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Report to Congressional Committees

April 2005

U.S.-CHINA TRADE

Textile Safeguard Procedures Should Be Improved

GAO-05-296

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Textile Safeguard Procedures Should Be Improved

GAO Accountability • Integrity • Reliability

Highlights

Highlights of GAO-05-296, a report to congressional committees

Why GAO Did This Study

U.S. textile and apparel imports from China have more than doubled in value since China became a World Trade Organization (WTO) member. When joining the WTO, China agreed to a special textile safeguard mechanism applicable only to that country. In this report, GAO (1) describes the mechanism, (2) describes requests for safeguard action filed by U.S. producers and the results of these requests, and (3) evaluates U.S. agency procedures for transparency and accessibility.

What GAO Recommends

If the courts rule that CITA may process threat-based cases, GAO recommends that CITA clarify its procedures for such cases.

GAO also recommends that the Commerce Department take actions to make production data more available for industry sectors that are at risk of experiencing disruptive import surges.

Agency officials did not comment on the first recommendation due to ongoing litigation but had concerns about the descriptions of CITA procedures. Agency officials disagreed with the second recommendation, stating that such actions would not be productive. GAO made some revisions in response, but continues to believe that the recommendations would make the textile safeguard more transparent and accessible.

www.gao.gov/cgi-bin/getrpt?GAO-05-296.

To view the full product, including the scope and methodology, click on the link above. For more information, contact Loren Yager at (202) 512-4347 or yagerl@gao.gov.

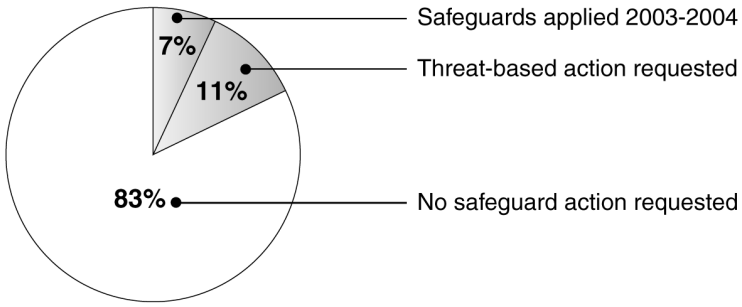
What GAO Found

The WTO China textile safeguard is a transitional mechanism that allows the United States and other WTO members to temporarily restrict growth in specific textile and apparel imports from China through the end of 2008 even though textile and apparel quotas in general were eliminated on January 1, 2005. The U.S. government's interagency Committee for the Implementation of Textile Agreements (CITA) has established procedures that explain to the public how it will consider safeguard action requests. These procedures stipulate that when requesting safeguard actions, producers must submit data on imports, market share, U.S. production, and additional information showing how imports from China have adversely affected U.S. industry or any other data deemed pertinent.

CITA has applied safeguard quotas on specific products in response to 4 out of 5 U.S. industry requests that were based primarily on evidence of actual market disruption. Twelve threat-based requests remain unresolved.

Procedural shortcomings have impaired effective application of the China textile safeguard. First, CITA's procedures created uncertainty about when, how, and under what circumstances it would consider threat-based requests. Seventeen months elapsed before CITA issued any procedures about the China textile safeguard, and the procedures did not clearly indicate how CITA would proceed in threat-based cases. Also, a court-ordered injunction prevents further government consideration of threat-based cases until litigation is resolved. GAO does not take any position on the legal issues involved. Regardless of the result, this situation will affect the speed, scope, and duration of potential relief available to U.S. producers who made these requests. Second, the unavailability of production data on about 20 percent of textile and apparel product categories—data that is necessary to fulfill CITA filing requirements—inhibits equal access to the safeguard. Beyond these issues, uncertainty about future developments in global textile trade makes the future impact of the safeguard unclear.

Share of $12 Billion in U.S. Imports from China Subject to Safeguards or Requests



Source: GAO analysis of data from the Department of Commerce, Bureau of the Census, and the Office of Textiles and Apparel.

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Abbreviations

CITA	Committee for the Implementation of Textile Agreements
OTEXA	Office of Textiles and Apparel
WTO	World Trade Organization

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United States Government Accountability Office
Washington, D.C. 20548

April 4, 2005

The Honorable Frank R. Wolf
Chairman
The Honorable Alan B. Mollohan
Ranking Minority Member
Subcommittee on Science, State, Justice and
Commerce, and Related Agencies
Committee on Appropriations
House of Representatives

The Honorable Richard C. Shelby
Chairman
The Honorable Barbara A. Mikulski
Ranking Minority Member
Subcommittee on Commerce, Justice, and Science
Committee on Appropriations
United States Senate

Concern about textile and apparel imports from China has increased over the last several years as the 50-year-old global quota system that regulated trade in this industry was phased out and finally terminated on January 1, 2005. Since China joined the World Trade Organization[1] (WTO), U.S. imports of textile and apparel products from that country have grown rapidly in value from about $7 billion in 2001 to about $15 billion in 2004[2] and may increase further now that all remaining quotas have been removed.

In anticipation of China's joining the WTO, the United States sought and obtained that country's agreement to a textile safeguard that allows WTO members to impose temporary quotas on Chinese-origin textile and apparel imports—thus permitting the United States to limit disruptive import surges in ways consistent with long-standing U.S.-China bilateral arrangements. The United States and China originally agreed on the safeguard language in the negotiations that led to Congress granting China permanent normal trade relations status and cleared the way for that

[1]China became a member of this organization in December 2001.

[2]In this report, import values for years prior to 2004 have been adjusted for inflation and are reported in constant 2004 U.S. dollars (see app. I).

country to become a member of the WTO. Relevant U.S. government agencies have received requests for relief from U.S. industry and have applied safeguard measures. However, domestic producers and importers of textile and apparel products have expressed some concerns about the procedures the United States has employed for China textile safeguard cases.

In May 2003, the House Appropriations Committee's Subcommittee on Commerce, Justice, and State, the Judiciary, and Related Agencies held hearings regarding U.S. government efforts to support American businesses adversely affected by imports from China. In light of concerns expressed at this hearing, the House-Senate conference report on fiscal year 2004 appropriations legislation[3] requested that GAO monitor the efforts of U.S. government agencies responsible for ensuring free and fair trade with China. In subsequent discussions with your staff, we agreed to respond by providing a number of reports on relief mechanisms available to U.S. producers that are adversely affected by unfair or surging imports, and the manner in which they have been applied to China.[4] In this report, we

- describe the China textile safeguard,
- describe the requests for safeguard action filed by domestic industry and the results of these requests, and
- evaluate agency procedures for transparency and access to safeguard measures and identify additional issues that may affect application of such measures in the future.

To address the first objective, we reviewed U.S. laws and procedures as well as relevant WTO agreements. We interviewed officials from the five member agencies of the U.S. government's Committee for the Implementation of Textile Agreements (CITA), as well as WTO officials and other experts on trade law.

[3]H.R. Rep. No. 108-401, at 574 (2003).

[4]Forthcoming reports will focus on countervailing duties, other safeguard measures, and antidumping duties.

To address the second and third objectives, we obtained and analyzed relevant information from both governmental and private sector sources. We reviewed the official record on each of the safeguard requests that CITA had considered as of the end of 2004. To clarify the views of those favoring and opposing application of safeguard measures, we spoke with officials from trade associations representing U.S. textile and apparel producers, as well as importers and retailers. We interviewed Chinese government officials and, to obtain a broader perspective on global textile trade in a postquota environment, spoke with representatives of additional textile and apparel exporting and importing countries. Finally, we conducted extensive analyses of textile and apparel trade and economic data. We performed our work from January 2004 to January 2005 in accordance with generally accepted government auditing standards. Appendix I contains a more detailed description of our scope and methodology.

Results in Brief

The China textile safeguard allows WTO members to place defined limits on particular textile and apparel imports from China through the end of 2008, despite the general elimination of most textile quotas on January 1, 2005. When a member finds that certain Chinese-origin imports are "due to market disruption, threatening to impede the orderly development of trade" in these products, it may request consultations with China and, at the same time, impose specific quota limits.[5] When requesting consultations, the importing member provides China with a statement showing the existence or threat of market disruption and the role of Chinese imports in that disruption or threat. If the two members cannot agree on another solution, the quota limits remain in place. In the United States, the interagency Committee for the Implementation of Textile Agreements (CITA) has adopted procedures that explain the process it follows in considering safeguard action requests from the public. CITA's procedures stipulate that requests must include import, market share, and U.S. production data, and additional information showing how imports from China have adversely affected the domestic industry, such as their effect on prices in the United States, or any other data deemed to be pertinent. They also establish a 15-week approximate time frame for deciding whether to impose safeguard measures. The duration of any safeguard applied can vary a great deal—from 3 months to a year—depending on when U.S. producers submit their requests.

[5]The agreement does not define the terms "market disruption" or "orderly development of trade."

During 2003 and 2004, U.S. producer groups claimed market disruption and requested safeguard actions against five Chinese products, including brassieres and dressing gowns. In 4 of these cases, CITA determined, among other things, that the market had been disrupted and that Chinese imports had played a role in that disruption, and applied safeguard measures. During 2004, U.S. producers also filed 12 "threat-based" requests for safeguard action to prevent future market disruption. In 9 of these requests, U.S. producers sought action to control expected growth in products to be removed from quota restrictions on January 1, 2005. In the remaining 3 instances, U.S. producers requested reapplication of previously imposed safeguards slated to expire in December 2004 on the grounds that this expiration threatened a renewal of disruptive import surges. CITA agreed to consider these 12 requests and began investigating. Decisions on these cases were due beginning in February 2005, but have remained unresolved due to a pending lawsuit against CITA by U.S. textile and apparel importers.

Procedural shortcomings have impaired application of the China textile safeguard. First, we found that CITA was slow to issue procedures and that the procedures do not provide clear guidance about threat-based requests. The procedures were not issued until about 17 months after China joined the WTO and after producer groups requested safeguard actions. When issued, the procedures focused primarily on market-disruption-based requests. U.S. importers and producers that we consulted in preparing this report experienced uncertainty about whether or how threat-based cases would proceed. In December 2004, U.S. importers filed a lawsuit to prevent CITA from considering these threat-based requests, alleging that CITA violated its own procedures in accepting them. The Court of International Trade has enjoined CITA from considering threat-based requests pending further judicial review. Regardless of the result, this situation will affect the speed, scope, and duration of potential relief available to U.S. producers. Second, we found that uneven availability of production data hinders access to the safeguard. U.S. government production data are unavailable on about half of the total value of textile and apparel imports from China. In the event that producer groups want to file a safeguard request on a product for which production data are unavailable, they must collect their own data to meet the safeguard filing requirements. This can be a difficult and time-consuming process that limits access to the safeguard for some U.S. producers.

We recommend (1) CITA take actions to clarify its procedures about how it will proceed in threat-based cases in the event that the courts rule that

CITA may process such cases and (2) the Department of Commerce take actions to improve the availability of required U.S. production data for industry sectors that are most likely to experience difficulties due to Chinese import surges. The Department of Commerce, in its capacity as CITA chair, compiled comments from the other member agencies into one letter. With respect to our first recommendation, CITA noted that our review focused on issues involved in the ongoing litigation, and, per a Department of Justice request, it could not comment on certain parts of the report. Nevertheless, CITA expressed concern about how we described the timing of issuance and content of CITA procedures as they relate to threat-based requests. CITA also expressed concern that some of our conclusions in the report seemed to be premised on the arguments of private parties in ongoing litigation. Our report does not take any position on the legal issues that are the subject of the ongoing litigation between the U.S. Association of Importers of Textiles and Apparel and the United States, including whether CITA's procedures allow for threat-based cases. Nevertheless, we continue to believe the procedures could be improved in this regard to further increase clarity and transparency. We believe the report's conclusions represent a balanced summation of the facts, based on our own analysis of evidence obtained from both government and private-sector sources. CITA disagreed with our second recommendation believing that it would not be productive. Additionally, CITA officials pointed out some constraints in making more production data available. We modified our discussion of unavailable production data and our recommendation to reflect some of the limitations in the publication of U.S. government production statistics. However, we continue to be concerned that some potential requesters may be disadvantaged in the future in light of the potential difficulties associated with private production data collection.

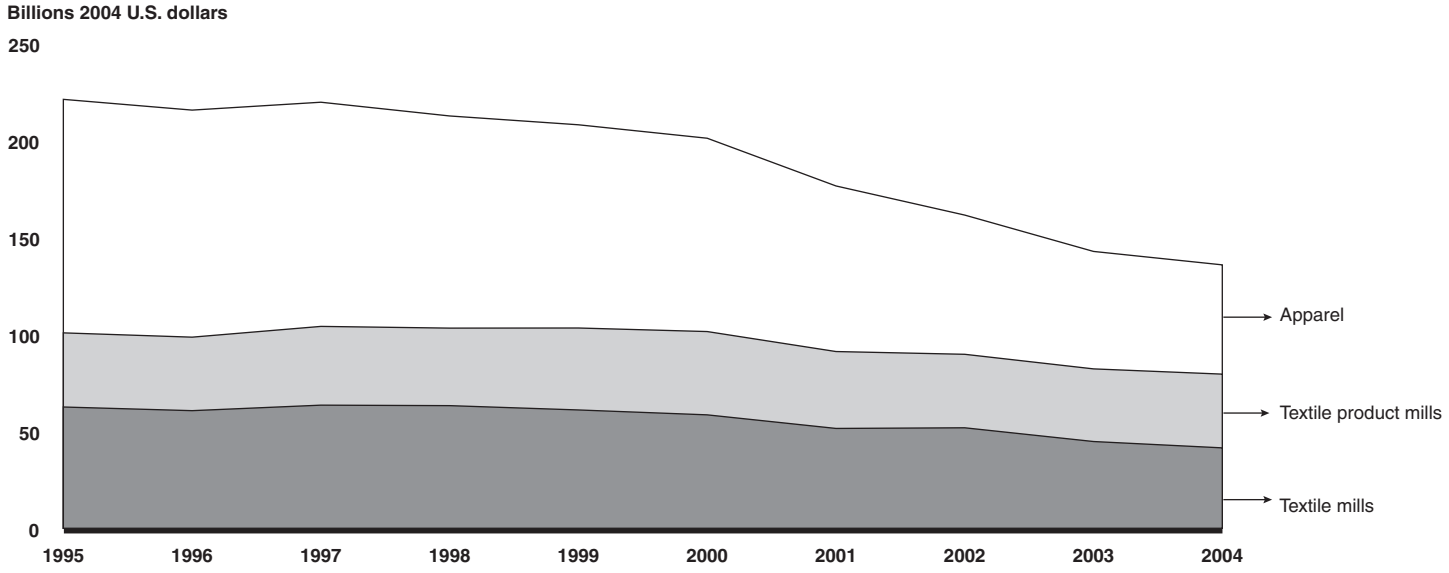
Background

U.S. textile and apparel production and employment have both declined over the past decade. Textile and apparel imports have grown throughout this period, with China recently playing a major role in this growth. Until recently, CITA limited this growth by administering quota limits, including limits on imports from China. However, with the final removal of all quotas on January 1, 2005, textile and apparel trade is now governed by the same WTO rules as apply to trade in other sectors.

U.S. Textile Production and Employment Have Declined

U.S. textile and apparel production and employment have both declined over the last decade. Production of apparel (and textiles to a lesser extent) tends to be relatively labor intensive. Consequently, developing countries, which tend to have significantly lower labor costs, have a competitive advantage. As shown in figure 1, U.S. producers' shipments of apparel products fell by over half between 1995 and 2004, to about $56 billion in 2004. Similarly, shipments by textile mills (yarns, threads, and fabrics) fell by about a third, to about $41 billion. On the other hand, textile product mills (carpets, curtains, bedspreads) remained relatively stable over the time period, with about $38 billion in shipments in 2004.[6]

Figure 1: U.S. Production (Shipments) in Textile and Apparel Sectors, 1995-2004



Source: GAO analysis of Census and Federal Reserve Bank data.

Notes: Industry shipments may be made to either the U.S. or foreign (export) markets.

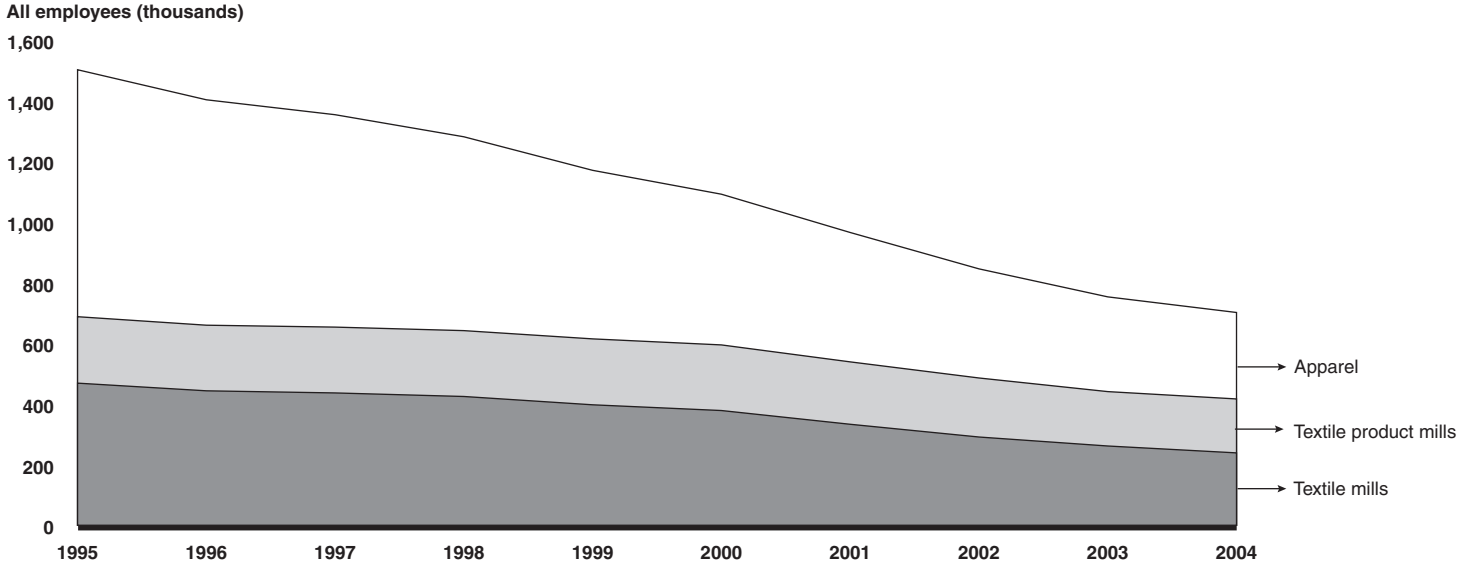
Textile mills produce inputs such as yarns, threads, and fabrics. Textile product mills produce goods such as carpets, curtains, bedspreads, and other textile products besides apparel (clothing).

Figure 2 shows U.S. employment losses in this industry are also largely attributable to declines in the apparel sector. From 1995 through 2004, overall employment in this industry fell by over half, from about 1,502,000

[6]Production values reported here are in 2004 U.S. dollars (see app. I).

employees in 1995 to about 701,000 in 2004. During that time, the apparel sector lost 65 percent of its employment, while the textile mills sector contracted by 49 percent and the textile product mills sector contracted by 19 percent.

Figure 2: U.S. Domestic Textile and Apparel Employment, 1995-2004



Source: U.S. Department of Labor, Bureau of Labor Statistics.

Note: Textile mills produce inputs such as yarns, threads, and fabrics. Textile product mills produce goods such as carpets, curtains, bedspreads, and other textile products besides apparel (clothing).

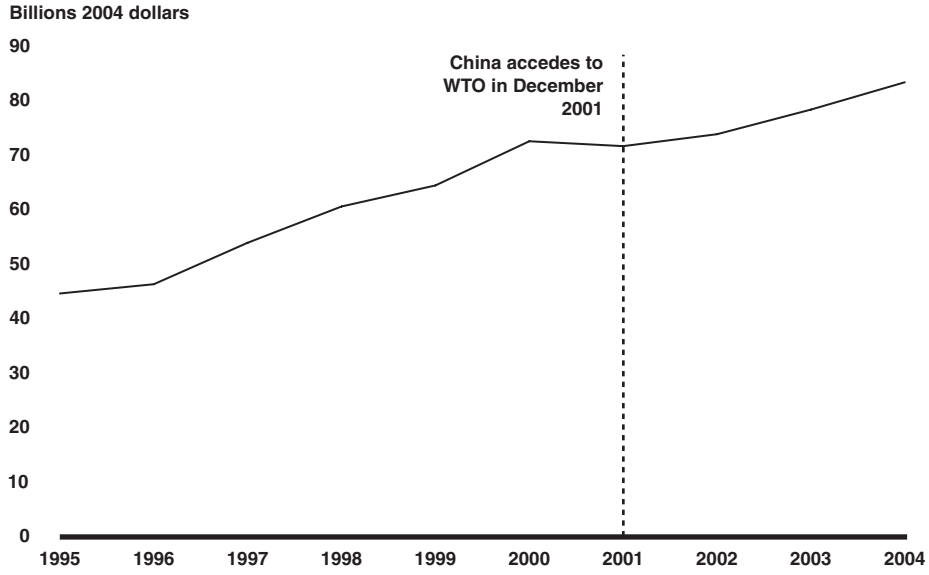
Textile and Apparel Imports Have Grown, Especially from China

As shown in figure 3, U.S. imports of textile and apparel products from all countries have grown significantly in the past decade, rising from about $44 billion in 1995 to about $83 billion in 2004.[7] While other U.S. trade partners, such as Mexico, accounted for much of this growth in earlier years, imports from China grew rapidly following its accession to the WTO in 2001. As shown in figure 4, the value of U.S. textile and apparel imports from China grew from about $5 billion in 1995 to about $15 billion in 2004, with much of that growth occurring since 2001. While China's share of the U.S. textile and apparel market fell during the late 1990s, that country's share of the

[7]Import values reported here are in inflation-adjusted 2004 U.S. dollars (see app. I).

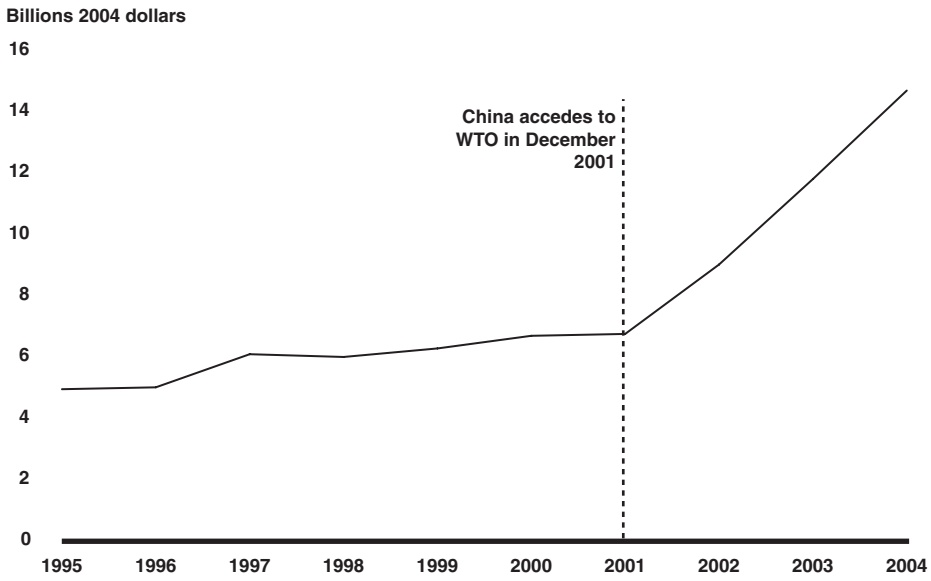
market increased from about 9 percent in 2000 to 18 percent in 2004. Much of that growth was in categories of products that were already removed from quota or were removed from quota in 2002. China is now the largest supplier of textile and apparel imports to the United States.

Figure 3: U.S. Textile and Apparel Imports from All Countries, 1995-2004



Source: GAO analysis of U.S. Department of Commerce, Office of Textiles and Apparel data.

Figure 4: U.S. Textile and Apparel Imports from China, 1995-2004



Source: GAO analysis of U.S. Department of Commerce, Office of Textiles and Apparel data.

Import Growth No Longer Subject to Regulation by Quota

Until recently, the United States governed growth in textile imports through a system of quotas established through approximately 45 bilateral agreements with individual supplier countries. In 1994, however, the United States (as well as Canada and the European Union, which also maintained broad-ranging quota arrangements) agreed in the WTO Agreement on Textiles and Clothing to remove these quota restrictions in a series of stages beginning on January 1, 1995, and ending with the removal of all remaining quotas on January 1, 2005.[8] Now textile and apparel trade is subject to the same WTO rules that apply to trade in other sectors.[9]

[8]The United States continues to maintain quotas on textile and apparel products from selected countries that are not WTO members (e.g., Vietnam).

[9]The United States continues to apply tariffs on these products, ranging up to approximately 33 percent. The trade-weighted average U.S. tariff on textile and apparel products was 10 percent in 2004, according to an official at the U.S. International Trade Commission. However, U.S. free-trade agreements and preferential access programs provide certain countries with duty-free access to the U.S. market for certain textile and apparel products.

China and the United States signed their first textile and apparel agreement in 1980. As China became a major exporter of textiles and apparel in the 1990s, these agreements came to be regarded as important means for restraining import growth and providing U.S. producers with an opportunity to adjust to trade liberalization in the textile and apparel sector. Upon China's accession to the WTO, the United States began removing quotas on Chinese textile and apparel products in accordance with the terms of the 1994 Agreement on Textiles and Clothing. Nonetheless, a majority of all imports from China remained subject to quota limits through January 1, 2005. The final step in quota removals ended quota restrictions on about 62 percent ($7 billion) of U.S. textile and apparel imports from China.

Interagency Committee Oversees Implementation of Textile Agreements

Congress has granted the President broad authority to regulate U.S. imports of textiles and apparel.[10] By executive order, the President, in turn, established and delegated authority for implementing textile agreements to CITA—an interagency committee chaired by the Department of Commerce.[11] Other CITA member agencies are the Departments of Labor, State, and the Treasury and the Office of the United States Trade Representative. Under the executive order, the committee chair takes action necessary to implement textile trade agreements after notifying the other CITA agencies, but if a majority of these agencies object within 10 days, the action may not be taken. While the end of the quota system has altered CITA's role, CITA continues to administer a number of U.S. textile and apparel import programs, such as quota arrangements with non-WTO members.

China Textile Safeguard Permits Control over Surging Imports

The purpose of the China textile safeguard is to limit surging imports and foster the orderly development of trade in textiles and apparel from China. Safeguards are import restrictions, normally of limited duration and extent, that provide an opportunity for domestic industries to adjust to increasing imports. The China textile safeguard permits WTO members, including the United States, to temporarily restrict growth in specific imports from China even though textile and apparel quotas in general have been eliminated.

[10]7 U.S.C. § 1854.

[11]Exec. Order No. 11651, 37 Fed. Reg. 4699 (Mar. 3, 1972), as amended.

The safeguard is transitional in nature in that it may be applied only through the end of 2008. CITA, an interagency group chaired by Commerce, has published procedures that explain the process it follows in considering safeguard action requests from the public.

WTO China Textile Safeguard Permits Application of Quota Limits

China's WTO accession agreement contains a textile safeguard that allows WTO members, including the United States, to impose time-limited restrictions on the growth of specific textile and apparel imports from China. (See app. II for complete text). When a member finds that imports of specific textile and apparel products from China are "due to market disruption, threatening to impede the orderly development of trade" in such products, it may request consultations with China, and at the same time impose quota limits. When making such a request, the member is required to provide China with a detailed statement of reasons and justifications that demonstrates the existence or threat of market disruption and the role of Chinese imports in that disruption. Unless China and the importing country reach agreement on another satisfactory solution within 90 days, the quotas remain in place.

The terms of China's accession agreement define the scope and duration of relief. In the absence of a bilateral agreement on some other solution, the importing member can generally limit growth in relevant Chinese imports to 7.5 percent above the level imported during the first 12 months of the previous 14-month period.[12] The term of any quota begins on the date of the request for consultations with China and ends on December 31 of the same year. When 3 or fewer months remain in the year at the time of the request for consultations, the quota ends 12 months after the request date. No quota may remain in effect longer than 1 year without reapplication, unless the member and China agree otherwise.

The China textile safeguard can only be applied through the end of 2008. After that, WTO members concerned about the effects of rapidly increasing or unfairly traded Chinese-origin textile and apparel products will have to rely on other import relief mechanisms. Other WTO agreements (and U.S. law) provide a number of possible alternatives, including other safeguard mechanisms and antidumping duties.

[12]In the case of wool products, the member will generally limit growth in relevant Chinese imports to 6 percent above the level imported during the first 12 months of the previous 14-month period.

CITA Has Established Procedures for the Safeguard

In May 2003, CITA published procedures that explain to the public how it will consider safeguard action requests.[13] These procedures inform producers of the information they must submit when requesting action, describe U.S. producers' standing to submit such requests, and establish time frames for processing requests and putting safeguard measures, if any are found appropriate, into place.

CITA determined that these procedures fall outside the rule-making provisions that apply to most federal agencies under the Administrative Procedure Act because they pertain to foreign affairs. Therefore, CITA did not provide the public with an opportunity to comment on the procedures prior to issuing them.[14]

Requesters Must Provide Import, Market Share, and U.S. Production Data

To obtain the information needed to determine whether a safeguard action is justified, CITA's procedures stipulate that those requesting such actions must submit (1) import and market share data from all foreign and domestic sources and from China in particular, (2) U.S. production data, and (3) additional information that shows how imports from China have adversely affected the domestic industry, such as their effect on prices in the United States "or any other data deemed pertinent." The import data "should demonstrate that imports of [the subject] Chinese origin textile and apparel product[s] . . . are increasing rapidly in absolute terms."

The relevant language in China's WTO accession agreement neither defines "market disruption" or "orderly development of trade" nor establishes any criteria for making determinations on these matters. CITA's procedures also do not provide any specific criteria or benchmarks. CITA officials informed us that in considering whether safeguard action is warranted, they typically consider a wide range of factors to determine whether imports from China are playing a role in any actual market disruption or threat thereof. Those factors usually include the following: (1) all U.S. imports of the products in question, (2) the quantity of imports from China,

[13]68 Fed. Reg. 27787 (May 21, 2003).

[14]The Administrative Procedure Act generally requires that agencies provide an opportunity for the public to comment on rules and procedures prior to their enactment. However, the act's rule-making procedures do not apply to certain agency activities, including the foreign affairs functions of the United States. See 5 U.S.C. § 553 and Attorney General's Manual on the Administrative Procedure Act, at 9 (1947), included as an appendix in American Bar Association, Section of Administrative Law and Practice, Federal Administrative Procedure Sourcebook (3d ed. 2000).

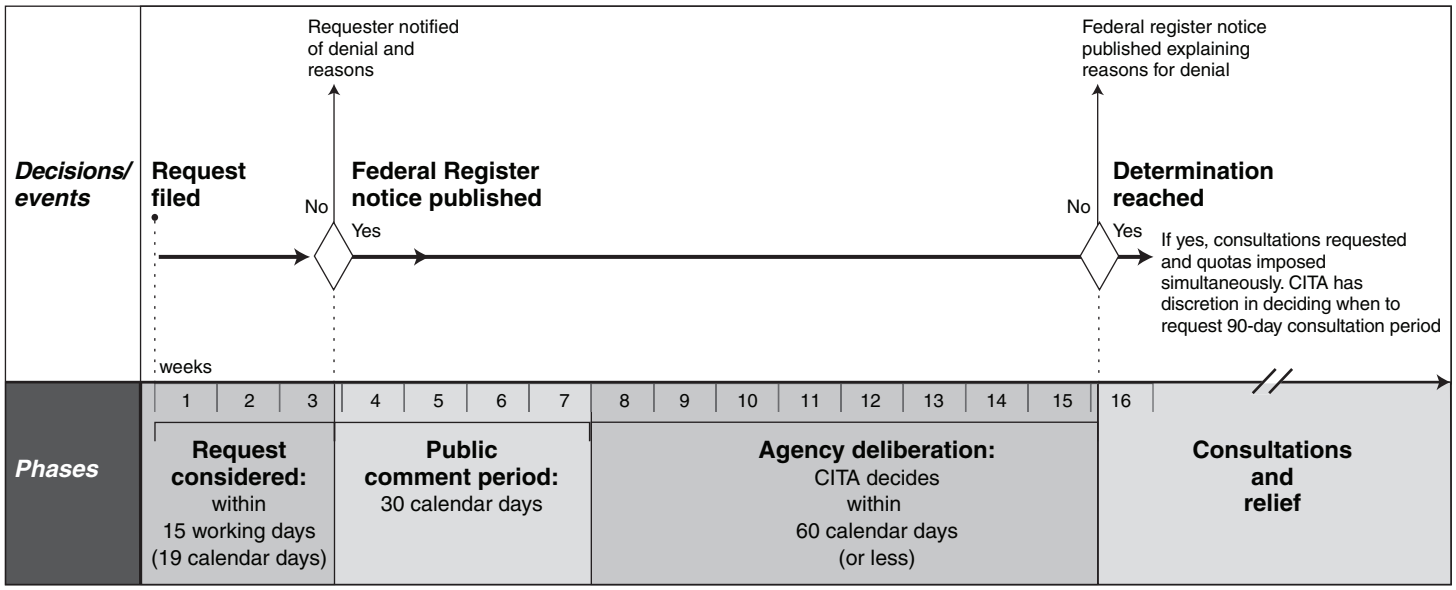
(3) the extent to which imports of the product are increasing relative to other imports, (4) pricing and average unit values of U.S. imports from China relative to imports from the rest of the world, (5) the degree to which U.S. production is declining, and (6) trends in the share of the market held by imports from China and by the world.

CITA Proceedings Designed to Take about 15 Weeks

The process for determining whether to impose a safeguard has three phases. First, CITA procedures provide 15 business days to review safeguard requests and determine whether the request provides the information necessary for consideration. Second, if CITA determines that the request provides the information required, it publishes in the Federal Register a notice seeking public comments within 30 calendar days. For example, U.S. importers opposing a safeguard can submit information that contradicts the requester's claims. Finally, CITA then has up to 60 calendar days after the close of the comment period to decide on the merits of a request.[15] After any positive finding of market disruption or threat thereof, CITA requests consultations with China and, as set forth in China's WTO accession agreement, provides that country with a "detailed factual statement of reasons and justifications" that shows "the existence or threat of market disruption" and the role that Chinese products have played in that disruption. At the same time, CITA notifies the public via a Federal Register notice, and announces quotas on the subject imports from China. The quotas remain in place unless consultations between U.S. and Chinese officials yield an alternate agreement. As shown in figure 5, the entire process is designed to take up to about 15 weeks.

[15]If CITA cannot decide within 60 days, it will publish a notice in the *Federal Register* indicating a date by which it will make a decision.

Figure 5: CITA Timeline for Taking Action on Textile Safeguard Requests



Source: GAO analysis of Department of Commerce information.

Duration of Relief Depends on When Industry Files Case

Under CITA procedures, and as outlined in China's WTO accession agreement, import limits are effective from the date that the U.S. requests bilateral consultations to December 31 of the same calendar year. However, if 3 or fewer months remain in the year at the time of the request for consultations, the limit can be applied for one year from the consultation request date. Therefore, the length of time that safeguard measures remain in effect can vary by months, depending on when industry requests application and when CITA requests consultations. For example, if U.S. producers submit their request to CITA in mid-June, and CITA subsequently requests consultations in late September, safeguard measures can only remain in effect for a little over 3 months (that is, until the end of the calendar year in question). However, if producers wait until mid-July to submit their request, such that CITA initiates consultations with China in October, measures imposed may remain in effect until the following October—or for 12 months.

CITA procedures allow producer groups to request reapplication of safeguard measures. However, the procedures specify that CITA will reapply safeguards only in the event of a new determination that Chinese imports are, due to market disruption, threatening to impede the orderly

development of trade.[16] The timeline for processing reapplication requests is the same as for initial safeguard requests.

CITA Procedures Grant Standing to Producers of Finished Goods and Components

CITA procedures give broad standing to producers of both finished goods (e.g., garments) and components (e.g., fabric) to submit requests for safeguard actions. Requests may be filed by an entity that represents either (1) domestic producers of a product "like or directly competitive with" the Chinese textile or apparel product or (2) domestic producers of a component used in such a product. CITA officials explained that component producers have long had standing to request imposition of quota restrictions on textile and apparel products. CITA officials explained that although component producers may request safeguard actions, the data they submit in support of their request must address the subject Chinese imports. Entities eligible to file a request include trade associations, firms, and certified or recognized unions or groups of workers in relevant industries. CITA itself may also initiate a safeguard action.

Over the last two decades, U.S. producers of apparel have come to rely heavily on outward processing arrangements. In such arrangements, U.S. factories focus on the relatively capital-intensive operations, such as fabric production. These fabrics and components are then shipped to Caribbean, Andean, or African countries that participate in certain U.S. trade preference programs.[17] Factories in these countries conduct the relatively labor-intensive business of assembling the fabric and other components into finished garments.

[16]China has taken the position that a safeguard cannot be reapplied without its consent.

[17]Relevant trade preference programs include those established under the Caribbean Basin Economic Recovery Act, as amended, 19 U.S.C. §§ 2701 and following; the Andean Trade Preference Act, as amended 19 U.S.C. §§ 3201, and following; and the African Growth and Opportunity Act, 19 U.S.C. §§ 3701, and following. For further information, see for example United States International Trade Commission, *The Impact of the Caribbean Basin Economic Recovery Act: Sixteenth Report 2001-2002*, Publication 3636 (Washington, D.C., September 2003).

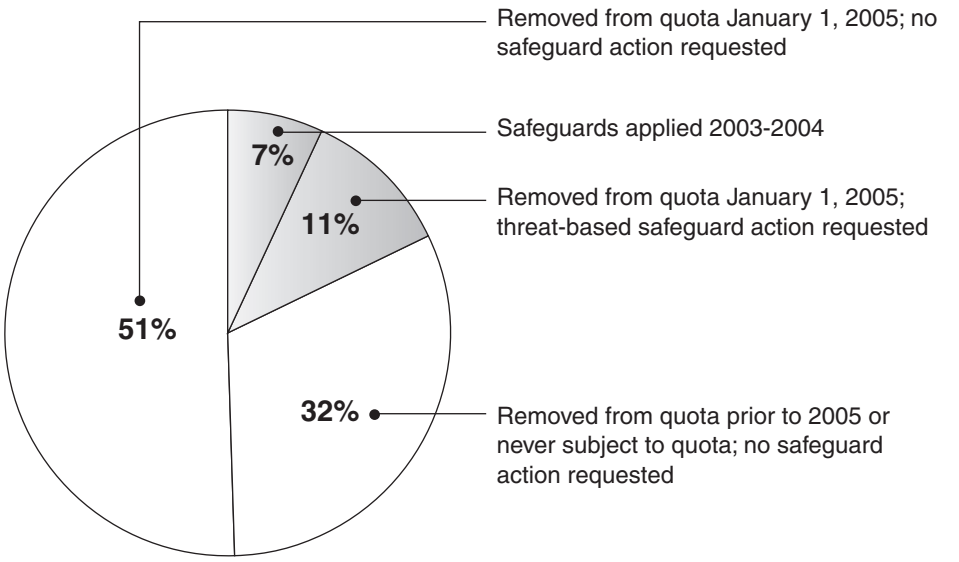
CITA Has Applied Market-Disruption-Based Safeguards but Threat-Based Requests Remain Unresolved

During 2003 and 2004, CITA applied safeguard measures on four Chinese-origin products that had previously been freed from quota limits, based on evidence of both actual market disruption and the threat of continued market disruption. As shown in figure 6, these products accounted for about 7 percent of U.S. imports of textile and apparel products from China.[18] More recently, producers groups have filed threat-based requests for safeguard action on a number of products, alleging that there would be disruptive import surges once quotas on those products expired on January 1, 2005. The main difference between the market-disruption-based requests and threat-based requests is that the market-disruption-based requests allege that market disruption has occurred and that Chinese imports have played a role in that disruption, whereas the threat-based requests allege that market disruption will occur in the future and that Chinese imports will play a role in that disruption. Figure 6 shows that these threat-based requests account for an additional 11 percent of U.S. imports of textile and apparel products from China.[19] These requests remain unresolved pending resolution of a lawsuit, filed by U.S. importers, that opposes CITA's processing of threat-based requests.

[18]Share of imports from China based on 2003 import statistics.

[19]Share of imports subject to threat-based safeguard requests based on petitions filed as of January 15, 2005. Threat-based petitions requesting reimposition of recently expired safeguards are not included in the 11 percent. All products subject to these safeguard requests were under quota until January 1, 2005. An additional 51 percent of total U.S. imports of textile and apparel products from China were removed from quota limitations in January 1, 2005, but have not been the object of safeguard requests. Therefore, a total of 62 percent of U.S. imports of textiles and apparel from China were removed from quota on January 1, 2005. These figures are based on 2003 import statistics.

Figure 6: Share of U.S. Imports from China Subject to Safeguards or Requests



Source: GAO analysis of data from the Department of Commerce, Bureau of the Census, and the Office of Textiles and Apparel.

Note: Share of approximately $12 billion in U.S. imports of textile and apparel products from China is based on 2003 import statistics. Shares do not equal 100 percent due to rounding.

Safeguards Applied in Four of Five Market-Disruption-Based Requests

U.S. producer groups requested that CITA impose safeguards on imports of knit fabric, brassieres, robes and dressing gowns, and gloves from China in July 2003, and in June 2004 they requested safeguards on socks from China as well.[20] Almost all of these products had been removed from quota protection well in advance of the requests for relief—either when China joined the WTO in December 2001 or shortly thereafter in January of 2002.

In four out of these five cases, CITA imposed 7.5 percent growth limits on relevant imports from China, as provided in China's WTO accession agreement, and these limits remained in place when U.S.-China consultations failed to produce agreement on any alternate solution. In each case, CITA determined that U.S. markets for the products in question

[20]Trade associations representing textile manufacturers that produced components of brassieres, dressing gowns and gloves requested the safeguard actions. In the case of knit fabric, trade associations representing producers of the final product requested the safeguard action. In the case of socks, the trade associations requesting the safeguard action represented producers of both components and the final product.

had been disrupted and that imports from China had played a significant role in this disruption. In each case, CITA also determined, based on a number of factors, that the subject Chinese imports posed a threat of further market disruption in the future. First, CITA found that China had a significant capacity to export textile and apparel products. Second, CITA found that the prices of textile and apparel products from China were lower than the average prices from other supplier countries. Third, CITA noted that since the U.S. removed quotas on these products, trends in prices, production, and imports had changed markedly. Consequently, CITA determined that without action, the trends would continue. CITA also considered the imports of the subject products to be increasing dramatically. Finally, CITA noted significant Chinese investment in its textile and apparel industry. See appendix III for more detail on each of the four CITA determinations.

CITA refused to consider the fifth case—a July 2003 market-disruption-based request concerning knit and woven, cotton and man-made fiber gloves—because (1) woven gloves were still subject to product-specific quotas under the Agreement on Textiles and Clothing[21] and therefore would already be subject to limits during the period of safeguard relief, and (2) the production data provided by the requester were from 2001, and 2002 data were to be released shortly. As of March 2005, however, U.S. producers have not filed an updated request.

Threat-Based Requests Remain Unresolved

In the last three months of 2004, U.S. producer groups filed 12 threat-based requests. Nine of the threat-based requests focused on products that would be removed from quota restrictions on January 1, 2005. These included cotton trousers, man-made fiber knit shirts/blouses, cotton knit shirts/blouses, man-made fiber trousers, man-made fiber shirts (not knit), and man-made fiber underwear. The remaining three requested reapplication of safeguard restrictions on knit fabric, brassieres, and dressing gowns on the grounds that disruptive imports of these products would resume when previously imposed restrictions ceased to apply in December 2004.

[21]CITA had indicated that it would not take action on products subject to specific quota limits but that this would not prevent CITA from considering a request for safeguard action on a product subject to a specific limit if the safeguard action were to take effect after the removal of that limit.

CITA agreed to consider these 12 threat-based requests, but has not yet completed action on them.[22] CITA had been scheduled to decide upon all of them between February and March 2005. However, as a result of a December 30, 2004, court-ordered injunction (described below) granted in response to a motion by importers, CITA is not permitted to process threat-based requests until judicial review of its authority to impose safeguards in such cases has been completed. Therefore, these cases remain unresolved.

Procedural Shortcomings Have Impaired Application of China Textile Safeguard

Although CITA has completed action on several textile safeguard requests and U.S. producers have received relief, procedural shortcomings have impaired use of the safeguard. First, we found that CITA was slow in issuing its procedures and a lack of clarity in those procedures created uncertainty about when, how, and under what circumstances CITA would consider threat-based requests and that this uncertainty resulted, and continues to result, in decisions being delayed while imports from China increase. Second, we found that the lack of production data on some textile and apparel products—data that is necessary to fulfill CITA filing requirements—has inhibited equal access to the safeguard. Beyond these issues, uncertainty about future developments in global textile trade makes the future impact of the China textile safeguard unclear.

Procedural Shortcomings Created Uncertainty

U.S. producers considering requests for safeguard action and U.S. importers of textiles and apparel that might oppose such safeguards have faced uncertainty because CITA was slow in issuing procedures and a lack of clarity in those procedures. A significant period of time elapsed before CITA issued procedures for the China textile safeguard, substantially delaying action on the initial market-disruption-based requests. Once issued, CITA's procedures were unclear about whether or how it would proceed on threat-based requests. The uncertainty surrounding threat-based cases has resulted in a court-ordered injunction preventing

[22]Please see appendix V for a complete list of the 12 threat-based requests. In a December 1, 2004, submission to CITA about whether to apply the textile safeguard on imports from China of cotton trousers, China contended that the language in its WTO commitment showed that the textile safeguard could only be imposed when there was actual market disruption and not merely a threat of market disruption. China contended that the language regarding threat did not refer to the kinds of textile and apparel cases that could be brought, but only to the material a WTO member could present to China showing why a safeguard should be applied.

action on these requests and created additional delays—both for those interested in seeking safeguard actions and those seeking a clear determination that such actions should not be taken.

CITA Slow to Issue Procedures

CITA issued procedures about the textile safeguard contained in China's WTO accession agreement approximately 17 months after China joined the organization. Until these procedures were issued, it was not clear when, how, or under what circumstances CITA would consider safeguard action requests from the public.

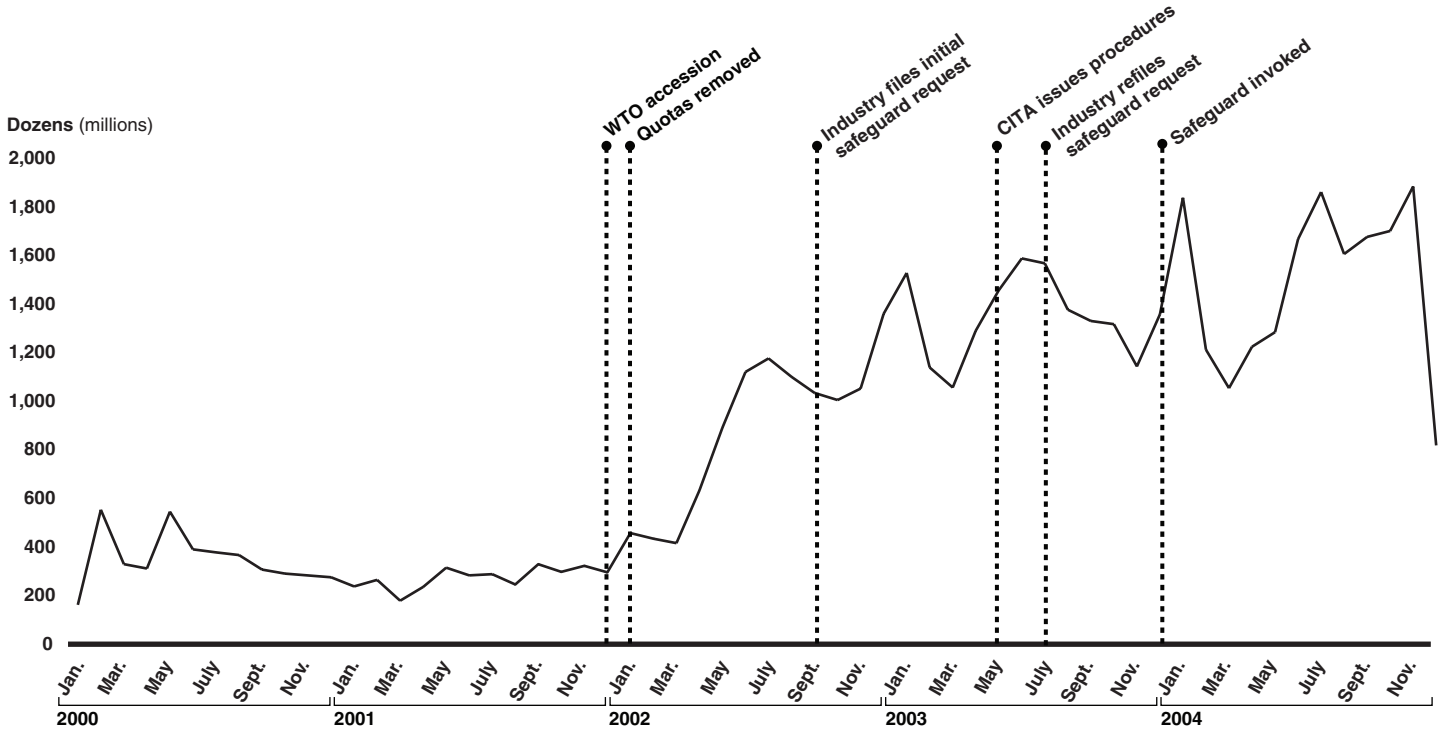
China's WTO accession agreement, which became effective December 11, 2001, outlined some aspects of the safeguard mechanism, but did not fully explain what or how much information national authorities should consider in deciding whether to apply safeguards. Member governments were left to clarify such matters.[23] Even though CITA had not yet provided any guidance, in September 2002 U.S. trade associations representing textile manufacturers requested application of safeguards against Chinese knit fabric, gloves, dressing gowns, brassieres, and luggage. CITA did not act on these requests.

In May 2003 CITA issued procedures describing the information that it would require in order to consider safeguard requests. U.S. producers of knit fabric, gloves, dressing gowns, and brassieres subsequently refiled their requests,[24] and CITA applied safeguards on these products (except gloves) in December 2003—15 months after these industry groups had originally requested action. Imports of some of these products grew significantly during the intervening months. Figure 7, for example, shows that imports of Chinese-origin brassieres increased by about half between the first and second industry filings.

[23]CITA officials noted that China's Accession Agreement does not obligate WTO members to publish procedures.

[24]The trade associations did not submit a revised safeguard action request for luggage, and no further action has been taken on this product.

Figure 7: Monthly Brassiere Imports from China, January 1999 to December 2004



Source: GAO analysis of U.S. Department of Commerce, Office of Textiles and Apparel data.

Commerce officials pointed out that the procedures issued for the China textile safeguard marked the first occasion that CITA had published guidance on how it would consider requests for new quota restraints. They noted that because CITA had not had this level of transparency in the past when administering the wide-ranging U.S. textile quota system, the procedures took longer than might be expected to prepare. Additionally, CITA officials indicated that the procedure of soliciting comments prior to requesting consultations and imposing limits was also unprecedented. Previously, CITA put out notices for public comment only after delivering a request for consultations to establish a quota.

Procedures Unclear on Threat-Based Requests for Safeguard Action

CITA's China textile safeguard procedures are not clear on how it will proceed in threat-based cases. CITA officials told us that the procedures utilize the WTO language through which members can request consultations on the existence as well as threat of market disruption. However, the procedures focus on market-disruption-based requests. For

example, they state that a request will only be considered if it includes specific information set forth in support of a claim of market disruption. Similarly, the procedures state that reapplication will only take place if CITA makes a new affirmative market disruption determination. They also specify that the import data submitted with a request "should demonstrate that imports of Chinese-origin textile and apparel products that are like or directly competitive with the product produced by the domestic industry concerned are increasing rapidly in absolute terms."

By their nature, threat-based cases will not rely on information claiming that market disruption has already taken place, but rather will focus on prospects for future market disruption. This was demonstrated in the requests filed by U.S. producers in the fall of 2004. Although import data demonstrating that a rapid increase has already occurred have been important in CITA's determinations in market-disruption-based requests, they would not be expected to be as important for threat-based requests. In fact, a majority of the threat-based requests made in late 2004 asserted that imports were unlikely to increase rapidly until 2005 because these products had, until recently, been subject to quotas that made substantial import increases improbable.[25]

In the absence of formal guidance, U.S. producers requesting threat-based actions submitted information on such matters as China's productive capacity, performance in other apparel categories already removed from quota, price behavior of products removed from quota, and information about alleged unfair trade practices in China. CITA's procedures do not specifically call for any of these types of information, but requesters are allowed to submit other information deemed pertinent.

CITA Officials Accepted Threat-Based Requests and Announced Indicative Factors

CITA officials emphasized that China's accession agreement provides for taking safeguard actions on the basis of threat. These officials further explained to us that their procedures do not preclude U.S. producers from requesting safeguard action solely on the basis of threatened market disruption. Therefore, even if U.S. procedures do not focus on threat, CITA

[25]The threat-based requests filed by producer groups thus far involve the elimination of a quota in the near future. In providing technical comments on this report, CITA officials said a threat could be found for which imports are increasing extremely rapidly, even though those imports have not yet caused market disruption.

may still consider requests on that basis.[26] Finally, administration officials maintained that they were under no obligation to issue procedures and can independently consider safeguard measures based upon the government's best information and judgment.

Although CITA's procedures do not clearly describe the information that requesters should submit in support of threat-based requests, Commerce officials observed that the Federal Register notices requesting public comment on threat-based requests have indicated the types of information that CITA would take into consideration in determining whether safeguard actions should be applied. These notices requested that interested parties submit information as to

- whether Chinese imports are entering the market at prices substantially below the prices of the equivalent U.S. product and whether the Chinese imports will likely depress prices of the U.S. product;
- whether Chinese imports are likely to rise due to increasing production capacity in China;
- whether there will be an imminent diversion of Chinese-origin products and other third markets to the United States;
- changes in inventory levels of the Chinese-origin products in question;
- the extent to which conditions in the domestic industry demonstrate that market disruption is likely (e.g., factory closures or production declines); and
- whether U.S. managers, retailers, purchasers, importers, or other market participants have recognized Chinese producers as potential suppliers.

CITA officials noted that these factors are indicative but not necessarily determinative. Moreover, they have not been integrated into their official procedures.

[26]CITA stated that even if the procedures are silent as to how CITA intended to evaluate requests for safeguards based solely upon allegations of threatened market disruption, CITA's decision to accept as sufficient such a request is in compliance with the overall principles of the agreement it is implementing.

Some U.S. Importers and Producers Experienced Uncertainty about Threat-Based Requests

In July 2004, a number of producers and producer associations observed that CITA had thus far refused to consider threat-based requests for safeguard action even though, in the associations' view, WTO rules allowed consideration of such requests. One industry representative at the time stated: "Specifically, the U.S. textile industry has asked the administration to recognize that China poses a severe threat to the domestic textile industry and to use appropriate safeguard actions, as allowed under WTO rules. To date, the administration has refused to consider safeguard actions before the actual occurrence of damage in the marketplace." In concert with other organizations, the same industry association subsequently filed a number of threat-based requests for safeguard action in early October 2004.

In opposing CITA's decision to accept these requests and initiate investigations as to whether safeguards should be applied, one association representing importers argued that the administration had changed its position on threat-based requests. The importers contended that administration officials had informally indicated to them that the safeguard was intended for market-disruption-based requests as opposed to threat-based requests. In addition, the association observed that when CITA decided to consider threat-based requests, it did not modify its procedures or make a formal announcement to reflect the change in its position.

Court Suspends CITA Consideration of Threat-Based Requests

Uncertainty over threat-based cases and the disagreement that ensued between U.S. textile importers and the administration led to a court order that CITA may not consider threat-based requests, pending further judicial review. At this point, it is not clear when the court will render a final decision.

The case began on December 1, 2004, when the U.S. Association of Importers of Textiles and Apparel filed a complaint and motion for a preliminary injunction before the U.S. Court of International Trade requesting that the court enjoin CITA from considering threat-based requests.[27] In support, the Association argued, among other things, that CITA had (1) violated its own procedures and the Administrative Procedure

[27]*U.S. Ass'n. of Importers of Textiles and Apparel v. United States*, Ct. No. 04-00598 (C.I.T. Dec. 1, 2004). GAO is not taking any position in this report on the legal issues involved in the lawsuit.

Act[28] by deciding to consider threat-based petitions and (2) exceeded its authority in taking any action under the China Textile safeguard because Congress had not authorized CITA to do so.[29]

In its response, the administration argued that CITA was not obligated to promulgate regulations implementing the textile safeguard and that, in any event, CITA acted within its authority in considering threat-based requests.[30] In this regard, the administration maintained that CITA had clarified its procedures regarding threat-based requests through individual case proceedings.[31] Furthermore, CITA officials asserted that they never had a policy of categorically denying threat-based requests.

On December 30, 2004, the court granted the association's motion for a preliminary injunction and enjoined CITA from taking any further action on China textile safeguard actions based on threat of market disruption during the court proceedings on the case.[32] In enjoining CITA from further considering threat-based requests, the court found that CITA officials made statements to various trade publications between July and August 2004 indicating that the safeguard was intended for cases of actual market disruption—rather than threat of market disruption. On Feb. 14, 2005, the administration appealed the Court of International Trade's granting of a preliminary injunction to the United States Court of Appeals for the Federal

[28]5 U.S.C. §§ 551, and following

[29]The association also argued that CITA did not follow the notice and comment requirements of 5 U.S.C. § 553 in promulgating its procedures.

[30]For a more detailed presentation of the administration's legal arguments, see Defendant's Memorandum in Support of its Motion to Dismiss and Opposition to Plaintiff's Motion for a Preliminary Injunction, *Ass'n of Importers of Textiles and Apparel*, Ct. No. 04-00598 (C.I.T. Dec. 15, 2004), and Brief of Defendant-Appellant, United States, *Ass'n of Importers of Textile and Apparel*, Ct. No. 05-1209 (Fed. Cir. Feb. 14, 2005).

[31]As a supporting example, the United States cited CITA's solicitation of public comments regarding whether there was a threat of market disruption to the U.S. market for cotton trousers. In the solicitation, CITA listed 6 factors (cited above) as examples of information it sought to help it determine whether there was a threat of market disruption. 69 Fed. Reg. 64,034 (Nov. 3, 2004).

[32]*U.S. Assn. of Importers of Textiles and Apparel v. United States*, Ct. No. 04-00598 (C.I.T. Dec. 30, 2004). In support of its order granting a preliminary injunction, the court noted that the plaintiff's complaint had raised an important question about whether CITA's delegated authority to administer textile agreements includes the authority to issue regulations pursuant to China's accession agreement.

Circuit.[33] Thus, at this point, it is unclear when there will be a final determination on whether CITA can properly hear threat-based requests.

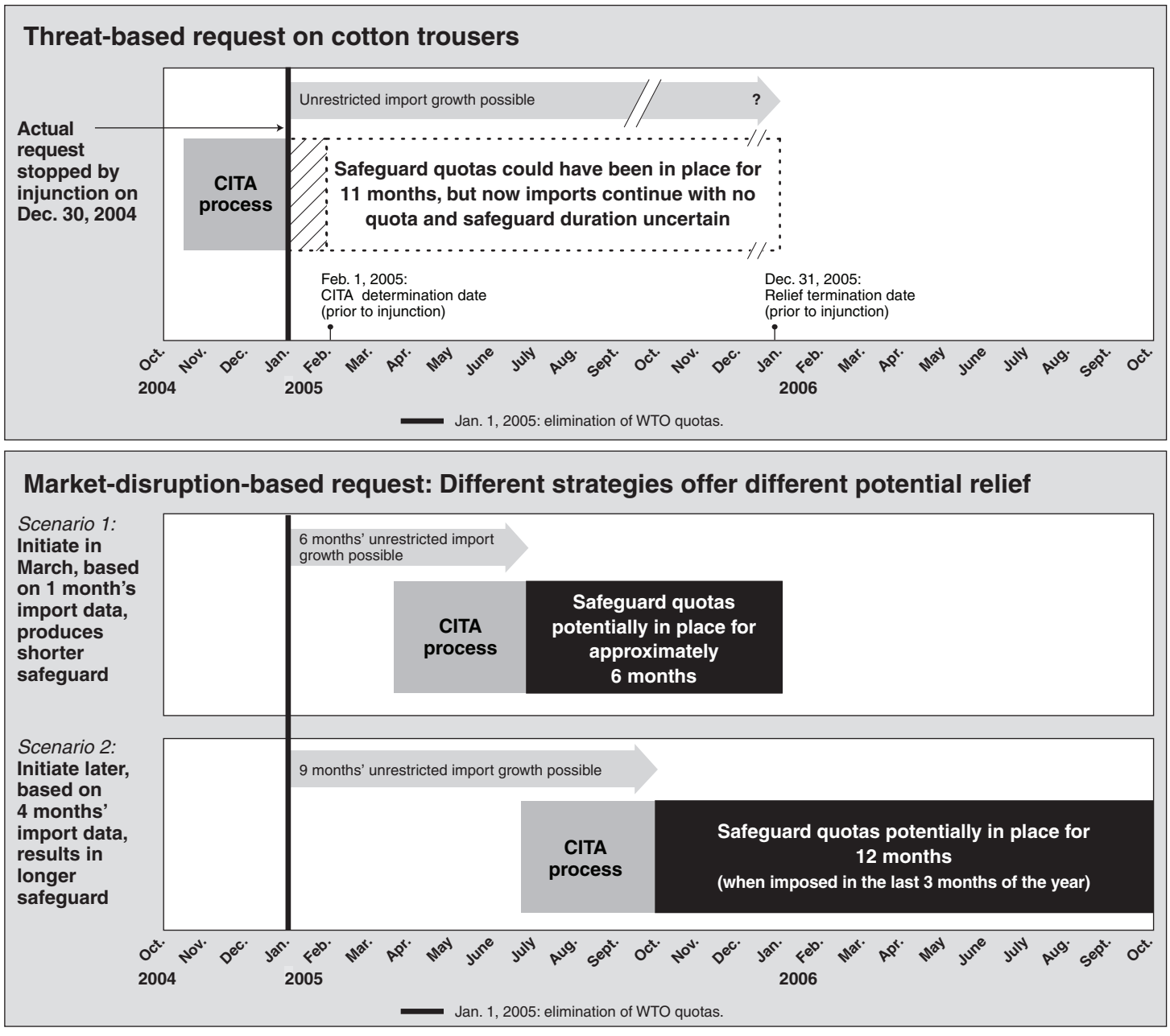
Delays Impact Timing and Level of Relief

Lengthy legal action against CITA or a court decision that CITA may only process cases that present evidence of actual market disruption will postpone determinations on whether to apply safeguard measures and may result in imposition of quota limits that remain in place for shorter periods of time and are less restrictive of Chinese imports.

Because of the wording in China's WTO accession agreement, decision-making delays on the pending requests for application of threat-based safeguards may shorten the duration of any measures imposed. Prior to the court issuing its preliminary injunction, CITA had been scheduled to decide whether to take action on the threat based requests submitted in October 2004 by early February 2005. As shown in figure 8, had CITA decided in favor of safeguard actions in accord with its original timetable, quota limitations on cotton trousers, for example, would have been in place for 11 months (from February 1 through the end of 2005). In the event of a court ruling in its favor, CITA may yet impose threat-based safeguards. However, as provided in China's WTO accession agreement, any safeguard measure imposed prior to October 1 of a given year will expire at the end of that year. Through September, therefore, each month of delay means that any safeguard measures imposed will remain in place for a correspondingly shorter period of time. For example, measures imposed at the end of April would remain in effect for 8 months.

[33] *U.S. Ass'n of Importers of Textiles and Apparel v. United States*, Ct. No. 05-1209 (Fed. Cir. Feb. 14, 2005).

Figure 8: Comparison of Timelines for Actual Threat-Based Request with Possible Market-Disruption-Based Request



Source: GAO analysis of Department of Commerce information.

Lengthy delays or a court ruling against CITA may result in U.S. producers choosing (or being required) to file new requests based only on actual market disruption. As shown in figure 8, any relief they receive would come at a significantly later date than would have resulted from their original threat-based requests. Since supporting import data in a market-disruption-based case should demonstrate a rapid increase in imports from China, any petitioner requesting relief based on actual market disruption on a product removed from quota on January 1, 2005 would likely have to wait until at least mid-March to file a request.[34] The reason is that they will probably need at least one month's import data after the quota expires to demonstrate an increase in imports that is leading to actual disruption in the U.S. market. In addition, it takes about 6 weeks for the federal government to make import data publicly available so that domestic producers may include it in their requests.[35] Given CITA's 3-month decision-making timeline, U.S. producers could not expect a decision on a case filed in mid-March until around July 2005. In this scenario, U.S. producers would receive about 6 months of relief.

Alternatively, domestic producers could wait until midyear to file a market-disruption-based request. As shown in figure 8, an affirmative determination would then result in a year of relief. However, a decision to postpone filing is likely to result in less effective relief for the domestic producer. As already noted, China's WTO accession agreement provides that quota restrictions will be calculated based on the import levels recorded during the first 12 months of the 14-month period leading up to the quota action being taken. In an environment of rapidly rising imports, the longer an organization waits to file a request, the higher import levels grow and the higher subsequently imposed quota limits become.

Unavailability of Production Data Hinders Access to the Safeguard

Equal access to the China Textile Safeguard is impaired by the lack of publicly available U.S. production data on some textile and apparel products. As mentioned earlier, CITA requires that safeguard action

[34]CITA's procedures state that supporting import data *should* demonstrate a rapid increase in imports from China, but do not specifically require the data to make that demonstration. The administration has argued in court proceedings that "rather than a prerequisite for CITA to consider requests, the 'rapid increase' language reflects an admonition that CITA will normally look for a rapid increase in imports as it considers whether to invoke paragraph 242 [the China Textile Safeguard]."

[35]The Census Bureau publishes official U.S. import statistics.

requests include import, market share and U.S. production data. CITA officials review production data (for example, the amount of knit fabric produced in the United States) to determine the nature and extent of disruption in the U.S. market. According to CITA procedures, if production data are not available from government sources, those requesting safeguard actions must provide the data themselves, along with a complete list of all sources from which the data were obtained. The submission must include an affirmation that, to the best of the requester's knowledge, the data represent substantially all of the domestic production of like or directly competitive products.

The Bureau of the Census collects and publishes production data for many textile and apparel products. The Census Bureau surveys U.S. industry to obtain production information as part of the bureau's Current Industrial Reports program. Census officials send questionnaires to manufacturers on a monthly, quarterly, or annual basis, depending on the product. The purpose of the bureau's program is to provide data on production and shipments of certain products for use by both government and the private sector.

Commerce's Office of Textiles and Apparel (OTEXA) takes the production data, converts it, and publishes it in category form in order to compare it with trade data.[36] The purpose of the category system is to allow the United States to implement quotas under international textile agreements by grouping products in directly competitive Harmonized Tariff Schedule headings together into single categories. For example, bow ties and other types of ties enter the United States under different tariff headings, but for quota management purposes, data on all types of ties are added together to form one "neckwear" category.

Since the two classification systems were developed for different purposes, Census production categories and CITA import categories differ to varying degrees. Because OTEXA is not able to match Census production data to all of CITA's categories, the availability of production data for safeguard investigations can be affected. In addition, because of the small number of producers in some industries, data are collected but not released publicly

[36]In determining the product detail collected in its manufacturing statistics programs, the Census Bureau has specifically worked over time to improve the consistency with the classifications in the Harmonized System, the international classification system for exports and imports developed by the Customs Cooperation Council.

because they would disclose private business information.[37] In total, U.S. production data are not available for 32 of 167 textile and apparel categories.[38] OTEXA and Census officials provided the following accounting of why data are not available in these categories:

- For 9 categories, Census does not collect production data. OTEXA believes many of these the categories are composed of products for which there is little or no domestic production. For 3 sock categories, Census did not start surveying the industry until the end of 2004. Also, in 1 category (nonwoven fabric), OTEXA believes the industry is large, but not import sensitive.

- For 11 categories, Census may collect some data, but Census production descriptions do not match CITA categories. For example, CITA maintains a category called "other man-made fiber apparel," which includes a range of products from swimwear to shawls. Census collects data for some, but not all, of the products in this category.

- For 12 categories, Census does collect domestic production data, but the data cannot be published to avoid disclosure of individual company information. Suppression across these 12 categories affects approximately 100 establishments, or about 1 percent of the total number of textile and apparel establishments from which Census collects data.[39]

The unavailability of production data might disadvantage an unknown number of U.S. producers facing market disruption. We found that most (25 of 32) Chinese-origin imports in categories for which there are no publicly available production data have increased both in absolute terms and in relation to imports from other countries. This suggests that U.S. producers

[37]Individual firms reporting to the Census Bureau in the Current Industrial Reports program may waive their right to confidentiality. If all companies in the suppressed sector submitted waivers, Census could then publish the data.

[38]Census recently finished a comprehensive review of the Current Industrial Reports program. As a result of that review, Census restructured survey coverage of the textile sector. Beginning in 2005, Census will cancel several textile surveys and consolidate others. We have not evaluated the impact that this restructuring may have on Commerce's ability to provide textile and apparel production data by category.

[39]An establishment is an individual business location (e.g., a factory). A company may have multiple establishments that produce textile and apparel products, and each one would be counted individually.

of these products face increased competition from Chinese imports, and thus may be more likely to seek safeguard action. In its past decisions to impose safeguards, CITA has cited relative and absolute Chinese import increases as factors in its market disruption determinations. Additionally, in some categories recently removed from quota, such as "other man-made fiber apparel," the Chinese producers largely filled their quota in the past several years. In its recent threat-based requests, the domestic industry cited import increases and high quota fill rates as evidence that Chinese imports will increase significantly upon removal of the quotas.

Table 1 provides a summary of import trends in categories for which production data are unavailable. (See app. IV for detailed information on each product category.) About half of the total value of textile and apparel imports from China (48 percent) fell into product categories for which data on U.S. production are unavailable.[40] Furthermore, for imports from China removed from quota on January 1, 2005, about half also fell into product categories in which data on U.S. production are unavailable.

Table 1: Summary of Import Data for Product Categories for Which U.S. Production Data Are Unavailable

Textile and apparel	Number of categories	Imports from China, 1995	Imports from China, 2004	China's share of total U.S. imports, 2004 (percent)	Average annual change, imports from China, 2001-2004 (percent)
Products removed from quota prior to January 1, 2005, or never under quota	15	$556,780	$2,761,488	42	50
Products removed from quota January 1, 2005	14	790,702	4,479,622	41	60
Products currently subject to safeguards measures (socks)	3	1,737	228,298	21	197
Total (all products without production data)	**32**	**$1,349,219**	**$7,469,408**	**40**	**57**

Source: GAO analysis of Department of Commerce data.

Note: Imports in thousands constant 2004 dollars.

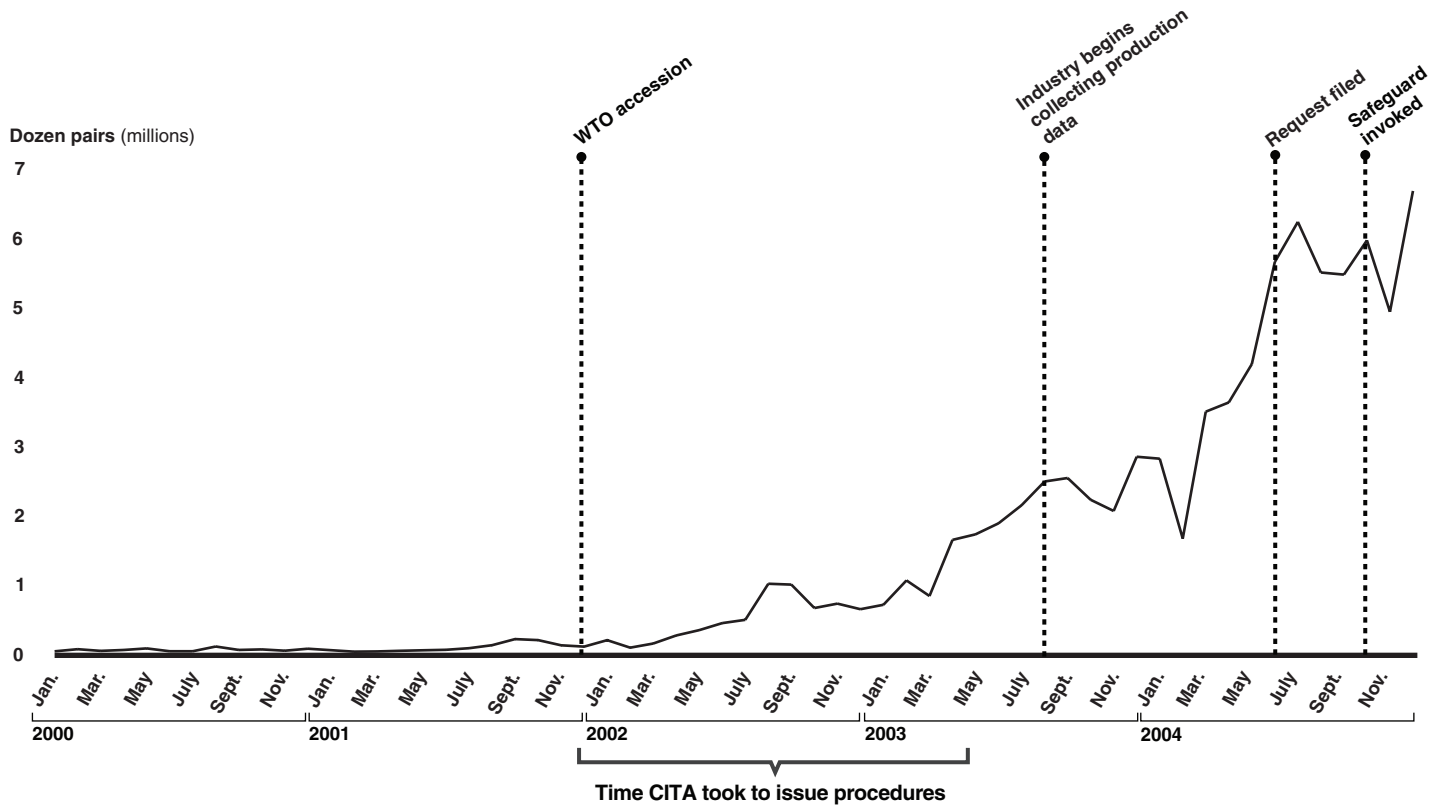
[40]Analysis of import shares are based on 2003 U.S. imports from China.

Sock Case Illustrates Data Collection Difficulties

The experience of U.S. sock producers in preparing their market-disruption-based request illustrates the difficulties that can result from production data not being available. Since the Census Bureau did not, until recently, collect production data on cotton, wool, or man-made fiber socks, the U.S. producers that filed this request needed to collect the data themselves. The requesters proceeded to survey the domestic industry to obtain the required data. However, according to a textile industry representative, some members of the industry did not cooperate with the survey because they did not support the request. This made it difficult for the requesters to collect the information needed to meet CITA's requirement for data covering "substantially all" domestic production. One industry representative said that collecting the production data was "a very difficult and time-consuming exercise." One of the producer associations requesting the safeguard said it had to delay submission of a request for 10 months while they gathered the relevant data. As shown in figure 9, sock imports from China rose substantially during this delay.[41]

[41]After the request had been filed and accepted the Bureau of the Census indicated that, due to interest among policymakers, it would conduct a one-time survey of U.S. sock production. This survey was conducted at the end of 2004. Availability of this data should make it easier for domestic sock producers to use the safeguard in the future.

Figure 9: Sock Imports from China, January 1999 to December 2004



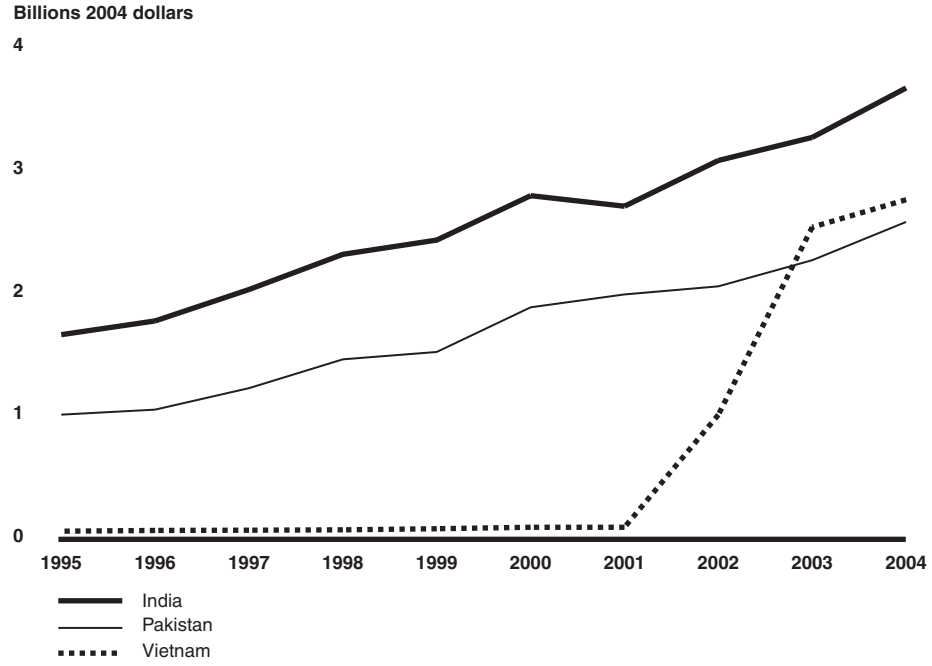
Source: GAO analysis of U.S. Department of Commerce, Office of Textiles and Apparel data.

Safeguard's Future Impact Unclear

Uncertainty about future patterns in the global textile and apparel trade and the applicability of other U.S. import relief mechanisms make the future impact of the China textile safeguard unclear. It is unclear to what extent safeguards imposed on China will provide relief to the U.S. industry—or will instead increase the market share obtained by other foreign producers. As shown in figure 10, U.S. textile and apparel imports from producers such as India, Pakistan, and especially Vietnam have also increased over the past decade, and the China textile safeguard cannot be applied to non-Chinese imports. While China is widely expected to become a more dominant force in global textile and apparel markets, it is too early to predict how other major producing countries will fare in the postquota

environment.[42] Other WTO members have expressed concern about changing trade patterns resulting from the termination of the quota limits. These members note that, while some studies suggest overall benefits from the liberalization of textile and apparel trade, certain developing countries will face difficult adjustment costs.

Figure 10: U.S. Imports of Textile and Apparel from India, Pakistan, and Vietnam, 1995-2004



Source: U.S. Department of Commerce, Office of Textiles and Apparel.

The Chinese government's recent announcement that it will impose export taxes on a range of textile and apparel products to ensure a smooth transition from the end of the quota system further clouds future

[42]For example, studies from both World Trade Organization and the U.S. International Trade Commission suggest that China will become the largest supplier to the U.S. market. However, both also suggest possible market share gains for other supplier countries. See United States International Trade Commission, *Textiles and Apparel: Assessment of the Competitiveness of Certain Foreign Suppliers to the U.S. Market* (Washington, D.C., 2004); and World Trade Organization Secretariat Staff, *The Global Textile and Clothing Industry Post the Agreement on Textiles and Clothing* (Geneva, Switzerland, 2004).

developments in U.S. textile trade. The Chinese government has indicated that these taxes are intended to encourage the export of higher-value-added products while discouraging export surges. The impact of these taxes remains to be seen.

Other import relief mechanisms available under the terms of China's WTO accession agreement and U.S. law may or may not prove useful for U.S. textile and apparel producers. The "product-specific" safeguard established under the accession agreement may in theory be applied to textile and apparel imports from China through the end of 2013.[43] However, no one has yet made such a request. Other import relief mechanisms available under U.S. law—such as noncountry and nonsector-specific safeguard measures and antidumping duties—might be used to deal with imports from China and other WTO members. However, to our knowledge these remedies have not been applied in the textile and apparel industry recently, and thus it is difficult to predict how effective they might prove.

It is also possible that a portion of the textile industry will not have recourse to any U.S. trade remedies after the China textile safeguard expires on December 31, 2008. Two industry representatives told us they had concerns about their eligibility to use other trade remedies. CITA procedures explicitly give standing to U.S. component producers to request application of the China textile safeguard against imports of finished products. However, the industry representatives observed that the laws and regulations governing antidumping and other import relief mechanisms have standing requirements that may preclude component producers from requesting relief through these other mechanisms. Thus, U.S. government agencies may determine that component manufacturers do not have standing because their component is not "like or directly competitive to" the subject Chinese import.

Conclusions

The China textile safeguard provides a mechanism for limiting growth in imports from that country in certain circumstances—thus helping to avoid market disruption and facilitate orderly adjustment to China's growth as a source of textile and apparel products. The four requests that the United States has decided upon thus far have demonstrated that once removed from quota restrictions, imports from China can rise rapidly and

[43]This commitment has been implemented by section 421 of the Trade Act of 1974, 19 U.S.C. § 2451.

significantly disrupt U.S. markets. The termination of all remaining quotas on Chinese imports at the beginning of this year may bring additional import surges and associated disruption in U.S. markets.

Procedural shortcomings have impaired effective application of the China safeguard, leading to, among other things, uncertainty and delay that may weaken safeguard actions on some products that were recently released from quota restrictions. Similarly, lack of production data impaired access to safeguard measures for U.S. sock producers, and may pose similar problems should other producers in similar circumstances seek application of this mechanism.

The extent to which vigorous application of the China-specific textile safeguard will assist U.S. producers—or create opportunities for other exporting nations—is unknown, and in any case, the safeguard is only available through the end of 2008. Nonetheless, China is expected to continue to be a major source of U.S. textile and apparel imports, and the usefulness of alternative U.S. import relief mechanisms remains untested by textile and apparel producers. Since the safeguard was an integral part of the framework that led to Congress approving permanent normal trade relations with China and cleared the way for that country to join the WTO, it is important that CITA and the Department of Commerce take action to enhance the procedures employed in applying this mechanism while it remains available.

Recommendations for Executive Action

In the event that the courts rule that CITA may process threat-based requests for China textile safeguards, we recommend that CITA amend its procedures to clarify how it will proceed in threat-based cases, including the information that producers should submit in such cases.

To enhance access to safeguard relief for all segments of the textile and apparel industry that may face import surges, we recommend that the Department of Commerce, as CITA's chair, review the products and categories for which U.S. Bureau of the Census production data are unavailable and, with public input, conduct a risk assessment aimed at identifying industry sectors at high risk of experiencing import surges from China and associated market disruption. We further recommend that on the basis of the risk assessment, Commerce's Office of Textiles and Apparel work with the Census Bureau to explore options to make production data concerning these industry sectors available for safeguard requests. We realize that in some instances it might not be feasible to make such data

publicly available due to disclosure limitations and that data (or analysis of trends in that data) possibly may need to be limited to CITA.

Agency Comments and Our Evaluation

We provided draft copies of this report to the Department of Commerce, in its capacity as chair of the interagency Committee for the Implementation of Textile Agreements. The Department of Commerce collected and compiled comments from the CITA member agencies into one letter, which, with our responses, are reproduced in appendix VI. CITA also provided technical comments that we incorporated, as appropriate. We also incorporated technical comments from the Bureau of the Census and the United States International Trade Commission.

With respect to our first recommendation, CITA noted that our review focused on issues involved in the ongoing litigation and, per a Department of Justice request, CITA could not comment on certain parts of the report. Nevertheless, CITA expressed concern about how we described the timing of issuance and content of CITA procedures as they relate to threat-based requests. CITA also expressed concern that some of our conclusions in the report seemed to be premised on the arguments of private parties in ongoing litigation. Our report does not take any position on the legal issues that are the subject of the ongoing litigation between the U.S. Association of Importers of Textiles and Apparel and the United States, including whether CITA's procedures allow for threat-based cases. However, we continue to believe the procedures could be improved in this regard to further increase clarity and transparency. With respect to the timing issue, we acknowledge the significant steps CITA has taken to increase the transparency of its investigations. Nevertheless, a significant amount of time elapsed prior to CITA's issuing procedures, and concerned groups had to refile several safeguard action requests. We reviewed the submissions of the parties and described some of their main points. However, we drew our conclusions from our analysis and evidence that we collected. We maintain that our findings about the public's uncertainty at the time represent a balanced summation of the facts.

In responding to our second recommendation, Commerce made three points. First, the agency observed that there are several reasons why production data might not be available, including the need to protect the confidentiality of individual producers. Second, it stated that there are few, if any, domestic entities from industries for which Census data were not published that would likely request safeguard action. Third, it noted that any domestic entity that did request a safeguard would be able to collect its

own data and that Commerce and CITA stand ready to provide advice as to how the data requirements could be met.

We revised our report to make clear that there are a number of reasons why production data are not published and that it may not be proper, in some situations, to make the data available to the public. We agree that the universe of producers that may be adversely affected by a lack of production data may be small. However, we found that collecting the information needed to meet CITA's production data requirement can be a time-consuming process that impedes safeguard access relative to industry sectors where the data is readily available from government sources. Given that the textile and apparel industry is undergoing rapid change, new industry sectors not previously viewed as vulnerable to Chinese competition may seek relief and would need data.

We are sending copies of this report to the heads of CITA member agencies (the Departments of Commerce, Labor, State, and the Treasury and the Office of the United States Trade Representative), appropriate congressional committees, and other interested parties. In addition, the report will be available at no charge on GAO's Web site at http://www.gao.gov.

If you or your staff have any questions about this report, please contact me at (202) 512-4347 or yagerl@gao.gov. Other GAO contacts and staff acknowledgments are listed in appendix VII.

Loren Yager
Director, International Affairs and Trade

Objectives, Scope, and Methodology

In May 2003, the House Appropriations Committee's Subcommittee on Commerce, Justice, and State, the Judiciary, and Related Agencies held hearings regarding U.S. government efforts to support American businesses adversely affected by imports from China. In light of concerns expressed at this hearing, the House-Senate conference report on fiscal year 2004 appropriations legislation requested that GAO monitor the efforts of U.S. government agencies responsible for ensuring free and fair trade with China. In subsequent discussions with your staff, we agreed to respond by providing a number of reports on relief mechanisms available to U.S. producers that are adversely affected by unfair or surging imports, and the manner in which the mechanisms have been applied to China.[1] In this report, we (1) describe the China textile safeguard, (2) describe the requests for safeguard action filed by domestic industry and the results of these requests, and (3) evaluate agency procedures for transparency and accessibility and identify additional issues that may affect application of safeguard measures in the future.

To address our first objective, we reviewed U.S. laws and procedures as well as relevant World Trade Organization (WTO) agreements and China's WTO accession agreement. To ensure our understanding of relevant laws, procedures, and agreements, we spoke with officials from the five member agencies of the U.S. government's Committee for the Implementation of Textile Agreements (CITA). The members of CITA are the Departments of Commerce, Labor, State, and the Treasury, and the United States Trade Representative. In addition, we interviewed officials with the World Trade Organization and private sector experts on trade law.

To address our second and third objectives, we reviewed and analyzed each of the Statements of Reasons and Justifications that CITA has issued to explain its determinations on safeguard actions completed as of December 2004. We also reviewed the information that CITA received in response to its request for public comment on each of these requests. To clarify the views of parties in favor of applying safeguard measures, we spoke with representatives of the three domestic industry trade associations that have participated in filing every safeguard action request to date. To clarify views of parties opposed to such measures, we spoke with a trade association representing over 200 importers of textiles and apparel and a trade association representing 50 state retail associations and

[1]Forthcoming reports will focus on countervailing duties, the China product-specific safeguard, and antidumping duties.

20 national retail organizations as well as national and independent retailers, and also attended an international conference of textile and apparel importers. We also spoke with Chinese government officials. To obtain a broader perspective on global textile trade and the application of the safeguard in a postquota environment, we spoke with representatives of additional textile and apparel exporting and importing countries. Finally, we reviewed the order of the U.S. Court of International Trade granting a preliminary injunction to the U.S. Association of Importers of Textiles and Apparel precluding CITA from acting on threat-based requests for safeguard action,[2] as well as other relevant documents filed by the parties involved in this case.

In support of these objectives, we also conducted analyses of textile and apparel import data, as well as U.S. domestic production and employment data for textile and apparel sectors. U.S. import data are official statistics from the Bureau of the Census, Department of Commerce. We adjusted the import data for inflation by using the textile and apparel products import price deflators from the Bureau of Labor Statistics. Inflation-adjusted values are in constant 2004 dollars and are identified throughout the report. U.S. production (shipment) values are from the Census Bureau's Manufacturing, Mining, and Construction Statistics. In order to present values in 2004 dollars, we used the 2004 value of shipments from Census for each industry and extrapolated prior year shipments using the Federal Reserve Board's Industrial Production Index for the particular industries. U.S. employment data are official statistics from the Bureau of Labor Statistics, Department of Labor. We assessed these data and found them to be sufficiently reliable for the purposes of this report.

We performed our work from January 2004 to January 2005 in accordance with generally accepted government auditing standards.

[2]*U.S. Ass'n. of Importers of Textiles and Apparel v. United States*, Ct. No. 04-00598 (C.I.T. Dec. 30, 2004).

Paragraph 242 of the Working Party Report on China's Accession to the WTO

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 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.

Summary of CITA Determinations on Market-Disruption-Based Requests to Date

Product	Key dates	Key elements of CITA finding that market was disrupted	Role of imports from China in present disruption	Role of imports from China in threat to disrupt the U.S. market in the near future
Brassieres and other body supporting garments	Request filed: July 24, 2003. CITA determination: Nov. 17, 2003. Consultation requested/quotas imposed: December 24, 2003.	U.S. production, including outward processing, dropped from 28,375,000 dozens in 2000 to 27,781,000 dozens in the year ending June 2003. U.S. producers' share of the market fell from 52.8 percent in 2000 to 43.8 percent in the year ending June 2003.	Total imports grew 17 percent from 2000 to year-end October 2003. Imports from China grew 291 percent in the same period. China went from the sixth largest supplier of such garments to the United States in 2001 to the largest source in 2002 and 2003. China gained U.S. market share (15.5 percentage points gained between 2000 and year-end June 2003), and gains came at the expense of domestically produced garments, including U.S. outward processing.	Enormous capacity of China to produce textile and apparel products for export. Lower average prices than other suppliers. Rapid change since integration suggests that without action, current trends in imports from China will likely continue. China has made significant investment in plants, equipment, and research and development in its textile and apparel industry.
Cotton and man-made fiber dressing gowns	Request filed: July 24, 2003. CITA determination: Nov. 17, 2003. Consultation requested/quotas imposed: Dec 24, 2003.	U.S. production plus outward processing fell by about 40 percent from 2000 to year-end June 2003. Share of the market held by U.S. producers fell 17.9 percentage points between 2000 and year-end June 2003.	Total U.S. imports grew by 77 percent from 2000 to yearend October 2003. U.S. imports from China increased 1,483 percent during the same period. Market share of imports from China increased from 3.9 percent in 2000 to 30.7 percent for the year ending June 2003. Imports from the rest of the world minus outward processing and U.S. producers plus outward processing both lost market share.	(See above explanation under "Brassieres.")

(Continued From Previous Page)

Product	Key dates	Key elements of CITA finding that market was disrupted	Role of imports from China in present disruption	Role of imports from China in threat to disrupt the U.S. market in the near future
Knit fabric	Request filed: July 24, 2003. CITA determination: Nov. 17, 2003. Consultation requested/quotas imposed: Dec 24, 2003.	U.S. production declined from about 657 million kilograms in 2000 to about 480 million kilograms in 2002. U.S. producers' market share had declined 9.6 percent between 2000 and 2002. Financial difficulties of two publicly traded firms engaged primarily in the manufacture of knit fabric.	Total imports increased 42 percent from 2001 to year-end October 2003, while knit fabric imports from China increased 21, 307 percent from 2000 to year-end October 2003. Imports from China gained market share at the expense of U.S. producers: Of the 9.6 percent of U.S. market share lost from 2000 to 2002 1.1 percent is attributable to Chinese imports.	(See above explanation under "Brassieres.") CITA also stated that the significant increase in knit fabric import volume since 2001 suggested that imports would continue to increase in the near future.
Cotton, man-made fiber, and wool socks	Request filed : June 28, 2004. CITA determination: Oct. 22, 2004. Consultation requested/quotas imposed: Oct. 29, 2004.	Excluding outward processing, U.S. imports increased from 51,014,517 to 98,976,106 dozen pairs between 2001 and 2003. U.S. production, including outward processing, dropped from 246 million dozen pairs to 214 million dozen pairs from 2001 to 2003. U.S. production plus outward processing market share fell from 82.9 in 2001 percent to 68.4 percent in 2003. Employment and number of sock-producing establishments both declined.	Between 2001 and August 2004, Chinese imports grew 4, 211 percent. Between 2001 and year-end August 2004 total world imports increased 100 percent. China went from the 12th largest foreign supplier to the United States in 2001 to the largest supplier by year-end August 2004. China's market share grew from 0.3 percent in 2001 to 7 percent in 2003, and the market share gain came at the expense of U.S. producers.	(See above explanation under "Brassieres.")

Source: CITA Statements of Reasons and Justifications.

Textile and Apparel Products Imported from China for Which U.S. Production Data Are Unavailable

U.S. production data on 32 of 167 textile and apparel categories are unavailable. Table 2 lists these 32 product categories and provides information on the size of U.S. imports from China in 1995 and 2004, imports from China as a percentage of total U.S. imports, the average annual percentage change in imports since China became a WTO member in 2001, and the quota fill rates for these product categories. Quota fill rates (as of December 1, 2004) show what share of the quota allocation for each product category was already allocated near the end of the quota period (December 31, 2004). Quotas on these products were removed completely on January 1, 2005, but the quota fill rates provide some information about how constraining the quotas were prior to their removal. In addition, notes at the end of the table identify qualitative information from OTEXA and Census on why the data for each category are unavailable.

Table 2: Import Data for Product Categories for Which U.S. Production Data Are Unavailable

Category name	Category number	Imports from China, 1995	Imports from China, 2004	Share of China in U.S. imports from all countries, 2004 (percent)	Average annual change, imports from China 2001-2004 (percent)	Quota fill rate as of December 1, 2004
Products removed from quota prior to January 1, 2005, or never under quota[a]						
Flat goods, handbags, and luggage[b]	670	$196,648	$1,735,685	78%	68%	N/A
Wool floor coverings[d]	465	181,679	164,981	18	-2	N/A
Womens' and girls' man-made fiber down-filled coats[c]	654	32,522	203,076	85	42	N/A
Other man-made fiber manufactures[d]	669	13,804	264,822	39	148	N/A
Men's and boys' man-made fiber down-filled coats[c]	653	66,801	108,207	85	6	N/A
Man-made fiber floor coverings[d]	665	8,933	96,762	16	48	N/A
Special purpose fabric[c]	229	4,175	122,266	14	134	N/A
Wool gloves and mittens[c]	431	5,182	15,857	76	6	N/A
Cotton handkerchiefs[b]	330	6,143	18,832	91	15	N/A
Women's and girls' cotton down-filled coats[c]	354	7,114	3,941	78	130	N/A
Nonwoven fabric[b]	223	830	14,264	2	505	N/A
Wool blankets[c]	464	414	4,055	24	30	N/A
Men's and boys' cotton down-filled coats[c]	353	30,248	4,293	68	-7	N/A

(Continued From Previous Page)

Category name	Category number	Imports from China, 1995	Imports from China, 2004	Share of China in U.S. imports from all countries, 2004 (percent)	Average annual change, imports from China 2001-2004 (percent)	Quota fill rate as of December 1, 2004
Nontextured filament yarn[b]	606	0	3,138	3	17,654	N/A
Man-made fiber handkerchiefs[b]	630	2,286	1,309	49	-7	N/A
Subtotal	**N/A**	**$556,780**	**$2,761,488**	**42%**	**50%**	**N/A**
Products removed from quota January 1, 2005						
Other cotton manufactures[d]	369	$280,155	$1,070,693	46%	42%	32.5
Babies' garments and clothing accessories[d]	239	76,606	1,103,435	55	135	No information
Other man-made fiber furnishings[d]	666	40,702	1,211,228	61	194	83.1
Other cotton apparel[d]	359	134,105	413,203	42	38	49.8 and 66.4[a]
Other man-made fiber apparel[d]	659	110,658	330,931	16	32	84.2 and 77.9 and 76.8[a]
Bedspreads and quilts[c]	362	120,525	183,713	34	6	80.1
Other wool apparel[d]	459	12,595	138,199	55	28	No info
Wool knit shirts and blouses[c]	438	5,102	9,560	3	5	93
Yarns put up for retail sale, and sewing thread[b]	200	3,032	9,434	5	43	89.4
Other wool manufactures[d]	469	3,699	5,257	29	8	64.8[a]
Woven fabric containing 85 percent or more by weight artificial staple[c]	611	3,081	2,756	13	6	32.1
Specialty yarns[c]	201	346	855	0	-5	64.8[a]
Other wool fabric[d]	414	95	142	0	-25	64.8[a]
Man-made fiber fabric, woven, containing more than 15 percent but less than 36 percent wool[c]	624	1	215	1	-20	64.8[a]
Subtotal	**N/A**	**$790,702**	**$4,479,622**	**41%**	**60%**	**N/A**
Products currently subject to safeguards measures (socks)						
Hosiery (socks)[e]	632(part)	$515	$221,348	57%	295%	N/A
Hosiery (socks)[e]	332	1,222	4,848	1	32	N/A
Hosiery (socks)[e]	432	0	2,103	10	21	N/A
Subtotal		**$1,737**	**$228,298**	**21%**	**197%**	
Total (all products for which production data is unavailable)	**N/A**	**$1,349,219**	**$7,469,408**	**40%**	**57%**	**N/A**

N/A = Not applicable.

Source: GAO analysis of U.S. Department of Commerce data.

Notes: Safeguard on hosiery (socks) is a single safeguard measure covering products from all three categories.

[a]Quota restraints are applied against a group of categories or subcategories in these cases. The fill rates either apply to the combined categories or several fill rates apply to one category.

[b]Census does not collect production data.

[c]Census does collect domestic production data, but the data cannot be published to avoid disclosure of individual company information.

[d]Census may collect some data, but Census production descriptions do not match CITA categories.

[e]Census began collecting data in December 2004

Threat-Based Requests for Safeguard Action Filed by U.S. Producer Groups, 2004

Description	Category	Date request received by CITA chair (2004)	Date CITA accepted request for consideration (2004)
Cotton trousers	347/348	Oct. 8	Oct. 29
Knit cotton shirts and blouses	338/339	Oct. 13	Nov. 3
Men's and boys' cotton and man-made fiber shirts, not knit	340/640	Oct. 13	Nov. 3
Knit man-made fiber shirts and blouses	638/639	Oct. 13	Nov. 3
Man-made fiber trousers	647/648	Oct. 13	Nov. 3
Cotton and man-made fiber underwear	352/652	Oct. 15	Nov. 3
Combed cotton yarn	301	Oct. 27	Nov. 18
Other synthetic filament fabric	620	Nov. 8	Dec. 1
Men's and boys' wool trousers	447	Nov. 12	Dec. 6
Knit fabric	222	Nov. 19	Dec. 13
Dressing gowns and robes	350/650	Nov. 24	Dec. 16
Brassieres and other body supporting garments	349/649	Dec. 1	Dec. 22

Source: Defendant's Memorandum in Support of its Motion to Dismiss and Opposition to Plaintiff's Motion for a Preliminary Injection, Sch. A, *Ass'n of Importers of Textiles and Apparel,* Ct. No. 04-00598 (C.I.T. Dec. 15, 2004).

Comments from the Committee for the Implementation of Textile Agreements

Note: GAO comments supplementing those in the report text appear at the end of this appendix.

MAR 11 2005

UNITED STATES DEPARTMENT OF COMMERCE
The Under Secretary for International Trade
Washington, D.C. 20230

Mr. Loren Yager
Director
International Affairs and Trade
United States Government Accountability Office
Washington, D.C. 20548

Dear Mr. Yager:

Thank you for providing us with your draft report regarding implementation of the textile safeguard provision of China's WTO accession agreement by the Committee for the Implementation of Textile Agreements (CITA). The study demonstrates a strong effort by GAO staff to understand the safeguard provision and to frame the status of the safeguard's application within the prevailing circumstances.

As you know, this year marked a watershed for international trade, with the conclusion of a liberalization process under the WTO Agreement on Textiles and Clothing (ATC) that was agreed to by the United States and other countries more than ten years ago. On January 1, 2005, all WTO Members lifted their quotas on textile and clothing imports, and the structure of global trade rules that have governed in this sector for several decades has been irreversibly changed. Consumers will benefit from lower prices for clothing and other essential products, but producers around the world, including in the United States, will face significant new challenges as a result of increased global competition.

The United States has been preparing for this change for many years. Recognizing that China had the potential to account for a major share of global exports of textiles and clothing once quotas were lifted, we negotiated a special textile safeguard as part of China's accession to the WTO – the subject of your draft report – that permits the United States to impose limits on textile and apparel imports from China when our domestic industry is faced with market disruption or the threat thereof. And in all of our recent free trade agreements, including our agreement with the five Central American countries and the Dominican Republic, we have negotiated special provisions that open new market opportunities for our domestic industry and leverage the competitive strengths of America's textile and clothing businesses and workers. Specifically, our free trade agreements include special textiles provisions that encourage the use of U.S. yarn and fabric, special textiles enforcement mechanisms, and textiles safeguards.

The Administration is committed to assisting U.S. textile and apparel firms and workers to adjust to competition from China and elsewhere that is causing or threatening to cause market disruption, using all available tools under U.S. trade laws and China's WTO accession agreement. The special China textile safeguard has proven to be an important mechanism for such adjustment. In fact, as the GAO's draft report indicates, CITA has applied the safeguard in four of the five actual market disruption cases in which U.S. producers have requested relief. Prior to the U.S. Court of International Trade's decision to enjoin CITA from further consideration of requests for relief based on "threat" of market disruption (as opposed to actual market disruption) from

See comment 1.

imports from China, pending the outcome of litigation, CITA had also agreed to consider twelve such "threat" requests filed at the end of 2004.

A good portion of the GAO's draft report focuses on many of the issues that are the subject of this ongoing litigation – including whether the current procedures allow for threat-based cases, as CITA believes they do. The Department of Justice has asked that CITA agencies not comment on those issues, so I cannot comment on many of the specific statements in the report. However, I am concerned regarding some of the conclusions in the report regarding the timing of issuance and sufficiency of CITA's current procedures. Prior to China's accession to the WTO, the United States, through CITA, had conducted numerous textile safeguard investigations pursuant to its authority under various bilateral and multilateral agreements (including the ATC and earlier U.S.-China bilateral textile agreements). Following China's WTO accession, CITA engaged Congress and other government agencies in the formulation of procedures to facilitate implementation of the WTO China textile safeguard. Thus, the procedures published in May 2003 were the result of extensive work and collaboration among many governmental agencies. The issuance of these guidelines, while not required by the WTO China textile safeguard agreement, or U.S. law, marked a significant step for CITA in increasing not only the transparency of, but also public involvement in its investigations.

As indicated in the Administration's submissions to the courts, China's accession agreement and CITA's published procedures clearly permit the United States to request consultations with China, and take safeguard action, based on the threat of market disruption. In addition, some of the GAO's assertions appear to be premised upon statements from private entities involved in the litigation.[1] Although we are not able to comment on such statements while the litigation is pending, we refer GAO to the Administration's submissions in those proceedings.

The GAO also recommends that the Commerce Department, as CITA's chair, periodically review the products included in Census Bureau surveys of U.S. textile and apparel production and, with public input, conduct a risk assessment aimed at identifying industry sectors at high risk of experiencing import surges from China and associated disruption. GAO further recommends that on the basis of the risk assessment, the Office of Textiles and Apparel work with the Census Bureau to insure that these industry sectors are included in subsequent production data gathering efforts.

Commerce's Office of Textiles and Apparel has for many years periodically reviewed, and consulted with the Census Bureau and with representatives of the domestic industry and workers, regarding the products included in Census Bureau surveys of U.S. textile and apparel production. Moreover, the textile category system was developed in close consultation with representatives of the domestic industry and workers and with Census. There are a variety of reasons why production data is not published by Census for certain categories. These are summarized in Attachment 1.

[1] See, e.g., pages 3, 4, 25.

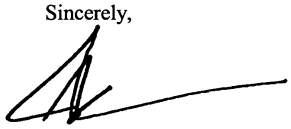
See comment 2.

We do not believe it would be productive for Commerce to conduct "risk assessments" of industry segments for which production data is not published by the Census Bureau. For the reasons described in Attachment 1, we believe that domestic entities would have an interest in requesting safeguard action on few, if any, of the remaining products for which Census production data is unavailable. If domestic entities were to have such an interest in a defined industry sector, we believe in virtually all instances that they would be able to collect production data. Lack of Census production data would not be a substantial impediment to a safeguard request in such instances. Should an industry believe that any of these products is at risk of market disruption and that China may play a role in such disruption, Commerce and CITA stand ready to consult with that industry regarding its China textile safeguard options, including ways in which the production data requirement can be satisfied. I understand that the Census Bureau has provided informal comments to GAO stating that Census is open to recommendations to collect additional information but indicating constraints to further collection and publication of textile and apparel data.

I have enclosed, as Attachments 2 and 3, specific comments relating to the report's text (where allowable in light of the current court proceedings) and technical corrections relating to appendices II and III.

I appreciate the opportunity to provide comments on the draft report.

Sincerely,



Grant D. Aldonas

The following are GAO's comments on the Committee for the Implementation of Textile Agreements' letter dated March 11, 2005.

GAO Comments

1. Our report does not take any position on the legal issues that are the subject of the ongoing litigation between the U.S. Association of Importers of Textiles and Apparel and the United States, including whether CITA's procedures allow for threat-based cases. We acknowledge CITA's extensive consultations and that the procedures represent a significant increase in the transparency of its investigations compared with those conducted under other agreements such as the Agreement on Textiles and Clothing. Nevertheless, 17 months is a significant amount of time to issue procedures to inform the public about CITA's process. The timing of issuance of the procedures necessitated industry groups refiling several safeguard action requests made months before the procedures were published. As noted in appendix I, we independently reviewed China's WTO accession agreement and CITA's procedures, and other information, as well as submissions from all parties involved in the ongoing litigation. We maintain that our description of CITA's procedures and findings about the public's uncertainty at the time represents a balanced summation of the facts. We continue to believe the procedures could be improved in this regard to further increase transparency and clarity.

2. According to a Bureau of the Census official, the Current Industrial Report program's coverage of U.S. textile and apparel production remained unchanged from 1993 until the completion of a programwide review in 2004 to reassign resources to manufacturing areas of increasing economic importance. We consider a risk assessment to be a useful and timely exercise due to the recent change in long-standing trade rules for textiles and apparel and resulting increased global competition. We agree that there are a variety of reasons why production data might be unavailable, including suppressing data to protect respondent confidentiality, and we amplified our discussion on textile and apparel production data accordingly. Additionally, we modified our recommendation to acknowledge that in certain instances, making the production data available might not be feasible. However, we found that requesting a safeguard action is substantially more difficult when production data are unavailable than when they are available; for example, it could add months onto the time to prepare a request. Accordingly, we believe that lack of production data may constitute a substantial impediment to a safeguard action request and

steps should be taken to mitigate this condition. Furthermore, some industries that were not deemed import sensitive in the past may become so in the future.

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