Anti-Subsidy 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 subsidized imports cause material injury or threat of material injury to an established domestic industry, or materially impede the establishment of a domestic industry, an anti-subsidy investigation shall be initiated and anti-subsidy measures shall be applied in accordance with the provisions of these Regulations.

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Article 3 — A subsidy refers to a financial contribution or any form of income or price support provided by the government or any public body of an exporting country (region) that confers a benefit on the recipient. Subsidies include the following forms:

(1) Direct transfer of funds by the government or any public body of the exporting country (region), such as grants, loans, and equity infusion, or potential direct transfer of funds or liabilities;

(2) Government revenue that is otherwise due is foregone or not collected;

(3) The government provides goods or services other than general infrastructure, or purchases goods;

(4) The government makes payments to a funding mechanism, or entrusts or directs a private body to carry out one or more of the functions illustrated in items (1) to (3) above;

(5) Any other form of income or price support provided for in the relevant provisions of the State Council.

Article 4 — A subsidy that is subject to anti-subsidy measures shall be specific. The following subsidies shall be deemed specific:

(1) A subsidy explicitly limited to certain enterprises by the government or any public body of the exporting country (region);

(2) A subsidy explicitly limited to certain enterprises by the laws or regulations of the exporting country (region);

(3) A subsidy granted within a designated geographical region;

(4) A subsidy contingent in law or in fact upon export performance, including those illustrated in the Annex to these Regulations;

(5) A subsidy contingent upon the use of domestic over imported goods.

In determining the specificity of a subsidy, the principles adopted shall be such that the determination is based on positive evidence.

Article 5 — The Ministry of Commerce shall be responsible for the investigation and determination of subsidies.

Article 6 — The amount of a subsidy received by the recipient shall be calculated in accordance with the following methods:

(1) Where the subsidy is in the form of a grant, the amount shall be the amount of the grant received;

(2) Where the subsidy is in the form of a loan, the amount shall be the difference between the amount of interest payable on a comparable commercial loan and the amount of interest paid on the subsidized loan;

(3) Where the subsidy is in the form of a loan guarantee, the amount shall be the difference between the amount the recipient would pay on a comparable commercial loan without the guarantee and the amount actually paid on the guaranteed loan;

(4) Where the subsidy is in the form of government provision of goods or services, or purchase of goods, the amount shall be the difference between the actual price and the market price;

(5) Where the subsidy is in the form of government revenue foregone or not collected, the amount shall be the amount of revenue foregone.

Article 7 — Injury shall be determined in accordance with the provisions on injury determination applicable to anti-dumping under the Foreign Trade Law of the People's Republic of China and these Regulations.

The Ministry of Commerce shall be responsible for the investigation and determination of injury. Where the products involved are agricultural products, the Ministry of Commerce shall conduct the investigation in

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conjunction with the Ministry of Agriculture and Rural Affairs.

Article 8 — Where subsidies granted by more than one country (region) simultaneously cause injury to a domestic industry, the effects of such subsidized imports may be cumulatively assessed, provided that the amount of subsidization from each country (region) is not de minimis and the volume of imports from each country (region) is not negligible.

Article 9 — In examining the injury caused by subsidized imports to a domestic industry, the provisions of Articles 8, 9 and 10 of the Anti-Dumping Regulations of the PRC shall apply mutatis mutandis.

Article 10 — "Domestic industry" and "like product" shall have the same meanings as defined in the Anti-Dumping Regulations of the PRC.

Chapter II — Subsidy and Injury

Article 11 — The provisions of Articles 13 to 17 of the Anti-Dumping Regulations of the PRC on the application for investigation shall apply mutatis mutandis to the application for an anti-subsidy investigation.

Article 12 — The application for an anti-subsidy investigation shall contain evidence of the existence, amount and nature of the subsidy.

Article 13 — The Ministry of Commerce shall, within 60 days from the date of receipt of the written application and relevant evidence, examine whether the application is made by or on behalf of the domestic industry, the contents of the application and the evidence. After examination, the Ministry of Commerce shall decide whether to initiate an investigation. The Ministry of Commerce shall, before deciding whether to initiate an investigation, invite the government of the exporting country (region) concerned for consultations on the matters relating to the subsidy.

Article 14 — Where the amount of the subsidy is de minimis, i.e., less than 1% of the value of the product, the investigation shall be terminated. However, for developing countries as specified in the WTO Agreement, the de minimis threshold shall be 2%.

Article 15 — The anti-subsidy investigation shall normally be completed within 12 months from the date of publication of the decision to initiate the investigation, or within 18 months under special circumstances.

Article 16 — An anti-subsidy investigation may be terminated in any of the following circumstances:

(1) The applicant withdraws the application;

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

(3) The amount of the subsidy is de minimis;

(4) The volume of subsidized imports actually or potentially, or the injury, is negligible;

(5) The government of the exporting country (region) agrees to eliminate or limit the subsidy, or to take other appropriate measures;

(6) The exporter agrees to revise its prices so that the injurious effect of the subsidy is eliminated.

Chapter III — Anti-Subsidy Investigation

Article 17 — The Ministry of Commerce may conduct an anti-subsidy investigation by means of questionnaires, sampling, hearings, on-the-spot verification and other methods, and shall provide opportunities for all interested parties to present their views.

Article 18 — Where the Ministry of Commerce deems it necessary to conduct an investigation in the exporting country (region), it shall notify the government of that country (region) and obtain its consent. Where the country (region) concerned raises an objection, the Ministry of Commerce may not conduct the

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investigation and shall make a determination on the basis of the facts available.

Article 19 — The government of the exporting country (region) or the exporters may propose an undertaking to the Ministry of Commerce. An undertaking may include:

(1) The government of the exporting country (region) agrees to eliminate or limit the subsidy, or to take other measures to address its effects;

(2) The exporters agree to revise their prices so that the injurious effect of the subsidy is eliminated.

The Ministry of Commerce may decide to suspend or terminate the investigation after accepting the undertaking. If the undertaking is violated, the Ministry of Commerce may resume the investigation.

Article 20 — During the investigation, the Ministry of Commerce shall provide sufficient opportunities for consultations between the government of the exporting country (region) and the government of the People's Republic of China.

Article 21 — The Ministry of Commerce shall issue a preliminary determination and a final determination on the subsidy, injury and the causal relationship between them, and publish the determination.

Chapter IV — Anti-Subsidy Measures

Section 1 — Provisional Measures

Article 22 — Where, after a preliminary determination, it is established that a subsidy exists and has caused injury to a domestic industry, provisional anti-subsidy measures may be applied. Provisional anti-subsidy measures shall take the form of a deposit, bond or other form of security equal to the amount of the preliminarily determined amount of the subsidy.

Article 23 — The period for applying provisional anti-subsidy measures shall not exceed 4 months from the date of publication of the decision.

Article 24 — Where, in the final determination, it is decided not to impose a definitive countervailing duty, any deposit, bond or other form of security provided shall be refunded or released.

Section 2 — Countervailing Duties

Article 25 — Where, after a final determination, it is established that a subsidy exists and has caused injury to a domestic industry, a countervailing duty may be imposed. The imposition of countervailing duties shall be recommended by the Ministry of Commerce and decided upon by the Customs Tariff Commission of the State Council. The Ministry of Commerce shall publish the decision. Customs authorities shall implement the decision.

Article 26 — The amount of the countervailing duty shall not exceed the amount of the subsidy as determined in the final determination.

Article 27 — Where the final determination establishes the existence of material injury and provisional measures have been applied, countervailing duties may be levied retroactively for the period during which provisional measures were applied.

Article 28 — Where the final determination establishes the existence of a threat of material injury or material impediment, countervailing duties may be levied as of the date of the final determination. Any deposits, bonds secured during the provisional measures period shall be refunded.

Article 29 — Countervailing duties may be levied retroactively in any of the following circumstances:

(1) Where the subsidized product has, within a relatively short period, been imported in massive quantities and is likely to seriously undermine the remedial effect of the countervailing duty;

(2) The exporter has benefited from export subsidies inconsistent with the WTO Agreement.

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The retroactive imposition shall not apply to products imported more than 90 days prior to the application of provisional measures.

Section 3 — Undertakings

Article 30 — Where, during the investigation period, the government of the exporting country (region) or the exporters propose an undertaking and the Ministry of Commerce considers it appropriate, it may decide to suspend or terminate the anti-subsidy investigation without imposing provisional measures or countervailing duties.

Article 31 — Where an undertaking is violated, the Ministry of Commerce may decide to resume the anti-subsidy investigation immediately and may apply provisional measures or impose countervailing duties.

Chapter V — Duration and Review

Article 32 — The period for imposing a countervailing duty shall not exceed 5 years. However, where it is determined through review that the expiry of the countervailing duty would likely lead to continuation or recurrence of subsidization and injury, the period for imposing the countervailing duty may be extended.

Article 33 — The Ministry of Commerce may, on its own initiative or upon application by interested parties, review the need for continued imposition of the countervailing duty or the continued acceptance of an undertaking. The review shall be completed within 12 months.

Article 34 — Based on the results of the review, the Ministry of Commerce may propose to retain, modify or terminate the countervailing duty or undertaking. The decision shall be published.

Chapter VI — Supplementary Provisions

Article 35 — Any interested party who is dissatisfied with the final determination may apply for administrative reconsideration or bring an administrative lawsuit in the people's court in accordance with law.

Article 36 — The Ministry of Commerce may take appropriate measures to prevent circumvention of countervailing measures.

Article 37 — Where any country (region) applies discriminatory countervailing measures to exports from the People's Republic of China, the People's Republic of China may take corresponding measures in response.

Article 38 — The Ministry of Commerce shall be responsible for foreign negotiations, notification and dispute settlement concerning countervailing duty matters.

Article 39 — These Regulations shall become effective on January 1, 2002. The provisions on subsidy matters under the Anti-Dumping and Anti-Subsidy Regulations of the People's Republic of China promulgated on March 25, 1997 shall be repealed simultaneously.

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