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**Committee on Subsidies
and Countervailing Measures**

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**NOTIFICATION OF LAWS AND REGULATIONS UNDER
ARTICLE 32.6 OF THE AGREEMENT**

PEOPLE'S REPUBLIC OF CHINA

The following communication, dated 3 September 2002, has been received from the Permanent Mission of the People's Republic of China.

REGULATIONS OF THE PEOPLE'S REPUBLIC OF CHINA ON COUNTERVAILING MEASURES

(Adopted at the 46th Executive Meeting of the State Council on 31 October 2001, promulgated by Decree No. 329 of the State Council of the People's Republic of China, and effective as of 1 January 2002)

CHAPTER I - GENERAL PROVISIONS

Article 1. These Regulations are formulated in accordance with 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 to which a subsidy is granted causes material injury or threat of material injury to an established domestic industry, or causes material retardation of the establishment of such an industry, a countervailing investigation shall be initiated and countervailing measures applied in accordance with the provisions of these Regulations.

CHAPTER II - SUBSIDY AND INJURY

Article 3. The term "subsidy" means a financial contribution or any form of income or price support which is provided by the government or any public body of an exporting country (region) and which will benefit the recipients.

The government or any public body of an exporting country (region) is hereinafter collectively referred to as "the government of an exporting country (region)".

The term "financial contribution" in Paragraph 1 of this Article shall include:

- (1) the government of an exporting country (region) directly provides funds in form of grants, loans, or equity infusion, etc., or potentially directly transfers funds or liabilities in form of loan guarantees or otherwise;
- (2) the government of an exporting country (region) forgoes or does not collect revenue that is otherwise due;
- (3) the government of an exporting country (region) provides goods or services other than general infrastructure, or purchases goods;
- (4) the government of an exporting country (region) carries out the above-mentioned functions by making payments to a funding mechanism, or entrusts or directs a private body to carry out the above-mentioned functions.

Article 4. A subsidy subject to countervailing investigation and countervailing measures under these Regulations must be specific.

A subsidy falling under one of the following circumstances shall be specific:

- (1) the subsidy received by certain enterprises or industries explicitly specified by the government of an exporting country (region);
- (2) the subsidy received by certain enterprises or industries explicitly provided for in laws and regulations of an exporting country (region);

- (3) the subsidy received by enterprises or industries located within a designated specific area;
- (4) the subsidy contingent upon export performance, including those illustrated in the List of Export Subsidies annexed to these Regulations;
- (5) the subsidy contingent upon the use of domestic over imported products.

In determining the specificity of a subsidy, such factors as the number of subsidized enterprises, the amount, proportion, length of time, and form of the subsidy received by enterprises shall also be considered.

Article 5. The Ministry of Foreign Trade and Economic Cooperation (hereinafter referred to as “MOFTEC”) shall be responsible for the investigation and determination of a subsidy.

Article 6. The amount of a subsidy to an imported product shall be calculated according to the following methods by distinguishing among differing cases:

- (1) where the subsidy is granted in form of a grant, the amount of the subsidy shall be calculated on the basis of the actual amount received by an enterprise;
- (2) where the subsidy is granted in form of a loan, the amount of the subsidy shall be calculated on the basis of the difference between the amount of interest an enterprise should pay on a loan in the ordinary commercial loan conditions and the amount of interest the enterprise pays on this loan;
- (3) where the subsidy is granted in form of a loan guarantee, the amount of the subsidy shall be calculated on the basis of the difference between the amount of interest an enterprise should pay on a commercial loan absent such guarantee and the amount of interest the enterprise actually pays on a loan guaranteed;
- (4) where the subsidy is granted in form of an equity infusion, the amount of the subsidy shall be calculated on the basis of the actual amount of the capital an enterprise receives;
- (5) where the subsidy is granted in form of the provision of goods or services, the amount of the subsidy shall be calculated on the basis of the difference between the price of the goods or services at normal market price and the price that an enterprise actually pays;
- (6) where the subsidy is granted in form of purchase of goods, the amount of the subsidy shall be calculated on the basis of the difference between the actual price the government pays and the normal market price of the goods;
- (7) where the subsidy is granted in form of forgoing or not collecting due revenue, the amount of the subsidy shall be calculated on the basis of the difference between the amount payable under law and the actual amount an enterprise pays;

The amount of subsidies granted in forms other than those enumerated in the preceding paragraph shall be calculated in a fair and reasonable way.

Article 7. The term “injury” means material injury or threat of material injury caused by a subsidy to an established domestic industry, or material retardation of the establishment of 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 countervailing 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 a subsidy to a domestic industry:

- (1) the trade effects likely to arise from the subsidy;
- (2) whether the volume of subsidized imports, including the volume of subsidized 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 subsidized imports;
- (3) the effects of subsidized imports on prices, including the price undercutting of the subsidized imports, or the significant suppressing or depressing effects on the price of a like domestic product, etc.;
- (4) the impact of the subsidized imports on the relevant economic factors and indices of the domestic industry;
- (5) the production capacity or export capacity of the exporting country (region) or the country (region) of origin, and inventories of the product under investigation;
- (6) 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 a subsidy to a domestic industry, the determination shall be based on positive evidence, and the injuries caused by factors other than subsidy must not be attributed to the subsidy.

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

- (1) the amount of subsidization established in relation to the subsidized imports from each country (region) is not de *minimis*, and the volume of imports from each country is not negligible;
- (2) a cumulative assessment of the effects of the subsidized imports is appropriate in light of the conditions of competition between the subsidized imports and the conditions of competition between the subsidized imports and the like domestic product.

A subsidy is de *minimis* if the amount of the subsidy is less than 1 per cent of the value of a product; however, with respect to the subsidized products from developing countries (regions), the subsidy is de *minimis* if the amount of the subsidy is less than 2 per cent of the value of a product.

Article 10. The effect of the subsidized 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 subsidized 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 products 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 subsidized products 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 subsidized product, or in the absence of such a product, another product that has characteristics closely resembling the subsidized product.

CHAPTER III - COUNTERVAILING 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 a countervailing investigation in accordance with the provisions of these Regulations.

Article 14. The application shall contain the following information:

- (1) the name, address and other relevant information of the applicant;
- (2) a complete description of the imported products in question, including the names of the products, the exporting countries (regions) or the countries (regions) of origin concerned, the identity of known exporters or producers, etc.;
- (3) a description of the volume and value of 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 a subsidy to the imported product in question;
- (2) injury caused to a domestic industry;
- (3) existence of a causal link between the subsidy 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 and the contents of the application and the evidence attached thereto,

and shall, after consulting with SETC, decide whether or not to initiate an investigation. Under special circumstances, the examination period may be extended.

Prior to the decision to initiate an investigation, the government of the country (region) the product of which may be subject to such investigation shall be invited for consultation regarding the subsidy in question.

Article 17. An application shall be considered to have been made by or on behalf of the domestic industry, and a countervailing 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 accounts for less than 25 per cent of total production of the like domestic product.

Article 18. If, in special circumstances, MOFTEC does not receive any written application for a countervailing investigation, but has sufficient evidence of a subsidy, injury and causal link between the two, it may, after consulting with SETC, decide to initiate an 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, other interested organizations and parties (hereinafter collectively referred to as “the interested parties”), and the government of an exporting country (region).

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 government of the exporting country (region).

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

The investigating authorities shall provide opportunities for all interested parties and the government of interested country (region) to present their views and supporting arguments.

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

Article 21. An interested party and the government of an interested country (region) shall provide authentic information and relevant documentation to the investigating authorities in the process of the investigation. In the event that any interested party or the government of the interested country (region) 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 available.

Article 22. An interested party or the government of an interested country (region) may request the investigating authorities to treat the information it provided as confidential if they consider that any disclosure of such information would create significantly adverse effect.

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

The confidential information shall not be disclosed without permission of the interested party or the government of the interested country (region) submitting it.

Article 23. The investigating authorities shall allow applicants, interested parties and governments of interested countries (regions) to have access to the information relevant to the investigation, provided that the information has not been treated as confidential.

Article 24. Throughout the period of investigation, the government of the country (region) the products of which are the subject of the investigation shall be afforded a reasonable opportunity to continue consultations. The consultations shall not prevent the investigating authorities from conducting investigations and adopting countervailing measures in accordance with the provisions of these Regulations.

Article 25. MOFTEC and SETC shall, on the basis of their findings, make a preliminary determination on subsidization and injury respectively, and make a preliminary determination on where there exists a causal link between subsidization and injury. The preliminary determinations shall be published by MOFTEC.

Article 26. In the case where a preliminary determination on subsidization, injury and the causal link between the two is affirmative, MOFTEC and SETC shall conduct further investigations on the subsidization and its amount, the injury and its degree and make final determinations respectively on the basis of their findings. The final determinations shall be published by MOFTEC. Before the final determinations are made, MOFTEC shall inform all known interested parties and the government of the interested country (region) of the essential facts on which the final determinations are based.

Article 27. A countervailing 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 28. In any one of the following circumstances, a countervailing 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 a subsidy, injury and causal link between them;
- (3) the amount of the subsidy is *de minimis*;
- (4) the actual or potential volume of the subsidized imports or the injury is negligible;
- (5) an agreement has been reached with the government of the country (region) concerned after consultations, and therefore the countervailing investigation is no longer necessary;
- (6) other circumstances that both MOFTEC and SETC consider not appropriate to continue the countervailing investigation.

If the product under investigation imported from one country (region) or some countries (regions) falls into one of the circumstances set forth in Item (2), (3), (4) or (5) of the preceding paragraph, the countervailing investigation on such product shall be terminated.

CHAPTER IV - COUNTERVAILING MEASURES

Section I: Provisional Measures

Article 29. Provisional countervailing measures may be applied if the preliminary determination establishes the existence of a subsidy and the injury caused by the subsidy to a domestic industry.

Provisional countervailing measures shall take the form of provisional countervailing duties guaranteed by cash deposits or bonds.

Article 30. The proposal applying provisional countervailing measures shall be put forward by MOFTEC, on the basis of which the State Council Tariff Commission shall make a decision thereon. The decision shall be published by MOFTEC. The Customs shall implement the decision from the effective date set forth in the public notice.

Article 31. The period for applying provisional countervailing measures shall not exceed 4 months from the effective date set forth in the public notice regarding the decision on provisional countervailing measures.

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

Section II: Undertakings

Article 32. During the period of a countervailing investigation, if the government of an exporting country (region) proposes an undertaking to eliminate or limit a subsidy or takes other relevant measures, or if an exporter proposes an undertaking to revise its prices, MOFTEC shall give it full consideration.

MOFTEC may suggest price undertakings to an exporter or the government of an exporting country (region).

The investigating authorities shall not force an exporter to enter into any undertaking.

Article 33. The fact that exporters or governments of exporting countries (regions) do not offer undertakings, or do not accept any suggestion regarding price undertakings, shall in no way prejudice the investigation and determination of a countervailing case. The investigating authorities have the right to determine that a threat of injury is more likely to be realized if the exporters continue subsidizing the imports.

Article 34. If considering that an undertaking is acceptable, MOFTEC may, after consulting with SETC, decide to suspend or terminate the countervailing investigation without applying provisional countervailing measures or imposing countervailing duties. The decision to suspend or terminate the countervailing investigation shall be published by MOFTEC.

If MOFTEC does not accept an undertaking, it shall provide the reasons therefor to the exporter concerned.

Undertakings shall not be sought or accepted unless the investigating authorities have made a preliminary affirmative determination of subsidization and injury caused by such subsidization. In the case where an exporter enters into an undertaking without consent of the government of an exporting country (region), the investigating authorities shall not seek or accept such an undertaking.

Article 35. After the suspension or termination of the investigation according to the provisions of Paragraph 1, Article 34 of these Regulations, upon the request of the government of an exporting country (region) or the investigating authorities deem necessary, the investigating authorities may continue the investigation of subsidization and injury.

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

Article 36. MOFTEC may require the exporter or the government of an exporting country (region) 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 37. In case of violation of an undertaking, MOFTEC may, after consulting with SETC, decide to resume the countervailing investigation immediately in accordance with the provisions of these Regulations, or on the basis of the best information available, decide to apply provisional countervailing measures and levy a countervailing duty retroactively on the product imported within 90 days prior to the application of such provisional countervailing measures, except the product imported before the violation of the undertaking.

Section III: Countervailing Duties

Article 38. If the efforts made to complete consultations produce no positive results, and a final determination establishes the existence of subsidy and the injury caused by the subsidy to a domestic industry, a countervailing duty may be imposed.

Article 39. The proposal imposing a countervailing duty shall be put forward by MOFTEC, on the basis of which 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 40. Countervailing duties shall be imposed on products imported after the date of the publication of the final determination, with the exception of circumstances set forth in Articles 37, 44 and 45 of these Regulations.

Article 41. Countervailing duties shall be paid by importers of subsidized imports.

Article 42. Countervailing duties shall be determined separately on the basis of the amount of subsidy each exporter has received. Where it is necessary to impose a countervailing duty on the subsidized imports of an exporter who was not actually investigated, an expedited review shall be conducted and a countervailing duty applicable to the exporter shall be determined in a reasonable way.

Article 43. No countervailing duties shall be levied in excess of the amount of a subsidy as established in a final determination.

Article 44. In the case where a final determination establishes the existence of a material injury, and provisional countervailing measures have been applied prior to the final determination, countervailing duties may be levied retroactively for the period for which provisional countervailing measures have been applied.

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

If the countervailing duty determined in a final determination is higher than the amount guaranteed by the cash deposit or bond, the difference shall not be collected; if the duty is less than the amount guaranteed by the cash deposit or bond, the excess amount shall be reimbursed.

Article 45. When the following three circumstances exist simultaneously, a countervailing duty may, when necessary, be retroactively levied on products imported not more than 90 days prior to the date of application of provisional countervailing measures:

- (1) the subsidized imports increased massively during a short period of time;
- (2) such increase has caused injury which is difficult repair to a domestic industry; and
- (3) such products have benefited from the subsidy.

Article 46. Where a final determination decides not to levy a countervailing duty, or does not decide a retroactive levy of a countervailing duty, any cash deposit made during the period of the application of provisional countervailing measures shall be refunded and any bonds released.

CHAPTER V - DURATION AND REVIEW OF COUNTERVAILING DUTIES AND UNDERTAKINGS

Article 47. The period for the levy of a countervailing duty and fulfilment of an undertaking shall not exceed 5 years. However, the period for the levy of the countervailing duty may be extended as appropriate if, as a result of review, it is determined that the termination of the countervailing duty would be likely to lead to continuation or recurrence of subsidization and injury.

Article 48. After a countervailing duty has taken effect, MOFTEC may, after consulting with SETC, decide on justifiable grounds to review the need for the continued imposition of the countervailing 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 an undertaking has taken effect, MOFTEC may, on justifiable grounds, decide to review the need for the continued fulfilment of an 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 49. 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 a countervailing duty. 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 an undertaking and publish such decision in accordance with the provisions of these Regulations.

Article 50. The review proceedings shall be conducted with reference to the relevant provisions of these Regulations on countervailing investigation.

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

Article 51. During the period of review, the review proceedings shall not impede the application of countervailing measures.

CHAPTER VI - SUPPLEMENTARY PROVISIONS

Article 52. Where any party is not satisfied with a final determination made under Article 26 of these Regulations, or not satisfied with a decision on whether or not to impose a countervailing duty and a decision on retroactive imposition of a duty, 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 53. A public notice issued under these Regulations shall contain, inter alia, important information, facts, reasons, basis, findings and conclusions, etc.

Article 54. MOFTEC and SETC may take appropriate measures to prevent the circumvention of countervailing measures.

Article 55. Where any country (region) discriminatorily imposes countervailing measures on exports from the People's Republic of China, the People's Republic of China may, on the basis of actual situations, response by taking corresponding measures against that country (region).

Article 56. MOFTEC shall be responsible for foreign-related consultations, notification and dispute settlement concerning countervailing activities.

Article 57. MOFTEC and SETC may, in accordance with these Regulations, formulate specific implementing measures of these Regulations.

Article 58. These Regulations shall be effective as of 1 January 2002. The provisions on countervailing measures contained in the Regulations of the People's Republic of China on Anti-Dumping and Anti-Subsidy promulgated by the State Council on 25 March 1997 shall be repealed simultaneously.

ANNEX

List of Export Subsidies

1. The provision of direct subsidies by the government of an exporting country (region) to an enterprise or industry contingent upon export performance.
 2. Foreign currency retention schemes or any similar practices which involve bonus on exports.
 3. Internal transport or freight charges on exports, provided for or approved by the government of an exporting country (region), on terms more favorable than for domestic goods.
 4. The provision of goods or services by the government of an exporting country (region) either directly or indirectly to the production of exports, on term more favorable than for provision of like goods or services to the production of domestic goods, except for special circumstances.
 5. The full or partial remission, exemption or deferral of direct taxes or social welfare charges specifically related to exports which have been paid or are payable by enterprises.
 6. The deductions directly related to exports or export performance, over and above those granted in respect to domestic production, in the calculation of the base on which direct taxes are charged.
 7. The remission, exemption or reimbursement, in respect of the production and distribution of exports, of indirect taxes in excess of those levied in respect of the production and distribution of like domestic products.
 8. The remission, exemption, reimbursement or deferral of prior-stage cumulative indirect taxes on goods or services used in the production of exports in excess of the remission, exemption, reimbursement or deferral of like prior-stage cumulative indirect taxes on goods or services used in the production of like domestic product, except for special circumstances.
 9. The remission, exemption or reimbursement of import charges on imported inputs for the production of exports in excess of those levied on such inputs when they are imported, except for special circumstances.
 10. The provision by the government of an exporting country (region) of export credit guarantee or insurance programmes, of insurance or guarantee programmes against increases in the cost of exported products or of exchange risk programmes at premium rates which are inadequate to cover the long-term operating costs and losses of the programmes.
 11. The grant by the government of an exporting country (region) of export credits at rates below those which are actually paid for the employment of such funds, or the payment by it of all or part of the costs incurred by exporters or financial institutions in obtaining credits, in order that that could attain advantages in the field of export credits terms, except for special circumstances.
 12. Any other charges on the public account constituting an export subsidy.
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