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Committee on Anti-Dumping Practices
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NOTIFICATIONS OF LAWS AND REGULATIONS UNDER
ARTICLE 18.5 OF THE AGREEMENT

PEOPLE'S REPUBLIC OF CHINA

The following communication, dated 27 August 2002, has been received from the Permanent Mission of the People's Republic of China.

With reference to Article 18.5 of the Agreement on Implementation of Article VI of the GATT 1994, I have the honour to provide the Committee on Anti-Dumping Practices the English translation of the Regulations of the People's Republic of China on Anti-Dumping. English translations of other Rules as notified are still in preparation and will be provided once available.

Please note that the Regulations are authentic only in Chinese and that the English translation of the Regulations is for reference only by WTO Members.

REGULATIONS OF THE PEOPLE'S REPUBLIC OF CHINA ON ANTI-DUMPING

(Adopted at the 46th Executive Meeting of the State Council on 31 October 2001, promulgated by Decree No. 328 of the State Council of the People's Republic of China on 26 November 2001, and effective as of 1 January 2002.

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.

Article 2. Where an imported product is dumped into the commerce of the People's Republic of China and causes material injury or threat of material injury to an established domestic industry, or causes material retardation to the establishment of such an industry, an anti-dumping investigation shall be initiated and anti-dumping measures applied in accordance with the provisions of these Regulations.

CHAPTER II - DUMPING AND INJURY

Article 3. The term "dumping" means that an imported product is introduced, in the ordinary course of trade, into the commerce of the People's Republic of China at an export price less than its normal value.

The Ministry of Foreign Trade and Economic Cooperation (hereinafter referred to as "MOFTEC") shall be responsible for the investigation and determination of dumping.

Article 4. The normal value of an imported product shall be determined according to the following methods by distinguishing among differing cases:

(1) where there is a comparable price for the like product of the imported product in the ordinary course of trade in the domestic market of the exporting country (region), such comparable price shall be the normal value;

(2) where there are no sales of the like product of the imported product in the ordinary course of trade in the domestic market of the exporting country (region), or the price and the quantity of such sales do not permit a fair comparison, the normal value shall be the comparable price of the like product when exported to an appropriate third country (region) or the cost of production of the like product in the country (region) of origin plus a reasonable amount for expenses and for profits.

In cases where a product is not imported directly from the country (region) of origin, its normal value shall be determined in accordance with Item 1 of the preceding paragraph. However, under the circumstances that the product is merely transshipped through the exporting country, or such product is not produced in the exporting country (region), or there is no comparable price for such product in the exporting country (region), the price of the like product in the country (region) of origin may be taken as the normal value.

Article 5. The export price of an imported product shall be determined according to the following methods by distinguishing among differing cases:

(1) the price actually paid or payable for the imported product shall be the export price;

(2) in cases where there is no export price for the imported product or the price is unreliable, the export price may be constructed on the basis of the price at which the imported product is first resold to an independent buyer; however, if the imported product is not resold to an independent buyer, or not resold in the condition as imported, the export price may be determined on the basis of reasonable price constructed by MOFTEC.

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

A fair and reasonable comparison shall be made between the export price and the normal value of an imported product, with due allowance for factors which affect price comparability.

The margin of dumping shall be established on the basis of a comparison of a weighted average normal value with a weighted average of prices of all comparable export transactions or by a comparison of normal value and export price on a transaction-to-transaction basis.

Where the export prices differ significantly among different purchasers, regions or time periods, and therefore it is difficult to make comparison through the methods prescribed in the preceding paragraph, a comparison may be made between a weighted average normal value with prices of individual export transactions.

Article 7. The term "injury" means material injury or threat of material injury to an established domestic industry or material retardation of the establishment of such a domestic industry.

The State Economic and Trade Commission (hereinafter referred to as "SETC") shall be responsible for the investigation and determination of injury. The anti-dumping investigation of injury to a domestic industry involving agricultural products shall be conducted by SETC jointly with the Ministry of Agriculture.

Article 8. The following factors shall be examined in the determination of injury caused by dumping to a domestic industry:

- (1) whether the volume of dumped imports, including the volume of dumped imports either in absolute terms or relative to the production or consumption of a like domestic product, has been increasing significantly, or the possibility of a significant increase in dumped imports;
- (2) the effects of dumped imports on prices, including the price undercutting by the dumped imports, or the significant suppressing or depressing effects on the price of a like domestic product, etc.;
- (3) the consequent impact of the dumped imports on the relevant economic factors and indices of the domestic industry;
- (4) the production capacity or export capacity of the exporting country (region) or the country (region) of origin, and inventories of the product under investigation;
- (5) other factors that may cause or have caused injury to a domestic industry.

The determination of threat of material injury shall be based on facts and not merely on allegation, conjecture or remote possibility.

When determining the injury caused by dumping to a domestic industry, the determination shall be based on positive evidence, and the injuries caused by factors other than dumping must not be attributed to dumping.

Article 9. Where the dumped imports from more than one country (region) simultaneously satisfy the following requirements, the effects of such dumped imports on a domestic industry may be cumulatively assessed:

- (1) the margin of dumping established in relation to the dumped imports from each country (region) is no less than 2 per cent, and the volume of such imports from each country is not negligible;
- (2) a cumulative assessment of the effects of the dumped imports is appropriate in light of the conditions of competition between the dumped imports and the conditions of competition between the dumped imports and the domestic like product.

The volume of dumped imports shall normally be regarded as negligible if the volume of dumped imports from a particular country (region) is found to account for less than 3 per cent of the total imports of the like product, unless countries (regions) which individually account for less than 3 per cent of the total imports of the like product collectively account for more than 7 per cent of its total imports of the like product.

Article 10. The effect of the dumped imports shall be assessed in relation to the separate identification of the domestic production of the like product. If such separate identification of that production is not possible, the effect of the dumped imports shall be assessed by the examination of the production of the narrowest group or range of products, including the like domestic product.

Article 11. The term "domestic industry" means the domestic producers as a whole of the like products within the People's Republic of China or those of them whose collective output of the product constitutes a major proportion of the total production of those products, except that when domestic producers are related to the exporters or importers or are themselves importers of the dumped imports or like products.

In exceptional circumstances, the producers within a regional domestic market may be regarded as a separate industry if the producers within such market sell all or almost all of the like products in that market, and the demand in that market is not to any substantial degree supplied by domestic producers of the like products located in other domestic regions.

Article 12. The term "like product" means the product that is identical to the dumped product, or in the absence of such a product, another product that has characteristics closely resembling the dumped product.

CHAPTER III - ANTI-DUMPING INVESTIGATION

Article 13. Any domestic industry or natural person, legal person or relevant organization on behalf of the domestic industry (hereinafter collectively referred to as "the applicant") may make a written application

to MOFTEC for an anti-dumping investigation in accordance with the provisions of these Regulations.

Article 14. The application shall contain the following information:

- (1) the name, address and relevant information of the applicant;
- (2) a complete description of the imported products in question, including the names of products, the exporting countries (regions) or the countries (regions) of origin concerned, the identity of known exporters or producers, information on the prices of the products destined for consumption in the domestic market of the exporting countries (regions) or the countries (regions) of origin, and information on export prices, etc.;
- (3) a description of the volume and value of the domestic production of the like product;
- (4) the effect of the volume and price of the imported product in question on the domestic industry;
- (5) other information that the applicant considers as necessary to submit.

Article 15. The application shall be supported by the following evidence:

- (1) existence of dumping of the imported product in question;
- (2) injury caused to a domestic industry;
- (3) existence of a causal link between dumping and the injury.

Article 16. MOFTEC shall, within 60 days from the date of receipt of the application and relevant evidence submitted by the applicant, examine whether the application is made by or on behalf of the domestic industry, the contents of the application and the evidence attached thereto, and shall, after consultation with the SETC, decide whether or not to initiate an investigation.

Prior to the decision to initiate an investigation, the government of the exporting country (region) concerned shall be notified.

Article 17. An application shall be considered to have been made by or on behalf of the domestic industry and an anti-dumping investigation may be initiated, if the application is supported by those domestic producers whose collective output constitutes more than 50 per cent of the total production of the like product produced by that portion of the domestic industry expressing either support for or opposition to the application. However, no investigation shall be initiated when the output of those domestic producers expressly supporting the application account for less than 25 per cent of total production of the like domestic product.

Article 18. If, in exceptional circumstances, MOFTEC does not receive any written application for an anti-dumping investigation, but has sufficient evidence of dumping, injury and causality between the two, it may, after consulting with SETC, decide to initiate the investigation. MOFTEC and SETC are hereinafter collectively referred to as "the investigating authorities".

Article 19. MOFTEC shall publish the decision to initiate an investigation and notify the applicants, the known exporters and importers, the governments of an exporting countries (regions) and other interested organizations and parties (hereinafter collectively referred to as "the interested parties").

As soon as the decision to initiate an investigation has been published, MOFTEC shall provide the full text of the application to the known exporters and the governments of the exporting countries (regions).

Article 20. The investigating authorities may conduct investigation and collect information from interested parties by, among others, sending questionnaires, using samples, holding public hearings and making on-the-spot verification .

The investigating authorities shall provide opportunities for all interested parties concerned to present their views and supporting arguments.

MOFTEC may send its staff members to the countries (regions) concerned to carry out investigation if it deems necessary to do so, unless the countries (regions) concerned object to such an investigation.

Article 21. An interested party shall provide authentic information and relevant documentation to the investigating authorities in the process of the investigation. In the event that any interested party does not provide authentic information and relevant documentation, or does not provide necessary information within a reasonable time-limit or significantly impedes the investigation in other way, the investigating authorities may make determinations on the basis of the facts already known and the best information available.

Article 22. An interested party may request the investigating authorities to treat the information it provided as confidential if it considers that any disclosure of such information would create significantly adverse effects.

The investigating authorities shall treat the information submitted by the interested party as confidential if they consider that the request for confidentiality is justifiable, and shall require the interested party to provide non-confidential summaries thereof.

The confidential information shall not be disclosed without permission of the interested party submitting it.

Article 23. The investigating authorities shall allow the applicant and interested parties to have access to the information relevant to the investigation, provided that the information has not been treated as confidential.

Article 24. MOFTEC and SETC shall, on the basis of their findings, make a preliminary determination on dumping and injury respectively, and make a preliminary determination on whether there exists a causal link between dumping and injury. The preliminary determinations shall be published by MOFTEC.

Article 25. In the case where a preliminary determination on dumping, injury and the causal link between the two is affirmative, MOFTEC and

SETC shall carry out further investigations on dumping, the margin of dumping, injury and its degree, and, on the basis of their findings, make final determinations respectively. The final determinations shall be published by MOFTEC.

Before the final determinations are made, MOFTEC shall inform all known interested parties of the essential facts on which the final determinations are based.

Article 26. An anti-dumping investigation shall be concluded within 12 months from the date of publication of the decision to initiate the investigation, and such period may be extended in special circumstances, but in no case the extension shall be more than 6 months.

Article 27. In any one of the following circumstances, an anti-dumping investigation shall be terminated and such termination shall be published by MOFTEC:

- (1) the application has been withdrawn by the applicant;
- (2) there is no sufficient evidence of the existence of dumping, injury and the causal link between the two;
- (3) the margin of dumping is less than 2 per cent;
- (4) the actual or potential volume of dumped imports or the injury is negligible;
- (5) other circumstances that both MOFTEC and SETC consider not appropriate to continue the anti-dumping investigation.

If the product under investigation imported from one country (region) or some countries (regions) falls under one of the circumstances set forth in Item 2, 3, or 4 of the preceding paragraph, the anti-dumping investigation on such product shall be terminated.

CHAPTER V - ANTI-DUMPING MEASURES

Section I: Provisional Anti-dumping Measures

Article 28. The following provisional anti-dumping measures may be applied if the preliminary determination establishes the existence of dumping and the injury caused by dumping to a domestic industry:

- (1) imposition of a provisional anti-dumping duty;
- (2) provision of cash deposit, bond or other forms of security.

The amount of the provisional anti-dumping duty, cash deposit, bond or other forms of security provided shall not exceed the margin of dumping established in the preliminary determination.

Article 29. The proposal imposing provisional anti-dumping duties shall be put forward by MOFTEC, on the basis of such a proposal, the State Council Tariff Commission shall make a decision thereon. The decision shall be published by MOFTEC. The decision on the provision of cash deposit, bond or other forms of security shall be made and published by MOFTEC. The Customs shall implement the decision from the effective date set forth in the public notice.

Article 30. The period for applying provisional anti-dumping measures shall not exceed 4 months from the effective date set forth in the public notice regarding the decision on provisional anti-dumping measures, and, in special circumstances, may be extended to 9 months.

No provisional anti-dumping measures shall be applied within 60 days from the date of publication of the decision to initiate the investigation.

Section II: Price Undertakings

Article 31. During the period of an anti-dumping investigation, an exporter of the dumped imports may offer price undertakings to MOFTEC to revise its prices or to cease exporting at dumped prices.

MOFTEC may suggest price undertakings to the exporter.

The investigating authorities shall not force the exporter to enter into price undertakings.

Article 32. The fact that exporters do not offer price undertakings, or do not accept any suggestion concerning price undertakings, shall in no way prejudice the investigation and determination of the anti-dumping case. The investigating authorities have the right to determine that a threat of injury is more likely to be realized if the exporters continue dumping the imports.

Article 33. If considering that price undertakings made by exporters are acceptable, MOFTEC may, after consulting with SETC, decide to suspend or terminate the anti-dumping investigation without applying provisional anti-dumping measures or imposing anti-dumping duties. The decision to suspend or terminate the anti-dumping investigation shall be published by MOFTEC.

If MOFTEC does not accept a price undertaking, it shall provide the reasons therefor to the exporters concerned.

Price undertakings shall not be sought or accepted unless the investigating authorities have made a preliminary affirmative determination of dumping and injury caused by such dumping.

Article 34. After the suspension or termination of the investigation according to the provisions of Paragraph 1, Article 33 of these Regulations, upon the request of the exporters, or the investigating authorities deem necessary, the investigating authorities may continue the investigation of dumping and injury.

On the basis of the findings of the investigation prescribed in the preceding Paragraph, the price undertaking shall automatically lapse if a negative determination is made on dumping or injury, or shall remain in force if the determination is affirmative.

Article 35. MOFTEC may require the exporter from whom an undertaking has been accepted to provide periodically information and documentation

relevant to the fulfilment of such an undertaking, and make verification on such information and documentation.

Article 36. In the case where an exporter violates his undertaking, MOFTEC may, after consulting with the SETC, decide to resume the anti-dumping investigations immediately in accordance with the provisions of these Regulations, or on the basis of the best information available, decide to apply provisional measures and levy anti-dumping duties retroactively on the products imported within 90 days prior to the application of such provisional anti-dumping measures, except the products imported before the violation of the undertaking.

Section III: Anti-dumping Duties

Article 37. If a final determination establishes the existence of dumping and injury caused by dumping to a domestic industry, an anti-dumping duty may be imposed.

Article 38. The proposal imposing an anti-dumping duty shall be put forward by MOFTEC, on the basis of such a proposal the State Council Tariff Commission shall make a decision which shall be published by MOFTEC. The Customs shall implement the decision from the effective date set forth in the public notice.

Article 39. Anti-dumping duties shall be imposed on products imported after the date of publication of the final determination, with the exception of the circumstances set forth in Articles 36, 43 and 44 of these Regulations.

Article 40. Anti-dumping duties shall be paid by importers of dumped imports.

Article 41. Anti-dumping duties shall be determined separately on the basis of the margin of dumping established for each individual exporter. Where it is necessary to impose an anti-dumping duty on the dumped imports of an exporter who has not been included in the ongoing examination, an anti-dumping duty applicable to the exporter shall be determined in a reasonable way.

Article 42. The amount of the anti-dumping duty shall not exceed the margin of dumping established in a final determination.

Article 43. In the case where a final determination establishes the existence of a material injury, and provisional anti-dumping measures have been applied prior to the final determination, anti-dumping duties may be levied retroactively for the period for which provisional anti-dumping measures have been applied.

In the case where a final determination establishes the existence of a threat of material injury, and provisional anti-dumping measures have been applied in the situation that the absence of such provisional anti-dumping measures would have lead to a determination of injury, anti-dumping duties may be levied retroactively for the period for which provisional anti-dumping measures have been applied.

If the definitive anti-dumping duty determined in a final determination is higher than the provisional anti-dumping duty paid or payable, or the amount estimated for the purpose of the security, the difference shall not be collected; if the definitive duty is lower than the provisional anti-dumping duty paid or payable, or the amount estimated for the purpose of the security, the difference shall be refunded or the duty recalculated, as the case may be.

Article 44. When the following two circumstances exist simultaneously, an anti-dumping duty may be retroactively levied on products imported not more than 90 days prior to the date of application of provisional anti-dumping measures, except the products imported before the initiation of the investigation:

(1) there is a dumping history of the dumped imports causing injury to the domestic industry, or the importer of the dumped imports was, or should have been, aware that the exporters practice dumping and that such dumping would cause injury to the domestic industry; and,

(2) the dumped imports were massively imported in a short time and were likely to seriously undermine the remedial effect of the definitive anti-dumping duty to be applied.

Article 45. Where a final determination decides not to levy an anti-dumping duty, or does not decide a retroactive levy of an anti-dumping duty, the provisional anti-dumping duty collected and any cash deposit made during the period of the application of provisional anti-dumping measures shall be refunded, and any bonds or other forms of security released.

Article 46. If an importer of dumped imports can provide evidence to prove that the anti-dumping duty already paid is higher than the margin of dumping, he can apply to MOFTEC for duty refund. MOFTEC shall, upon examination and verification of the application, make a proposal to the State Council Tariff Commission, who shall make a decision to reimburse the extra duty on the basis of the proposal made by MOFTEC, and the Customs shall implement the decision.

Article 47. After an imported product is subject to an anti-dumping duty, new exporters who have not exported the product in question to the People's Republic of China during the period of investigation, may apply to MOFTEC for a separate determination of the margin of dumping, provided that they can show that they are not related to any of the exporters who are subject to the anti-dumping duty. MOFTEC shall promptly carry out a review and make a final determination. No anti-dumping duties shall be levied on imports from such exporters or producers while the review is being carried out, but measures may be taken as provided for in Item 2, Paragraph 1 of Article 28 of these Regulations.

CHAPTER V - DURATION AND REVIEW OF ANTI-DUMPING DUTIES AND PRICE UNDERTAKINGS

Article 48. The period for the levy of an anti-dumping duty and fulfilment of a price undertaking shall not exceed 5 years. However, the period for the levy of the anti-dumping duty may be extended as appropriate if, as a

result of the review, it is determined that the termination of the duty would be likely to lead to continuation or recurrence of dumping and injury.

Article 49. After an anti-dumping duty has taken effect, MOFTEC may, after consultation with SETC, decide on justifiable grounds to review the need for the continued imposition of the anti-dumping duty; such a review may also be conducted, provided that a reasonable period of time has elapsed, upon request by any interested party and on the basis of examination of the relevant evidence submitted by the interested party.

After a price undertaking has taken effect, MOFTEC may, on justifiable grounds, decide to review the need for the continuance of the price undertaking; such a review may also be conducted, provided that a reasonable period of time has elapsed, upon request by any interested party and on the basis of examination of the relevant evidence submitted by the interested party.

Article 50. On the basis of the findings of a review, MOFTEC shall, in accordance with the provisions of these Regulations, make a proposal on the retention, revision, or termination of an anti-dumping duty, and on the basis of such a proposal the State Council Tariff Commission shall, in light of the proposal made by MOFTEC, make a decision which shall be published by MOFTEC. Meanwhile, MOFTEC may, after consulting with SETC, make a decision on the retention, revision, or termination of the price undertaking and publish such decision in accordance with the provisions of these Regulations.

Article 51. The review proceedings shall be conducted with reference to the relevant provisions of these Regulations on anti-dumping investigation.

Any review shall be concluded within 12 months from the date of decision of initiation of such a review.

Article 52. During the period of review, the review proceedings shall not impede the application of anti-dumping measures.

CHAPTER VI - SUPPLEMENTARY PROVISIONS

Article 53. Where any party is not satisfied with a final determination made under Article 25 of these Regulations, or not satisfied with a decision on whether or not to impose an anti-dumping duty, retroactive imposition of an anti-dumping duty, reimbursement of an anti-dumping duty or imposition of an anti-dumping duty on new exporters made under Chapter IV of these Regulations, or not satisfied with the review findings made under Chapter V of these Regulations, it may, in accordance with the law, apply for administrative reconsideration or file a lawsuit in the people's court.

Article 54. A public notice issued under these Regulations shall contain, inter alia, important information, facts, reasoning, legal basis, findings and conclusions, etc.

Article 55. MOFTEC and SETC may take appropriate measures to prevent the circumvention of anti-dumping measures.

Article 56. Where a country (region) discriminatorily imposes anti-dumping measures on the exports from the People's Republic of China, China may, on the basis of the actual situations, take corresponding measures against that country (region).

Article 57. MOFTEC is responsible for foreign-related consultations, notification and dispute settlements concerning anti-dumping activities.

Article 58. MOFTEC and SETC may, in accordance with these Regulations, formulate specific implementing measures.

Article 59. These Regulations shall be effective as of 1 January 2002. The provisions on anti-dumping contained in the Regulations of the People's Republic of China on promulgated by the State Council on 25 March 1997 shall be repealed simultaneously.