Anti-Dumping Regulations of the PRC

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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 order of foreign trade and fair competition.

Article 2 — Where products are imported by way of dumping and thereby cause material injury or threat of material injury to an established domestic industry, or materially impede the establishment of a domestic industry, an anti-dumping investigation shall be initiated and anti-dumping measures shall be applied in accordance with the provisions of these Regulations.

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Article 3 — Dumping refers to the entry of a product into the market of the People's Republic of China at an export price lower than its normal value in the ordinary course of trade.

The Ministry of Commerce shall be responsible for the investigation and determination of dumping.

Article 4 — The normal value of an imported product shall be determined in accordance with the following methods:

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

(2) Where the like product of the imported product is not sold in the domestic market of the exporting country (region) in the ordinary course of trade, or the price or quantity of the like product makes it inappropriate for 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 reasonable expenses for administration, selling and general costs, plus profits.

In the ordinary course of trade, where there is no export price for the imported product, or the export price is deemed 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. Where the imported product is not resold to an independent buyer or is not resold in the condition as imported, the export price may be constructed on a reasonable basis as determined by the Ministry of Commerce.

Article 5 — The export price and normal value of the imported product shall be compared in a fair and reasonable manner, taking into account differences in conditions and terms of sale, differences in taxation, differences in quantities, and other factors affecting price comparability.

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

When comparing the export price with the normal value, a weighted average normal value shall be compared with a weighted average of the prices of all comparable export transactions, or the normal value and export price shall be compared on a transaction-to-transaction basis.

Where the margin of dumping is less than 2 percent of the export price, it shall be treated as de minimis.

Article 7 — Injury refers to material injury or threat of material injury caused by dumping to an established domestic industry, or material impediment to the establishment of a domestic industry.

The Ministry of Commerce shall be responsible for the investigation and determination of injury. The anti-dumping investigation involving agricultural products shall be conducted by the Ministry of Commerce in conjunction with the Ministry of Agriculture and Rural Affairs.

Article 8 — In determining the injury caused by dumping to a domestic industry, the following matters shall be examined:

(1) The volume of dumped imports, including whether there has been a significant increase in the volume of dumped imports, either in absolute terms or relative to production or consumption in China;

(2) The effect of dumped imports on prices of like domestic products, including whether there has been a significant price undercutting by the dumped imports, or whether the effect of such imports is otherwise to depress prices to a significant degree or prevent price increases which otherwise would have occurred;

(3) The impact of dumped imports on the relevant economic factors and indices of the domestic industry;

(4) The production capacity and export capacity of the exporting country (region) or the country (region) of origin, and the inventory of the product under investigation;

(5) Other factors causing injury to the domestic industry.

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

Article 9 — Where dumped imports from more than one country (region) simultaneously cause injury to a domestic industry, the effects of such dumped imports may be cumulatively assessed.

Article 10 — The causal relationship between dumped imports and injury to the domestic industry shall be established on the basis of examination of all relevant evidence. Other known factors causing injury to the domestic industry shall not be attributed to the dumped imports.

Article 11 — "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 constitutes a major proportion of the total domestic production of those products. However, where domestic producers are related to the exporters or importers, or are themselves importers of the dumped product, they may be excluded from the domestic industry.

In exceptional circumstances, the domestic industry may be analyzed on the basis of producers in a regional market.

Article 12 — "Like product" means a product that is identical to the dumped imported product, or in the absence of such a product, another product that, although not alike in all respects, has characteristics closely resembling those of the dumped imported product.

Chapter II — Dumping and Injury

Article 13 — Any domestic industry or natural person, legal person or relevant organization representing the domestic industry (hereinafter referred to as "the applicant") may submit a written application for an anti-dumping investigation to the Ministry of Commerce in accordance with the provisions of these Regulations.

Article 14 — The application shall contain the following information:

(1) Information on the applicant and description of the domestic production of the like product by the domestic producers represented by the applicant;

(2) A complete description of the allegedly dumped product, the names of the exporting countries (regions) or countries (regions) of origin concerned, the identity of the known exporters or producers, and the known importers of the product;

(3) Information on the normal value and export price of the product concerned in the domestic market of the exporting country (region) or the country (region) of origin;

(4) Information on the evolution of the volume of the allegedly dumped imports, the effect of these imports on prices of the like product in the domestic market and the consequent impact of the imports on the domestic industry;

(5) Other information that the applicant deems necessary.

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

(1) Evidence of dumping;

(2) Evidence of injury to the domestic industry;

(3) Evidence of the causal relationship between the dumped imports and the alleged injury;

(4) Other evidence as required.

Article 16 — The Ministry of Commerce shall, within 60 days from the date of receipt of the written application and relevant evidence submitted by the applicant, examine whether the application is made by or

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on behalf of the domestic industry, the contents of the application and the evidence attached thereto. Before deciding whether to initiate an investigation, the Ministry of Commerce shall notify the government of the exporting country (region) concerned.

Article 17 — An application shall be considered to have been made by or on behalf of the domestic industry if it is supported by those domestic producers whose collective output constitutes more than 50 percent 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 domestic producers expressly supporting the application account for less than 25 percent of the total production of the like product produced by the domestic industry.

Article 18 — In special circumstances, where the Ministry of Commerce has sufficient evidence of dumping, injury and the causal link between the two, and considers that it is necessary to initiate an anti-dumping investigation, the Ministry of Commerce may initiate an investigation without having received a written application.

Article 19 — The Ministry of Commerce shall decide whether to initiate an investigation and make a public announcement. The decision shall be notified to the applicant, the known exporters and importers, the government of the exporting country (region) and other interested parties.

Article 20 — The Ministry of Commerce may conduct investigation and gather information from interested parties by means of questionnaires, sampling, hearings, on-the-spot verification and other methods.

The Ministry of Commerce shall provide opportunities for all interested parties to present their views and supporting evidence.

Article 21 — Where the Ministry of Commerce deems it necessary, it may send personnel to the relevant country (region) to conduct investigations, provided that no objections have been raised by the country (region) concerned.

Article 22 — Where any interested party fails to provide necessary information within a reasonable time, or materially impedes the investigation, the Ministry of Commerce may make a determination on the basis of the facts available.

Article 23 — Interested parties shall have the right to request the Ministry of Commerce to treat as confidential any information provided which is by nature confidential. The Ministry of Commerce shall treat such information as confidential when so requested and where good cause is shown.

Interested parties providing confidential information shall also provide non-confidential summaries thereof. Where such information cannot be summarized, the reasons shall be stated.

Article 24 — The Ministry of Commerce shall publish its preliminary determination and final determination on dumping and injury. The preliminary determination and final determination shall be made on the basis of sufficient evidence.

Article 25 — The Ministry of Commerce may take provisional anti-dumping measures upon its preliminary determination of dumping and injury.

Article 26 — In the preliminary determination, the Ministry of Commerce shall make a preliminary determination on dumping and injury, and on whether there is a causal relationship between dumping and injury. The preliminary determination shall be published by the Ministry of Commerce.

Article 27 — An anti-dumping investigation shall be terminated in any of the following circumstances:

(1) The applicant withdraws the application;

(2) There is insufficient evidence of dumping, injury or a causal relationship between them;

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(3) The margin of dumping is less than 2% of the export price;

(4) The volume of dumped imports or the injury is negligible;

(5) Other circumstances that the Ministry of Commerce considers appropriate for terminating the investigation.

Article 28 — The anti-dumping investigation shall be completed within 12 months from the date of publication of the decision to initiate the investigation, or within 18 months under special circumstances.

Chapter III — Anti-Dumping Investigation

Article 29 — Where a provisional anti-dumping duty is imposed, the applicant may, after the publication of the preliminary determination, request the suspension or termination of the investigation by proposing a price undertaking to the Ministry of Commerce. The Ministry of Commerce may decide to suspend or terminate the investigation.

Price undertakings include voluntary undertakings by the exporters to revise their prices or to cease exporting at dumped prices.

Article 30 — The Ministry of Commerce may decide not to accept a price undertaking where it considers the undertaking impractical.

Article 31 — Where a price undertaking is accepted, the Ministry of Commerce may decide to suspend or terminate the anti-dumping investigation without imposing provisional anti-dumping measures or anti-dumping duties. Where it is decided to suspend or terminate the investigation, the Ministry of Commerce shall make a public announcement.

Where the exporter violates the price undertaking, the Ministry of Commerce may decide to resume the investigation.

Chapter IV — Anti-Dumping Measures

Section 1 — Provisional Anti-Dumping Measures

Article 32 — Where, after a preliminary determination, it is established that dumping exists and causes injury to a domestic industry, provisional anti-dumping measures may be applied.

Provisional anti-dumping measures may take the form of a provisional anti-dumping duty, or a deposit, bond or other form of security equal to the amount of the preliminarily determined margin of dumping.

Article 33 — The amount of the provisional anti-dumping duty, or the deposit, bond or other form of security, shall not exceed the margin of dumping as preliminarily determined.

Article 34 — The decision to apply provisional anti-dumping measures shall be made by the Ministry of Commerce and published. Implementation shall be carried out by the Customs authorities.

Article 35 — The period for applying provisional anti-dumping measures shall not exceed 4 months from the date of publication of the decision. Under special circumstances, it may be extended to 9 months.

Article 36 — Where, in the final determination, it is decided not to impose a definitive anti-dumping duty or not to accept a price undertaking, any provisional anti-dumping duty collected, or deposit, bond or other form of security provided, shall be refunded or released.

Section 2 — Anti-Dumping Duties

Article 37 — Where, after a final determination, it is established that dumping exists and causes injury to a domestic industry, an anti-dumping duty may be imposed. The imposition of anti-dumping duties shall be recommended by the Ministry of Commerce and decided upon by the Customs Tariff Commission of the

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State Council. The Ministry of Commerce shall make a public announcement. Customs authorities shall implement the decision.

Article 38 — Anti-dumping duties shall be imposed on the dumped imports as of the date of publication of the final determination.

Article 39 — Anti-dumping duties shall be imposed on a non-discriminatory basis on the dumped imports from all relevant sources found to be dumped and causing injury, except where a price undertaking is accepted.

Article 40 — The amount of the anti-dumping duty shall not exceed the margin of dumping determined in the final determination.

Article 41 — Where the final determination establishes the existence of material injury and provisional measures have already been applied, anti-dumping duties may be levied retroactively. Where the final determination establishes the existence of a threat of material injury or material impediment to the establishment of a domestic industry, and provisional measures have been applied, anti-dumping duties may be levied as of the date of the final determination.

Article 42 — Anti-dumping duties may be levied retroactively in any of the following circumstances:

(1) Where the dumped product has previously caused injury and the exporter knew or should have known that it was engaging in dumping and that such dumping would cause injury;

(2) Where the dumped product has, within a relatively short period of time, been imported in large quantities and is likely to seriously undermine the remedial effect of the anti-dumping duty to be applied.

Article 43 — Where a final determination decides not to impose a retroactive anti-dumping duty, anti-dumping duties already provisionally collected shall be refunded. Deposits, bonds or other forms of security shall be released.

Article 44 — Where a final determination decides to impose an anti-dumping duty retroactively, the anti-dumping duty to be retroactively imposed and the anti-dumping duty already provisionally imposed shall be settled. The difference shall be remitted or collected.

Article 45 — The importer of dumped products shall pay the anti-dumping duty to the Customs. The anti-dumping duty shall be collected by the Customs.

Article 46 — Any new exporter or producer who has not exported the product to the People's Republic of China during the investigation period may apply to the Ministry of Commerce for a separate determination of margins of dumping.

Chapter V — Duration and Review of Anti-Dumping Duties and Price Undertakings

Article 47 — The period for imposing an anti-dumping duty or implementing a price undertaking shall not exceed 5 years. However, where it is determined through review that the expiry of the anti-dumping duty would likely lead to continuation or recurrence of dumping and injury, the period for imposing the anti-dumping duty may be extended as appropriate.

Article 48 — After an anti-dumping duty takes effect, the Ministry of Commerce may decide to review the need for continued imposition of the anti-dumping duty. Upon review, the Ministry of Commerce may propose to modify the anti-dumping duty in accordance with the provisions of these Regulations and the Customs Tariff Commission of the State Council shall make a decision.

Article 49 — The Ministry of Commerce shall, upon application by any interested party or when it is necessary, review the anti-dumping duty or price undertaking. Based on the results of the review, the Ministry of Commerce may, in accordance with the provisions of these Regulations, make a decision on the

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retention, modification or termination of the anti-dumping duty or price undertaking, and publish the decision.

Article 50 — The period for review shall not exceed 12 months from the date of initiation of the review.

Article 51 — In the course of the review, the Ministry of Commerce may investigate dumping, injury and the causal relationship between them. The review procedures shall be governed by the relevant provisions on anti-dumping investigations in these Regulations.

Chapter VI — Supplementary Provisions

Article 52 — Any interested party who is dissatisfied with the final determination or the decision on whether to impose an anti-dumping duty, or with the decision on the review, may, in accordance with law, apply for administrative reconsideration or bring an administrative lawsuit in the people's court.

Article 53 — The Ministry of Commerce may take appropriate measures to prevent circumvention of anti-dumping measures.

Article 54 — Where any country (region) applies discriminatory anti-dumping measures to the exports from the People's Republic of China, the People's Republic of China may, on the basis of the actual circumstances, take corresponding measures against that country (region).

Article 55 — The Ministry of Commerce shall be responsible for foreign negotiations, notification and dispute settlement concerning anti-dumping matters.

Article 56 — The Ministry of Commerce may, in accordance with these Regulations, formulate specific implementing measures.

Article 57 — These Regulations shall become effective on January 1, 2002. The Anti-Dumping and Anti-Subsidy Regulations of the People's Republic of China promulgated by the State Council on March 25, 1997 shall be repealed simultaneously, provided that the provisions on anti-dumping matters under those Regulations shall continue to apply to anti-dumping investigations initiated prior to the effective date of these Regulations.

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