽²⁾ OJ L 275, 8.11.1993, p. 3.

⁽³⁾ 'Textiles and clothing after 2005 — the Recommendations of the High Level Group for textiles and clothing', COM(2004)668 final, of 13.10.2004.

These guidelines are for the information of interested parties and do not constitute a legal instrument. They reflect the policy intention of the Commission to follow certain procedures and criteria for the application of the TSSC, and therefore should not lead to any legally legitimate expectations regarding the individual decisions that the Commission will adopt on the TSSC in conformity with the relevant regulations, and which will have to result from a case-by-case examination to ensure that any action under the TSSC is fully justified. Since the Commission has wide powers under the Community legislation for the application of the TSSC, these guidelines explain to interested parties how the Commission intends to exercise these powers.

2. DESCRIPTION OF THE SPECIFIC TEXTILES SAFEGUARD CLAUSE

The Report of the Working Party on the Accession of China to the WTO ⁽⁴⁾ attached to the Protocol of Accession of China to the WTO ⁽⁵⁾ introduced in its paragraph 242 a provision that would enable WTO Members to introduce safeguard measures vis-à-vis imports of textile and clothing (T&C) products from China, and this until the end of 2008 ⁽⁶⁾. The main elements of the provision (reproduced in Annex 1) are the following:

- (a) **Conditions for invocation:** the clause can be triggered 'in the event a WTO Member believes that imports of Chinese origin of T&C products (...) were, due to market disruption, threatening to impede the orderly development of trade in these products'.
- (b) **Safeguard measures contemplated.** The clause is triggered by a request for consultations by the Member invoking the clause. There are two steps: (a) upon request of consultations, China agrees to limit its shipments to the country concerned in the relevant product category subject of the request to the amounts exported during the first 12 months of the most recent 14 months preceding the month in which the request for consultations was made, increased by 7,5 % (6 % for wool products); (b) in the absence of a mutually agreed solution, the WTO Member concerned may introduce quantitative limits for such amounts.

⁽⁴⁾ Document WT/MIN(01)3 of 10 November 2001.

⁽⁵⁾ Document WT/L/432 of 23 November 2001.

⁽⁶⁾ This paragraph is considered a part of the Protocol of Accession of China to the WTO, which in turn is an integral part of the WTO Agreement, cf. paragraph 2 of the Accession Protocol.

Such measures may be in force only for one year. However, the question whether they can be extended is subject to interpretation, as the text says that 'no action taken under this paragraph shall remain in effect beyond one year without reapplication (...)', thus leaving open the possibility for a new application of the clause to the same products after the expiry of the year period.

It is worth noting that the TSSC is an exceptional provision of a transitional nature with no clear link with other safeguard provisions or procedures in the WTO. Its uniqueness, which implies that the approach followed in these guidelines cannot be applicable in other safeguard instruments, comes from the fact that it is destined to provide an additional means to facilitate the transition to the quotas-free regime that will be in force from the time of expiry of the WTO Agreement on Textiles and Clothing (ATC) on 31 December 2004, and taking into account the accession of China to the WTO seven years after the negotiations on the ATC concluded. It is also a particularly vaguely worded provision which can be applied with a relatively wide margin of discretion and little room for challenge in the WTO.

Its standards for application appear to be lower than those in force in the other WTO safeguard provisions. This may be attributable to the fact that the measures available under the TSSC are more limited in scope (only quantitative limits) and duration (maximum one year) than those possible under other safeguard instruments.

3. TRANSPOSITION OF THE TSSC INTO EU LAW

The TSSC was implemented into Community law by Council Regulation (EC) No 138/2003 of 21 January 2003, which introduced a new Article 10a into Council Regulation (EEC) No 3030/93, in terms similar to the language contained in the Protocol (see Annex 2) and granted power to apply the mechanism to the Commission. The Commission thus is empowered to take the decisions, in consultation with the Textiles Committee, concerning the request for consultations (which triggers the imposition of self-limitations by China), acting at the request of a Member State or on its own initiative, and regarding the imposition of restrictions. It is this provision, in conjunction with general principles of Community law, that governs the application of TSSC in the Community.

Under Article 10a in Council Regulation (EEC) No 3030/93, whose legal provisions are also reproduced in Annex 2⁽¹⁾, before the Commission requests formal consultations with China or before introducing restrictions, the Commission submits a draft of the measures proposed to the Textiles Committee, and adopts it subsequently if the Committee votes in favour by a qualified majority. In case of absence of qualified majority, the Commission submits to the Council a proposal

⁽¹⁾ Cf. Article 17 of Council Regulation (EEC) No 3030/93, which was amended by Council Regulation (EC) No 391/2001 of 26 February 2001.

without delay, after which the Council may reject, amend or revoke the Commission proposal by a qualified majority. However, if the Council fails to reach a position by a qualified majority within one month, then the Commission adopts the proposed measures. In case the Council opposed the measure by a qualified majority, then the Commission should re-examine it, and may then either make an amended proposal, resubmit its proposal, or present a legislative proposal; after the expiry of one month without a Council Decision, then the Commission should adopt the act.

This present Communication explains the criteria according to which decisions will be taken, which will be addressed in Section 4, and the procedures for the handling of complaints and in the decision-making, which will be addressed in Section 5. It also describes the 'early warning system' designed to minimise the risk of market disruption and therefore having to resort to safeguards (Section 6). Finally, some levels of imports are indicated, below which the Commission does not intend, in principle, to invoke the safeguard clause (Section 7).

4. DEFINITIONS AND CRITERIA FOR THE APPLICATION OF THE TSSC

The TSSC can be applied when 'imports into the Community of textile and clothing products originating in China and covered by the ATC threaten to impede, owing to market disruption, the orderly development of trade in those products'. A number of key elements, as set out below, deserve explanation. This explanation should not be regarded as binding or authoritative; it merely sets out, for the benefit of interested parties, the Commission's understanding of these elements.

(a) Causes of the disturbance

The cause of the disturbance — disorderly development of trade due to market disruption — has to be 'imports of textile and clothing products originating from China and covered by the ATC'. The origin of the products, as determined in accordance with the rules in force in the Community, is relevant, no matter if they come directly from China or through other intermediate territories. The products concerned must be covered by the WTO Agreement on Textiles and Clothing (ATC).

(b) 'Threat to impede the orderly development of trade in textile and clothing products'

The TSSC was agreed in the WTO accession negotiations with China as an additional safeguard mechanism available in particular after liberalisation in the ATC has taken place, to take into account the very important production and export potential of China in textiles and clothing. In particular, its objective

was to ensure a transition as smooth as possible to the quota-free trade environment prevailing in the sector from 2005. For this reason, the TSSC establishes as a trigger that the evolution of imports from China must 'threaten to impede (...) the orderly development of trade' in textile and clothing products.

Such a concept has not been defined in WTO law or jurisprudence, nor is it found in EU legislation. In order to assess whether the 'orderly development of trade' in textile and clothing products is being threatened, the Commission will take into account as a main indicator the existence of a **rapid rise or surge in imports**, in absolute or relative terms. A small percentage change cannot be considered sufficient to trigger the application of the TSSC. The increase must be rapid and steep, in a way that it can be considered as a significant alteration of trade patterns in a given product or group of products. It may concern the quantities imported, or the values of the products imported, or both. For instance, an increase of several tens of percentage points in products where China is already a dominant supplier — or by more in those cases where the quotas for China were low in relative terms — in a matter of a few months in 2005 as compared with the same period in 2004 can be considered as a rapid increase in imports.

In this context, increases such as those indicated in tables A and B of Section 6 can be considered as in principle 'threatening to prevent the orderly development of trade in textile and clothing products'. Conversely, the Commission will in principle consider that below certain rates of growth of imports, as indicated in Section 7, there is not such a 'disorderly development of trade', as certain increased imports can be considered as a normal consequence of the elimination of quotas.

Such a rapid increase of imports need not be in absolute terms, it can also be in relative terms. However, the case for action to be envisaged if the increase is only in relative terms will obviously be weaker and more difficult to justify, except in case the imports took place under certain conditions (for instance in case of significant price drops or significant drops in exports to the EU from, for example, Euro Mediterranean or ACP partner countries), so as to 'threaten to impede the orderly development of trade'. In particular in cases of increased imports from China in relative or absolute terms which cannot be considered a surge in imports, a relevant factor to take into account will be the **evolution of import prices**, which will normally have to be assessed as average unit import prices as can be determined by import statistics. Significant drops of average unit import prices (especially if there is price undercutting as compared

with other suppliers) combined with such increases in imports are likely to result in market disruption and constitute a threat to the 'orderly development of trade'.

(c) Market disruption

Drawing from the definitions and practice in other WTO and EC safeguard instruments⁽¹⁾, market disruption can be considered to exist, whenever imports of a product, or a category of products, are increasingly rapidly, either absolutely or relatively, or under such conditions, so as to be a significant cause of material injury, or threat of material injury, to the Community industry. Factors to be taken into consideration in determining whether market disruption exists are *inter alia* the volume of imports concerned, the effect of such imports on prices for such products in the EU, and the effect of such imports on the EU industry producing these products.

In accordance with this internationally agreed definition of 'market disruption', there is no need for actual injury to materialise, as in that case it would be too late for any measure to be effective, and therefore a threat of such injury can be sufficient. However, the threat of injury should be qualified and cannot be hypothetical: it should be imminent and appear from the current evolution of imports. In this respect, a requirement for the consideration of the existence of a threat of injury should be an actual rapid increase, in absolute or relative terms, of imports. A mere likelihood that such an increase may take place — for instance after the elimination of import quotas — should not be enough. Such a rapid increase in imports should be assessed in particular comparing the evolution of imports in a given relevant period (not shorter than 2 or 3 months) with a similar period in preceding years.

Another important element to take account is the evolution of import prices, as any significant drop of such prices or an undercutting of prices as compared for instance with other major suppliers can provide an indication of market disruption

It should also be examined whether the volume of imports and their price have or will have a direct negative effect on the EU industry. The impact on upstream industry (e.g. spinning, weaving and knitting, or finishing industries) may also be relevant and should not be excluded in the assessment of injury or threat of injury to industry. All available relevant data will be used to assess the actual or expected impact on affected EU industry, such as, for instance, the evolution of production, market share, sales, employment, profitability and supply chain effects.

⁽¹⁾ Cf. Article 2.1 of the WTO Agreement on Safeguards on the conditions for the application of safeguard measures, and paragraph 16.4 of the Protocol of Accession of China to the WTO (the Transitional Product Specific Safeguard Mechanism or TPSSM, Article 2.1 of Council Regulation (EC) No 427/2003 on a transitional product-specific safeguard mechanism for imports from China and Article 16.1 of Council Regulation (EC) No 3285/94 on the common rules for imports.

In order to take account of the multiplicity of products within and among categories in the textile and clothing sector, and the links and overlaps that may exist among them, it is considered appropriate to maintain flexibility to define on a case-by-case basis the products or groups of products concerned.

(d) Other relevant factors

One factor to be considered is the impact that a surge in imports from China may have on other suppliers and in particular on the more vulnerable and textile-dependent developing countries (small developing country economies, least developed and ACP countries, and in particular Southern and Eastern Mediterranean countries as they are part of the natural zone of competitiveness of the EU textile and clothing industry and are an important destination of both exports and investments of EU industry). A serious displacement from the EU market of traditional suppliers can constitute a sign that trade is being disturbed and have serious negative consequences that it may be appropriate to remedy, although safeguard action can be taken only if the criteria of 'threat to prevent the orderly development of trade' and 'market disruption', as explained in sub-sections (b) and (c) above, are met.

A positive determination that the conditions for the application of the TSSC have been met would in principle lead the Commission to request formal consultations with China under paragraph (a) of Article 10a. However, the Commission may decide otherwise in case the invocation of the TSSC would have important and tangible negative impact on the general interest of the Community (e.g. other industries — upstream or downstream -, EU industry with investments in China, consumers or trade), which would clearly outweigh the positive consequences of action for industry.

5. PROCEDURES AND TIMETABLE FOR SAFEGUARD PROCEEDINGS

The Commission attaches great importance to the transparency and expediency in the handling of its trade instruments, so that when a Member State or other interested parties introduce a request for safeguard action, there are procedures to treat them in a way that all interested parties can be heard, decisions are adopted within a reasonable period of time and are properly motivated and communicated to the interested parties and to the public in general. Such transparency should result in greater predictability and certainty for trade and business, and make sure that decisions are taken in the best possible knowledge of all relevant factors and after having heard all relevant arguments. In cases of particular urgency, the Commission may decide, however, to expedite its procedures involving a shortening of the deadlines or a simplified and accelerated process

of consultations, or take the necessary steps on the basis of the information available.

In order to achieve these objectives, the Commission intends to proceed as follows regarding the procedures for the implementation of the TSSC. Again, this must be regarded as an explanation, for the benefit of interested parties, of how the Commission intends to exercise its powers. It should not be regarded as binding or authoritative.

(a) Initiation of the procedure — Opening of an investigation and request for informal consultations with China

Before the invocation of the safeguard clause by requesting formal consultations with China, it is appropriate that the Commission will open an investigation in order to establish facts and request informal consultations with China in order to examine ways to avoid market disruption. This will be done under two hypotheses:

- at the request of a Member State,
- on the Commission's own initiative, which can be in two instances: when in application of the 'early warning system' described in Section 6 certain 'alert levels' are reached; or at the request of industry providing *prima facie* evidence of the need for safeguard.

The same procedures will apply to investigations initiated ex-officio or those initiated on the basis of requests.

(i) Initiation upon request from a Member State

In case a request contains sufficient *prima facie* evidence that the conditions for the application of the TSSC as spelt out in Section 4 are met, the Commission services will open an investigation and request informal consultations with the Chinese authorities.

Prima facie evidence is understood to exist when the request includes data and elements sufficiently pointing to the existence of market disruption, either at the EU level or at an appropriate lower geographical level, and the 'disorderly development on trade' as defined in Section 4 of these guidelines. Such requests should, in principle, not be admissible if import levels are below those indicated in Section 7 of this document.

Requests may concern one or more product categories, or individual products within such categories.

The Commission will normally decide, within 15 calendar days from the reception of the request, whether to launch an investigation and request informal consultations or to reject the request. Any rejection of a request will give the reasons for its inadmissibility.

The Commission will, in principle, not accept for examination requests that constitute basically a repetition of previous requests that had been rejected, unless there were new elements that justify their presentation.

(ii) *Initiation on the Commission own initiative*

The Commission intends to initiate the procedures in two hypotheses:

- when, based on information collected under the imports monitoring system as detailed under Section 6 of these guidelines, the 'alert levels' are exceeded;
- upon the presentation of sufficiently substantiated requests by parties which are directly affected by market disruption.

In this second hypothesis, for requests to be admissible, they should come from a body or group of enterprises within the EU sufficiently representative of the sector or product in question (this would not be the case, for instance, if there were two or more associations of manufacturers of the same products which held opposite views).

The Commission intends to apply to requests for safeguard action received from industry the procedures and criteria described in section (i) above.

(b) Publication of a notice and deadlines for comments

In case of the opening of an investigation, the Commission will publish without delay a notice of initiation of an investigation in the Official Journal ('OJ') of the European Union and in the first page of the web-site page of Directorate-General for Trade ⁽¹⁾.

The notice in the OJ and in the web-site of Directorate-General for Trade will contain a summary of the basis for a safeguard investigation, including as appropriate the main elements of a request for safeguards that may have been presented, and invite all interested parties to make, within 21 calendar days, submissions with their views and providing relevant factual information. It will also specify the procedures and timetable to be followed by interested parties participating in the process.

(c) Investigation and informal consultations

The Commission will conduct an investigation to establish the facts within 60 days from the publication of the notice. This period can be extended once, in exceptional circumstances, by

⁽¹⁾ Address: http://europa.eu.int/comm/trade/index_en.htm.

ten working days. The Commission will seek all information it deems to be necessary, including as appropriate by examining representations from interested parties to make a determination on whether to request formal consultations with China.

The Commission will disclose its findings to interested parties inviting additional comment and may also conduct hearings, if requested, of interested parties. The Commission will fix appropriate limits for this purpose. At the same time the investigation is opened the Commission will request informal consultations with China. The investigation and the informal consultations with China will be conducted simultaneously and within the deadline of 60 days.

(d) Decision to request formal consultations with China

The Commission will reach its decision on the basis of the information available at the end of the investigation, and will present to the Textiles Committee the results and conclusions of the investigations and of the informal consultations with China.

In case the Commission makes a positive determination regarding the applicability of the TSSC, it will without delay call a meeting of the Textiles Committee to seek its opinion on its intention to request formal consultations with China under paragraph (a) of the TSSC. The Commission will provide the Committee with a detailed factual statement of reasons and justifications for the request, together with 'current data showing the existence or threat of market disruption and the role of products of Chinese origin in that disruption' ⁽²⁾. The further steps in the procedure are those indicated in Article 17 of Council Regulation (EEC) No 3030/93 ⁽³⁾.

After consultation of the Textiles Committee and, as appropriate, completion of the procedures provided for in Article 17 of Council Regulation (EEC) No 3030/93, the Commission will, without undue delay, request formal consultations with China. Its determination and the reasons for the decision to request consultations will be published in a notice in the *Official Journal of the European Union* and in the first page of the web-site page of the Directorate General for Trade ⁽⁴⁾ and communicated to the party that made the request.

In case the Commission finds that the conditions for the application of the TSSC are not met, it will inform the complainant accordingly with an indication of the reasons of the decision, which will also be published in the OJ of the EU.

⁽²⁾ Cf. first sub-paragraph of Article 10a).1.(a) of Council Regulation (EEC) No 3030/93 and paragraph 242(a) of the Report of the Working Party on the Accession of China to the WTO.

⁽³⁾ See Annex 2.

⁽⁴⁾ Address: http://europa.eu.int/comm/trade/index_en.htm.

(e) Decisions and procedures in case of extreme urgency

In circumstances where delay would cause damage which it would be difficult to repair, the Commission may, after a preliminary determination that imports threaten to impede the orderly development of trade, request directly formal consultations with China without an investigation, or before the investigation is completed. This could be the case in particular if there is a surge of imports of such a significant magnitude that it is deemed obvious that the orderly development of trade is threatened and that such imports will cause significant material injury to the Community industry if action is not taken. Such request shall be made after consultation with the Textile Committee, in accordance with the procedures set out in Article 17 of Council Regulation (EEC) No 3030/93.

(f) Period of formal consultations with China

In accordance with the TSSC, China should from the receipt of the requests for consultations introduce self-restrictions in the exports. Should that not be the case within 15 calendar days from the request, the Commission will transmit, without delay, to the Textiles Committee the necessary proposals to remedy the situation; these should normally provide for the establishment of import limits calculated as provided for in Article 10a.1(a) of Council Regulation (EEC) No 3030/93.

The consultations period shall last 90 days from the receipt of the request for such consultations.

(g) Adoption of safeguard measures

If no mutually satisfactory solution is reached with China within the 90 day period specified in (f) above, and if it determines that the conditions set out in Section 4 are met, the Commission may impose a quantitative limit for the products under consideration. In this context the Commission will, without delay, call a meeting of the Textiles Committee to seek its opinion on a proposal to impose a quantitative limit for the relevant categories subject to the consultations. Such limit should also apply to imports of goods of Chinese origin, exported after the publication of the notice announcing formal consultations and shipped in excess of the quantities to which China should have limited itself in accordance with §242 of the Protocol of Accession. The further steps in the procedure are those indicated in Article 17 of Council Regulation (EEC) No 3030/93 ⁽¹⁾.

Such a quantitative limit will be fixed at the amount of products of the concerned category that were imported into the EU during the first 12 months of the most recent 14

⁽¹⁾ See Annex 2.

months preceding the month in which the request for consultations was made, increased by 7,5 % (or 6 % for wool product categories). Such limit will be effective for a period ending on 31 December of the year in which consultations were requested, or, where three months or less remained in the year at the time of the request for consultations, for a period ending 12 months after the request for consultations. Consultations with China should be continued during the term of the quantitative limit set up under this provision.

Such a decision, in accordance with the relevant procedures (Commission or Council), will be published in the OJ of the EU.

After the expiry of a safeguard measure on a given product, the procedures described in this section will be applicable for the introduction of new safeguards on the same products.

6. EARLY WARNING SYSTEM — EX-OFFICIO INITIATION OF INVESTIGATION AND REQUEST FOR INFORMAL CONSULTATIONS

In the light of past experience and in particular the development of imports from China in product categories liberalised in 2002, it would be appropriate to provide some guidance concerning the steps that the Commission will follow in order to give the highest possible degree of predictability for trade, to facilitate that imports from China evolve in a manner that avoids market disruption, and thus give maximum scope for finding acceptable solutions in a way that safeguard action is taken only as a last resort.

To pursue these objectives, the Commission will introduce an early warning system according to which, should the trend of imports from China show that there are indications that a 'disorderly development of imports' is occurring or is imminent, and before invoking the safeguard clause, it would first ask for informal consultations with China and open an investigation on whether such imports may be causing market disruption. Only in cases where, despite such discussions, the trends in trade continued in such a way that the conditions for the application of the safeguard were met, the Commission would, using the procedures established in Council Regulation (EEC) No 3030/93, formally invoke the safeguard clause and therefore request formal consultations with China.

In any event, determinations to take safeguard action under the TSSC should be made on a case-by-case basis, after verification that the conditions for the application of the TSSC are met and — unless in cases of extreme urgency — following an investigation in line with the procedures outlined above.

On the basis of the monitoring of imports that it is carrying out in accordance with the provisions of Council Regulation (EEC) No 3030/93, the Commission will be examining regularly whether some indicative thresholds of actual imports ⁽¹⁾ from China may be exceeded, either on a yearly basis or during a shorter period of time (in principle no less than 3 months) on a *pro-rata temporis* basis. In such cases, the Commission will establish contact with the Chinese authorities to examine the evolution of imports, its impact and the likelihood that the trends may continue. Such indicative thresholds, which contemplate very considerable increases over the quotas for China in 2004, have been determined, on a category by category basis, taking into account:

- (a) The extent to which the quotas eliminated on 1 January 2005 were utilised, also taking into account the relative position of other countries subject to quota in 2004.
- (b) The share of total EU imports represented by imports from China as an indication or scope for expansion.
- (c) The import penetration ratios and their evolution.
- (d) The levels of EU production and their evolution.
- (e) Other indicators concerning the situation of the market in the products concerned, such as the trends in consumption and prices.

The tables below give an indication of the growth of imports from China which, if reached, would in principle lead the Commission to open an investigation and request informal consultations with China:

TABLE A

Formula to determine the consultation levels				
Products whose imports from China represent as % of total EU imports in 2004 in volume	2005 Increase over 2004 in % of 2004 imports	2006 Increase over 2005 level in % of 2004 imports	2007 Increase over 2006 level in % of 2004 imports	2008 Increase over 2007 level in % of 2004 imports
7,5 % or less	100 %	50 %	50 %	50 %
> 7,5 % to 20 %	50 %	50 %	50 %	50 %
> 20 % to 35 %	30 %	30 %	30 %	30 %
Over 35 %	10 %	10 %	10 %	10 %

TABLE B

Consultation levels resulting from the application of the formula in Table A

[NB: table to be developed on a category by category basis after application of the formula]

Product category	Unit	Chinese 2004 imports EU-25 (thousands of units)	Chinese 2004 quota EU-25 (thousands of units)	Level 2005	Level 2006	Level 2007	Level 2008
1 — cotton yarn	tns	3 263	4 770	9 540	11 925	14 310	16 695
2 — cotton fabrics	tns	34 465	30 556	51 698	68 930	86 163	103 395
3 — synth. fabrics	tns	10 938	8 088	21 876	27 345	32 814	38 283
4 — T-shirts	pcs	191 473	126 808	382 946	478 683	574 419	670 156

⁽¹⁾ Data on actual imports collected in accordance with Article 27 of Annex III of Council Regulation (EEC) No 3030/93. Should, however, such data not be available in a timely manner for reasons outside its control, the Commission may decide to start the procedure and open an investigation and request informal consultations with China if the data available from import licensing (cf. Article 25 of Annex III of Council Regulation (EEC) No 3030/93) indicate that imports from China are likely to exceed such 'consultations levels'.

Product category	Unit	Chinese 2004 imports EU-25 (thousands of units)	Chinese 2004 quota EU-25 (thousands of units)	Level 2005	Level 2006	Level 2007	Level 2008
5 — pullovers	pcs	64 324	39 422	128 648	160 810	192 972	225 134
6 — men's trousers	pcs	75 688	40 913	151 376	189 220	227 064	264 908
7 — blouses	pcs	26 035	17 093	52 070	65 088	78 105	91 123
8 — men's shirts	pcs	40 837	27 723	61 256	81 674	102 093	122 511
9 — terry towels	tns	13 538	6 962	20 307	27 076	33 845	40 614
12 — stockings + socks	prs	131 443	132 029	264 058	330 073	396 087	462 102
13 — men's underpants	pcs	681 114	586 244	749 225	817 337	885 448	953 560
14 — men's overcoats	pcs	24 326	17 887	26 759	29 191	31 624	34 056
15 — women overcoats	pcs	35 570	20 131	46 241	56 912	67 583	78 254
16 — men's suits	pcs	17 407	17 181	19 148	20 888	22 629	24 370
17 — jackets & blazers	pcs	6 063	13 061	14 367	15 804	17 241	18 677
20 — bed linen	tns	7 894	5 681	15 788	19 735	23 682	27 629
22 — synthetic fibre yarn	tns	9 364	19 351	38 702	48 378	58 053	67 729
26 — dresses	pcs	8 682	6 645	17 364	21 705	26 046	30 387
28 — trousers (other)	pcs	102 204	92 909	132 865	163 526	194 188	224 849
29 — women suits	pcs	22 541	15 687	24 796	27 050	29 304	31 558
31 — brassieres	pcs	128 272	96 488	166 754	205 235	243 717	282 198
39 — table + kitchen linen	tns	7 342	5 681	11 013	14 684	18 355	22 026
78 — other garments	tns	31 395	36 651	40 316	43 981	47 646	51 311
83 — overcoats	tns	12 039	10 883	15 651	19 262	22 874	26 486
97 — nets	tns	3 124	2 861	4 062	4 999	5 936	6 873
163 — medical gauze	tns	8 657	8 481	9 523	10 388	11 254	12 120
ex 20 — bed linen silk	tns	100	59	200	250	300	350
115 — flax or ramie yarn	tns	2 727	1 413	3 545	4 363	5 181	6 000
117 — woven fabrics flax	tns	1 510	684	2 264	3 019	3 774	4 529
118 — table bedlinen flax	tns	2 409	1 513	2 650	2 891	3 132	3 373
122 — sacks and bags flax	tns	360	220	468	576	684	792

Product category	Unit	Chinese 2004 imports EU-25 (thousands of units)	Chinese 2004 quota EU-25 (thousands of units)	Level 2005	Level 2006	Level 2007	Level 2008
136A — woven fabrics silk	tns	446	462	693	924	1 155	1 386
156 — blouses, pullover silk	tns	7 291	3 986	8 020	8 749	9 478	10 207
157 — garments knitted	tns	17 941	13 738	19 735	21 529	23 323	25 117
159 — blouses silk	tns	3 236	4 352	4 787	5 222	5 658	6 093

The increases provided for the calculation of such levels are so important that, if they were exceeded, it could be considered in principle that there is a high likelihood that a 'disorderly development of imports' is taking place. In case they were reached, either on a yearly basis or on a pro-rata basis over a period of in principle no less than 3 months⁽¹⁾, the Commission would launch an investigation to examine whether there are factors that may lead to the conclusion that the development of those imports prevent or not the 'orderly development of imports' and whether the second condition for the application of the TSSC is met, i.e. market disruption in the sense of at least threat of injury to domestic industry. These thresholds would only trigger an investigation and informal consultations but would not be relevant in determining application of whether the TSSC is justified or not.

The consultations levels for 2006, 2007 and 2008 may be adjusted in the light of further examination and other factors that may come to the light subsequently.

The formula for the calculation of the consultation levels can be applied as appropriate for particular products determined at a level of aggregation below that of a product category. In that case, if imports from China exceeded the resulting levels on a yearly or on a pro-rata basis (in principle no less than 3 months), Commission could also, on its own initiative or at the request of a Member State or of an interested party, request informal consultations with China and open an enquiry.

Such levels therefore should be seen as an indication, which in case they are reached do not trigger any automatic application of the TSSC.

7. LEVELS BELOW WHICH, IN PRINCIPLE, NO TSSC ACTION SHOULD BE CONSIDERED

The Commission also considers that, in case some levels are not exceeded, there should in principle be no case for the invocation of the TSSC. This should be particularly the case when a Chinese expansion is moderate, taking into account their relative position in the EU market. In those instances, the Commission will consider that such increases are normal after the elimination of import quotas and therefore will in principle — i.e. unless evidence to the contrary is provided — consider that there is no 'disorderly development of trade'. These levels, which would provide already a considerable margin for expansion of Chinese exports to the EU, are indicated in the table below:

⁽¹⁾ The calculation of the 'consultation' or 'alert' levels on a pro-rata basis should be done in such a way that, insofar as possible, seasonal aspects are taken into account. This may make it advisable to apply the formula for the calculation of the levels for the relevant period of the year to the imports of a comparable period of 2004.

TABLE C

Formula to determine the minimum levels below which the TSSC will not be triggered				
Products whose imports from China represent as % of total EU imports in 2004 in volume	2005 Increase over 2004 in % of 2004 imports	2006 Increase over 2005 level in % of 2004 imports	2007 Increase over 2006 level in % of 2004 imports	2008 Increase over 2007 level in % of 2004 imports
7,5 % or less	25 %	25 %	25 %	25 %
> 7,5 % to 20 %	20 %	20 %	20 %	20 %
> 20 % to 35 %	15 %	15 %	15 %	15 %
Over 35 %	10 %	10 %	10 %	10 %

TABLE D

Levels below which in principle the TSSC should not be invoked

Product category	Unit	Chinese 2004 imports EU-25 (thousands of units)	Chinese 2004 quota EU-25 (thousands of units)	Level 2005	Level 2006	Level 2007	Level 2008
1 — cotton yarn	tns	3 263	4 770	5 963	7 155	8 348	9 540
2 — cotton fabrics	tns	34 465	30 556	41 358	48 251	55 144	62 037
3 — synth. fabrics	tns	10 938	8 088	13 673	16 407	19 142	21 876
4 — T-shirts	pcs	191 473	126 808	239 341	287 210	335 078	382 946
5 — pullovers	pcs	64 324	39 422	80 405	96 486	112 567	128 648
6 — men's trousers	pcs	75 688	40 913	94 610	113 532	132 454	151 376
7 — blouses	pcs	26 035	17 093	32 544	39 053	45 561	52 070
8 — men's shirts	pcs	40 837	27 723	49 004	57 172	65 339	73 507
9 — terry towels	tns	13 538	6 962	16 246	18 953	21 661	24 368
12 — stockings + socks	prs	131 443	132 029	165 036	198 044	231 051	264 058
13 — men's underpants	pcs	681 114	586 244	749 225	817 337	885 448	953 560
14 — men's overcoats	pcs	24 326	17 887	26 759	29 191	31 624	34 056
15 — women overcoats	pcs	35 570	20 131	40 906	46 241	51 577	56 912
16 — men's suits	pcs	17 407	17 181	19 148	20 888	22 629	24 370
17 — jackets & blazers	pcs	6 063	13 061	14 367	16 326	18 285	20 245
20 — bed linen	tns	7 894	5 681	9 868	11 841	13 815	15 788
22 — synthetic fibre yarn	tns	9 364	19 351	24 189	29 027	33 864	38 702
26 — dresses	pcs	8 682	6 645	10 853	13 023	15 194	17 364
28 — trousers (other)	pcs	102 204	92 909	117 535	132 865	148 196	163 526
29 — women suits	pcs	22 541	15 687	24 796	27 050	29 304	31 558

Product category	Unit	Chinese 2004 imports EU-25 (thousands of units)	Chinese 2004 quota EU-25 (thousands of units)	Level 2005	Level 2006	Level 2007	Level 2008
31 — brassieres	pcs	128 272	96 488	147 513	166 754	185 994	205 235
39 — table + kitchen linen	tns	7 342	5 681	8 810	10 279	11 747	13 216
78 — other garments	tns	31 395	36 651	40 316	43 981	47 646	51 311
83 — overcoats	tns	12 039	10 883	13 845	15 651	17 457	19 262
97 — nets	tns	3 124	2 861	3 593	4 062	4 530	4 999
163 — medical gauze	tns	8 657	8 481	9 523	10 388	11 254	12 120
ex 20 — bed linen silk	tns	100	59	125	150	175	200
115 — flax or ramie yarn	tns	2 727	1 413	3 136	3 545	3 954	4 363
117 — woven fabrics flax	tns	1 510	684	1 812	2 113	2 415	2 717
118 — table bedlinen flax	tns	2 409	1 513	2 650	2 891	3 132	3 373
122 — sacks and bags flax	tns	360	220	414	468	522	576
136A — woven fabrics silk	tns	360	220	414	468	522	576
156 — blouses, pullover silk	tns	7 291	3 986	8 020	8 749	9 478	10 207
157 — garments knitted	tns	17 941	13 738	19 735	21 529	23 323	25 117
159 — blouses silk	tns	3 236	4 352	4 787	5 222	5 658	6 093

ANNEX 1

Extract of the Report of the Working Party on the Accession of China

242. The representative of China agreed that the following provisions would apply to trade in textiles and clothing products until 31 December 2008 and be part of the terms and conditions for China's accession:
- (a) In the event that a WTO Member believed that imports of Chinese origin of textiles and apparel products covered by the ATC as of the date the WTO Agreement entered into force, were, due to market disruption, threatening to impede the orderly development of trade in these products, such Member could request consultations with China with a view to easing or avoiding such market disruption. The Member requesting consultations would provide China, at the time of the request, with a detailed factual statement of reasons and justifications for its request for consultations with current data which, in the view of the requesting Member, showed: (1) the existence or threat of market disruption; and (2) the role of products of Chinese origin in that disruption;
 - (b) Consultations would be held within 30 days of receipt of the request. Every effort would be made to reach agreement on a mutually satisfactory solution within 90 days of the receipt of such request, unless extended by mutual agreement;
 - (c) Upon receipt of the request for consultations, China agreed to hold its shipments to the requesting Member of textile or textile products in the category or categories subject to these consultations to a level no greater than 7,5 per cent (6 per cent for wool product categories) above the amount entered during the first 12 months of the most recent 14 months preceding the month in which the request for consultations was made;
 - (d) If no mutually satisfactory solution were reached during the 90-day consultation period, consultations would continue and the Member requesting consultations could continue the limits under subparagraph (c) for textiles or textile products in the category or categories subject to these consultations;
 - (e) The term of any restraint limit established under subparagraph (d) would be effective for the period beginning on the date of the request for consultations and ending on 31 December of the year in which consultations were requested, or where three or fewer months remained in the year at the time of the request for consultations, for the period ending 12 months after the request for consultations;
 - (f) No action taken under this provision would remain in effect beyond one year, without reapplication, unless otherwise agreed between the Member concerned and China; and
 - (g) Measures could not be applied to the same product at the same time under this provision and the provisions of Section 16 of the Draft Protocol.

The Working Party took note of these commitments.

ANNEX 2

Extract of provisions concerning the internal EU procedures for the adoption of decisions concerning the TSSC

Article 10a of Council Regulation (EEC) No 3030/93:

'Article 10a

Special safeguard provisions for China

1. Should imports into the Community of textiles and apparel products originating in China and covered by the (ATC) threaten to impede, owing to market disruption, the orderly development of trade in those products, such imports may, during the period ending on 31 December 2008, be made subject to specific safeguard measures under the following conditions:
 - (a) The Commission — acting at the request of a Member State or on its own initiative — shall open consultations with China with a view to easing or avoiding such market disruption. The request for consultation shall provide China with a detailed factual statement of reasons and justifications for the request, with current data showing the existence or threat of market disruption and the role of products of Chinese origin in that disruption. Consultations shall be commenced within 30 days of receipt of the request, the consultation period lasting 90 days from such receipt, unless extended by mutual agreement.

Upon receipt of the request for consultations China shall, during the period of consultation, hold its shipments to the Community of textile or textile products in the category or categories subject to the consultations, at a level no greater than 7,5 % (6 % for wool product categories) above the amount entered during the first 12 months of the most recent 14 months preceding the month in which the request for consultations was made.
 - (b) The Commission may, if no mutually satisfactory solution is reached during the 90-day consultation period, establish a quantitative limit for the category or categories subject to the consultations. The quantitative limit shall be set up on the basis of the level at which China held its shipments upon receipt of the Community's request for consultation. The term of this quantitative limit shall be effective for a period ending on 31 December of the year in which consultations were requested, or, where three months or less remained in the year at the time of the request for consultations, for a period ending 12 months after the request for consultations. Consultations with China shall be continued during the term of the quantitative limit set up under this provision.
 - (c) No action taken under this paragraph shall remain in effect beyond one year without reapplication, unless otherwise agreed between the Community and China. Measures shall not be applied to the same product at the same time under this paragraph and the provisions of Section 16 of the Protocol on the Accession of China to the WTO. Measures taken pursuant to point (b) shall be the subject of a Commission communication published without delay in the *Official Journal of the European Communities*.
2. The quantitative limits established pursuant to this Article shall not apply to products which have already been dispatched to the Community provided that they were shipped from the supplier country in which they originate for export to the Community before the date of notification of the request for consultations.
3. The measures provided for in this Article, including opening of consultations as provided for in paragraph 1(a), shall be adopted and implemented in accordance with the procedure laid down in Article 17.'

Article 17 of Council Regulation (EEC) No 3030/93:

'Article 17

The textile committee

1. The Commission shall be assisted by a committee (hereinafter referred to as the "textile committee").
2. Where reference is made to this paragraph, Articles 5 and 7 of Decision 1999/468/EC shall apply.

The period laid down in Article 5(6) of Decision 1999/468/EC shall be set at one month.
3. The textile committee shall adopt its rules of procedure.'

Articles 5 and 7 of Council Decision 1999/468/EC (1):

Article 5

Regulatory procedure

1. The Commission shall be assisted by a regulatory committee composed of the representatives of the Member States and chaired by the representative of the Commission.
2. The representative of the Commission shall submit to the committee a draft of the measures to be taken. The committee shall deliver its opinion on the draft within a time-limit which the chairman may lay down according to the urgency of the matter. The opinion shall be delivered by the majority laid down in Article 205(2) of the Treaty in the case of decisions which the Council is required to adopt on a proposal from the Commission. The votes of the representatives of the Member States within the Committee shall be weighted in the manner set out in that Article. The chairman shall not vote.
3. The Commission shall, without prejudice to Article 8, adopt the measures envisaged if they are in accordance with the opinion of the committee.
4. If the measures envisaged are not in accordance with the opinion of the committee, or if no opinion is delivered, the Commission shall, without delay, submit to the Council a proposal relating to the measures to be taken and shall inform the European Parliament.
5. If the European Parliament considers that a proposal submitted by the Commission pursuant to a basic instrument adopted in accordance with the procedure laid down in Article 251 of the Treaty exceeds the implementing powers provided for in that basic instrument, it shall inform the Council of its position.
6. The Council may, where appropriate in view of any such position, act by qualified majority on the proposal, within a period to be laid down in each basic instrument but which shall in no case exceed three months from the date of referral to the Council.

If within that period the Council has indicated by qualified majority that it opposes the proposal, the Commission shall re-examine it. It may submit an amended proposal to the Council, re-submit its proposal or present a legislative proposal on the basis of the Treaty.

If on the expiry of that period the Council has neither adopted the proposed implementing act nor indicated its opposition to the proposal for implementing measures, the proposed implementing act shall be adopted by the Commission.

Article 7

1. Each committee shall adopt its own rules of procedure on the proposal of its chairman, on the basis of standard rules of procedure which shall be published in the *Official Journal of the European Communities*.
Insofar as necessary existing committees shall adapt their rules of procedure to the standard rules of procedure.
2. The principles and conditions on public access to documents applicable to the Commission shall apply to the committees.
3. The European Parliament shall be informed by the Commission of committee proceedings on a regular basis. To that end, it shall receive agendas for committee meetings, draft measures submitted to the committees for the implementation of instruments adopted by the procedure provided for by Article 251 of the Treaty, and the results of voting and summary records of the meetings and lists of the authorities and organisations to which the persons designated by the Member States to represent them belong. The European Parliament shall also be kept informed whenever the Commission transmits to the Council measures or proposals for measures to be taken.
4. The Commission shall, within six months of the date on which this Decision takes effect, publish in the *Official Journal of the European Communities*, a list of all committees which assist the Commission in the exercise of implementing powers. This list shall specify, in relation to each committee, the basic instrument(s) under which the committee is established. From 2000 onwards, the Commission shall also publish an annual report on the working of committees.
5. The references of all documents sent to the European Parliament pursuant to paragraph 3 shall be made public in a register to be set up by the Commission in 2001.'

(1) OJ L 184, 17.7.1999, p. 23.