

Regulations of the People's Republic of China on Anti-dumping and Countervailing Measures

(Promulgated by Decree No.214 of the State Council of the People's Republic of China
on March 25, 1997, and effective as of the date of promulgation)

Chapter I General Provisions

Article 1 These Regulations are formulated in accordance with the relevant provisions of the Foreign Trade Law of the People's Republic of China for the purpose of maintaining the foreign trade order and fair competition and protecting the related domestic industries.

Article 2 If an imported product, by adopting the form of dumping or subsidy, causes the material injury or the threat of material injury to a related domestic industry already established or materially retards the establishment of a related domestic industry, the anti-dumping or countervailing measures shall be taken in accordance with the provisions of these Regulations.

Chapter II Dumping and Injury

Article 3 Dumping means that the export price of an imported product is less than its normal value.

Article 4 The normal value shall be determined according to the following methods:

(1) If the like or similar product of an imported product has the comparable price in the market of the exporting country, the said comparable price shall be the normal value;

(2) If the like or similar product of an imported product does not have the comparable price in the market of the exporting country, the comparable price of the said like or similar product exported to a third country or the production cost plus reasonable amount for expenses and for profit shall be the normal value.

Article 5 The export price shall be determined according to the following methods:

(1) If an imported product has the price actually paid or payable, the said price shall be the export price;

(2) If an imported product does not have the price actually paid or payable or if its price cannot be determined, the price at which the said product is first resold to an independent purchaser or the price presumed by the Ministry of Foreign Trade and

Economic Cooperation in consultation with the General Administration of Customs on a reasonable basis shall be the export price.

Article 6 The difference by which the export price of an imported product is less than its normal value shall be the margin of dumping.

A fair and reasonable comparison shall be made between the export price of an imported product and its normal value to determine the margin of dumping.

Article 7 The injury shall include the material injury and the threat of material injury to a related domestic industry already established and the material retardation of the establishment of a related domestic industry which are caused by dumping.

Article 8 In determining the injury caused by dumping to a domestic industry, the following particulars shall be checked:

(1) the volume of the dumped product, including the total volume of the dumped product or the increment in relation to the like or similar domestic product and the possibility of a significant increment;

(2) the price of the dumped product, including the price reduction of the dumped product or its impact on the price of the like or similar domestic product;

(3) the impact of the dumped product on the domestic industry; and

(4) the production capacity, export capability and inventories of the country exporting the dumped product.

Article 9 If an anti-dumping investigation involves imported products from two or more countries, the impact of the related imported products may be assessed cumulatively.

Article 10 The domestic industry means all the producers of the like or similar product within the territory of the People's Republic of China or the producers whose total volume of output takes up a large part of the total volume of output of the like or similar domestic product; however, the domestic producer who is related to the export or import operator or who itself is the import operator of the dumped product may be excluded.

Chapter III Anti-dumping Investigation

Article 11 Any domestic producer of the like or similar product of an imported product or any organization concerned (hereinafter referred to as the petitioner) may, in accordance with the provisions of these Regulations, submit a written petition for an anti-dumping investigation to the Ministry of Foreign Trade and Economic Cooperation.

Article 12 The written petition shall contain the following particulars:

(1) names and addresses of the petitioner and of the producer whom the petitioner

represents;

(2) the name, category, serial number in the tariff schedule of the imported product as well as the name and category of the like or similar domestic product;

(3) the volume and price of the dumped product and its impact on the domestic industry;

(4) the causal relationship between the dumping and injury; and

(5) other particulars prescribed by the Ministry of Foreign Trade and Economic Cooperation.

The written petition shall enclose necessary evidences.

Article 13 After receiving the petitioner's written petition, the Ministry of Foreign Trade and Economic Cooperation shall examine the petition and enclosed evidences; and after consulting with the State Economic and Trade Commission, decide whether to file the case for investigation or not.

Article 14 If, under the special circumstances, the Ministry of Foreign Trade and Economic Cooperation has sufficient evidences to believe that there exists the dumping and injury and the causal relationship between them, it may, on its own, file the case for investigation after consulting with the State Economic and Trade Commission.

Article 15 The period of an anti-dumping investigation shall be 12 months from the date of announcement of the decision that a case is filed for investigation to the date of announcement of the final rulings, and under the special circumstances, the period may be extended to 18 months.

Article 16 The Ministry of Foreign Trade and Economic Cooperation shall announce its decision whether a case is filed for investigation or not and notify such interested parties as the petitioner, the known export and import operators and the government of the exporting country.

Article 17 After deciding to file a case for investigation, the Ministry of Foreign Trade and Economic Cooperation shall investigate the dumping and its margin jointly with the General Administration of Customs; the State Economic and Trade Commission shall investigate the injury and its extent jointly with the relevant departments of the State Council; the Ministry of Foreign Trade and Economic Cooperation and the State Economic and Trade Commission shall, in accordance with the investigation results, respectively make the preliminary rulings, which shall be announced by the Ministry of Foreign Trade and Economic Cooperation.

If the dumping and injury are affirmed upon the preliminary rulings, further investigation on the dumping, the margin of dumping, the injury and the extent of injury shall be carried out in accordance with the provisions of the preceding paragraph; the Ministry of Foreign Trade and Economic Cooperation and the State

Economic and Trade Commission shall, in accordance with the further investigation results, respectively make the final rulings, which shall be announced by the Ministry of Foreign Trade and Economic Cooperation.

Article 18 Under one of the following circumstances, an anti-dumping investigation shall be terminated and the Ministry of Foreign Trade and Economic Cooperation shall announce it:

- (1) The petitioner withdraws the petition;
- (2) There exists no dumping and injury upon the preliminary rulings;
- (3) There exists no dumping and injury upon the final rulings; or
- (4) The margin of dumping or the import volume of the dumped product may be neglected.

Article 19 In conducting the investigation, the Ministry of Foreign Trade and Economic Cooperation jointly with the General Administration of Customs, and the State Economic and Trade Commission jointly with the relevant departments of the State Council, may distribute investigative questionnaires to the interested parties and make sampling investigations; and upon request by the interested parties, shall give them the opportunity to make opinions.

When it deems necessary, the Ministry of Foreign Trade and Economic Cooperation may send staff members to the countries concerned to conduct the investigation except that the countries concerned raise objections.

Article 20 When the Ministry of Foreign Trade and Economic Cooperation jointly with the General Administration of Customs, and the State Economic and Trade Commission jointly with the relevant departments of the State Council conduct investigations, the interested parties shall truthfully explain the situation and provide relevant materials. If they fail to do so or obstruct the investigation in other forms, the Ministry of Foreign Trade and Economic Cooperation and the State Economic and Trade Commission may make the rulings on the basis of the existing materials.

Article 21 The Ministry of Foreign Trade and Economic Cooperation and the State Economic and Trade Commission shall permit the petitioner and the interested parties to look up files related to the case except for those kept confidential.

Chapter IV Anti-dumping Measures

Article 22 If dumping is affirmed upon the preliminary rulings and thus injury is caused to a domestic industry, the following interim anti-dumping measures may be taken:

- (1) to levy the interim anti-dumping duty according to the prescribed procedures;
- (2) to demand to provide the cash deposit or guaranty in any other form.

The amounts of interim anti-dumping duty and of cash deposit and guaranty in any other form shall meet the margin of dumping determined by the preliminary rulings.

The levy of interim anti-dumping duty shall be proposed by the Ministry of Foreign Trade and Economic Cooperation and decided on by the State Council Customs Tariff Commission. The demand to provide cash deposit or guaranty in any other form shall be decided on by the Ministry of Foreign Trade and Economic Cooperation.

Article 23 The decision of interim anti-dumping measures shall be announced by the Ministry of Foreign Trade and Economic Cooperation and implemented by the Customs.

Article 24 The period for the interim anti-dumping duty shall be four months from the date of announcement of the decision of interim anti-dumping measures; and it may be extended to nine months under the special circumstances.

Article 25 If the export operator or the government of the exporting country of the dumped product makes a commitment of proposed effective measures to remove the injury caused by dumping to the domestic industry, the Ministry of Foreign Trade and Economic Cooperation may, after consulting with the State Economic and Trade Commission, decide to suspend the anti-dumping investigation and announce it.

The Ministry of Foreign Trade and Economic Cooperation may demand the export operator or the government of the exporting country mentioned in the preceding paragraph to regularly provide relevant information on the fulfillment of the commitment.

Article 26 If the export operator or the government of the exporting country of the dumped product fails to fulfill or withdraws the commitment, the Ministry of Foreign Trade and Economic Cooperation may, after consulting with the State Economic and Trade commission, decide to resume the anti-dumping investigation.

Article 27 Where, upon the final rulings, dumping exists and thereby causes injury to a domestic industry, the anti-dumping duty may be levied in accordance with the prescribed procedures and shall be announced by the Ministry of Foreign Trade and Economic Cooperation.

The levy of anti-dumping duty shall be proposed by the Ministry of Foreign Trade and Economic Cooperation, decided on by the State Council Customs Tariff Commission and implemented by the Customs.

Article 28 The payer of anti-dumping duty shall be the import operator of the dumped product.

Article 29 The amount of anti-dumping duty may not exceed the margin of dumping determined by the final rulings.

Article 30 If the anti-dumping duty finally established is lower than the interim anti-dumping duty, the over collected portion shall be refunded; and if the anti-dumping duty finally established is higher than the interim anti-dumping duty, the under collected portion shall not be made up any more.

Article 31 If the anti-dumping duty is not levied by decision, the interim anti-dumping duty, the cash deposit or guaranty in any other form collected shall be refunded.

Article 32 If the following two circumstances exist simultaneously, the State Council Customs Tariff Commission may, upon the proposal submitted by the Ministry of Foreign Trade and Economic Cooperation, decide to retroactively levy the anti-dumping duty on the dumped product imported within 90 days before the announcement of the decision of interim anti-dumping measures:

(1) The dumped product has a history of dumping causing injury to a domestic industry, or the import operator of the dumped product knows or should know that the export operator of the said product is dumping the product and the dumping will cause injury to a domestic industry;

(2) A large volume of import of the dumped product within a short period of time has already caused injury to a domestic industry.

Article 33 The period for the levy of anti-dumping duty or a price commitment in accordance with the provisions of these Regulations shall be five years. During this period, the Ministry of Foreign Trade and Economic Cooperation may, on its own or at the request of the interested parties, reexamine the decision on the levy of anti-dumping duty after consulting with the State Economic and Trade Commission, and within 12 months from the date of the commencement of reexamination, submit its proposal to the State Council Customs Tariff Commission on the modification, cancellation or retention of the decision on the levy of anti-dumping duty, and the decision of reexamination shall be made by the State Council Customs Tariff Commission and announced by the Ministry of Foreign Trade and Economic Cooperation.

Article 34 The import operator of the dumped product may, if having evidences to prove that the paid amount of anti-dumping duty exceeds the margin of dumping, apply to the Ministry of Foreign Trade and Economic Cooperation for a refund. Upon examination and verification by the Ministry of Foreign Trade and Economic Cooperation jointly with the General Administration of Customs, the Ministry of Foreign Trade and Economic Cooperation shall put forth a proposal of refund, the State Council Customs Tariff Commission shall decide thereon and the Customs shall implement the decision.

The decision on the refund under the preceding paragraph shall be made within

18 months from the date of receipt of the application for refund.

Article 35 The Ministry of Foreign Trade and Economic Cooperation, the State Economic and Trade Commission and the relevant departments of the State Council may take appropriate measures to prevent evasions of anti-dumping measures.

Chapter V Special Provisions on Countervailing Measures

Article 36 Any financial aids or benefits, directly or indirectly provided by a foreign government or public institution to an industry or enterprise, shall be the subsidy.

Article 37 These Regulations are applicable to imported products which have subsidies. However, these Regulations are not applicable to imported products which have subsidies for the sole purpose of industrial research and development, supporting the backward regions or environmental protection.

Article 38 The net amount of subsidy accepted by the subsidized product shall be the amount of subsidy.

The amount of subsidy shall be calculated in a fair and reasonable manner.

Article 39 The relevant provisions of Chapters II, III and IV of these Regulations shall be applicable to the injury caused by subsidy, countervailing investigations and implementation of countervailing measures.

Chapter VI Supplementary Provisions

Article 40 Where any country or region adopts discriminatory anti-dumping or countervailing measures against export products of the People's Republic of China, the People's Republic of China may take corresponding measures against the said country or region in accordance with the actual circumstances.

Article 41 The Ministry of Foreign Trade and Economic Cooperation and the State Economic and Trade Commission may, jointly with the relevant departments of the State Council, formulate the relevant specific measures in accordance with these Regulations.

Article 42 These Regulations shall enter into force as of the date of promulgation.