

Countervailing Regulations of the PRC

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Contents

Table of Contents	1
Chapter I — General Provisions	1
Chapter II — Subsidies and Injury	2
Chapter III — Countervailing Investigation	4
Chapter IV — Countervailing Measures	5
Section 1 — Provisional Countervailing Measures	6
Section 2 — Undertakings	6
Section 3 — Countervailing Duty	7
Chapter V — Duration of Countervailing Duty and Undertaking, and Review	7
Chapter VI — Supplementary Provisions	8

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Table of Contents

- Chapter I — General Provisions
- Chapter II — Subsidies and Injury
- Chapter III — Countervailing Investigation
- Chapter IV — Countervailing Measures
- Chapter V — Duration of Countervailing Duty and Undertaking, and Review
- Chapter VI — Supplementary Provisions

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 foreign trade order and fair competition.

Article 2 — Where a product imported from a country or region receives a specific subsidy, and such subsidized import causes or threatens to cause material injury to an established domestic industry, or materially retards the establishment of a domestic industry, the State may impose countervailing measures in accordance with these Regulations.

Article 3 — The term "subsidy" as used in these Regulations refers to a financial contribution or any form of income or price support provided directly or indirectly by the government or any public body of the exporting country or region, which confers a benefit on the recipient.

Article 4 — Countervailing measures shall be applied on the basis of investigations conducted in accordance with these Regulations. The investigation and determination of subsidies and injury, and the imposition of countervailing measures shall be conducted by the Ministry of Commerce (hereinafter referred to as "MOFCOM"). Where the matters involve agricultural products, the MOFCOM shall, in conjunction with the Ministry of Agriculture and Rural Affairs, conduct the investigation and determination of injury.

Article 5 — The application of countervailing measures shall be consistent with the public interest.

Chapter II — Subsidies and Injury

Article 6 — A financial contribution provided by the government or any public body of the exporting country or region as referred to in Article 3 of these Regulations shall include:

- (1) a direct transfer of funds by the government, such as grants, loans or equity infusion, or a potential direct transfer of funds or liabilities by the government;
- (2) government revenue that is otherwise due but is foregone or not collected;
- (3) the provision by the government of goods or services other than general infrastructure, or the purchase by the government of goods; or
- (4) the making by the government of payments to a funding mechanism, or entrusting or directing a private body to carry out one or more of the functions of the type described in items (1) to (3) above, which would normally be vested in the government, and such practice in no real sense differs from practices normally followed by governments.

Article 7 — A subsidy subject to investigation shall be specific. A subsidy shall be deemed to be specific if the granting authority or the legislation pursuant to which the granting authority operates explicitly limits access to the subsidy to certain enterprises. A subsidy shall also be deemed to be specific if the following circumstances exist:

- (1) the granting authority or the legislation pursuant to which the granting authority operates establishes objective criteria or conditions governing the eligibility for and the amount of the subsidy, but eligibility is not automatic or such criteria or conditions are not strictly observed;
- (2) the subsidy is limited to certain enterprises located within a designated geographical region; or
- (3) the subsidy is contingent, in law or in fact, upon export performance, including those subsidies illustrated in the illustrative list of export subsidies in the Annex to these Regulations.

A subsidy shall also be deemed to be specific if the subsidy is contingent upon the use of domestic over imported goods.

Article 8 — In determining whether a subsidy is specific, positive evidence shall be considered. Factors that shall be examined include the extent of diversification of economic activities within the jurisdiction of the granting authority and the length of time during which the subsidy program has been in operation.

Article 9 — The amount of a subsidy shall be calculated in accordance with the following methods:

(1) where the subsidy is in the form of a grant by the government, the amount of subsidy shall be calculated on the basis of the amount of grant actually received by the enterprise;

(2) where the subsidy is in the form of a loan by the government, the amount of subsidy shall be calculated on the basis of the difference between the amount of interest paid or payable by the enterprise receiving the loan and the amount of interest that would have been paid on a comparable commercial loan which the enterprise could have actually obtained on the market;

(3) where the subsidy is in the form of an equity infusion by the government, the amount of subsidy shall be calculated on the basis of the amount the government actually paid for the equity infusion that exceeds the normal return on investment for comparable private investment; and

(4) where the subsidy is in the form of the provision by the government of goods or services, or the purchase by the government of goods, the amount of subsidy shall be calculated on the basis of the difference between the price at which the goods or services are provided or purchased by the government and the normal market price for the goods or services.

Article 10 — The term "injury" refers to material injury or threat of material injury caused by subsidized imports to a domestic industry, or material retardation of the establishment of a domestic industry. MOFCOM shall examine and determine injury on the basis of positive evidence and shall conduct an objective examination of all the following economic factors and indices having a bearing on the state of the domestic industry:

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

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

(3) the consequent impact of subsidized imports on the domestic producers of like products, including all relevant economic factors and indices having a bearing on the state of the domestic industry, such as actual and potential decline in output, sales, market share, profits, productivity, return on investments, or utilization of capacity; factors affecting domestic prices; the amount of the subsidy and the magnitude of the margin of subsidization; actual and potential negative effects on cash flow, inventories, employment, wages, growth, ability to raise capital, or investment; and, in the case of agriculture, whether there has been an increased burden on government support programs.

Article 11 — It must be demonstrated that the subsidized imports are, through the effects of subsidies, causing injury within the meaning of these Regulations. The demonstration of a causal relationship between subsidized imports and the injury to the domestic industry shall be based on an examination of all relevant evidence. MOFCOM shall also examine any known factors other than the subsidized imports which at the same time are injuring the domestic industry, and the injuries caused by these other factors must not be attributed to the subsidized imports.

Article 12 — In determining injury caused by subsidized imports to a domestic industry, the examination shall be based on all relevant facts which MOFCOM has obtained through investigation. If domestic producers accounting for a major proportion of the total domestic production of the like product expressly support the application, such application shall be regarded as having been made "by or on behalf of the domestic industry". If the application is supported by those domestic producers whose collective output constitutes more than fifty percent (50%) of the total domestic production of the like product produced by that portion of the domestic industry expressing either support for or opposition to the application, the application shall be deemed to have been made by or on behalf of the domestic industry. In no case, however, shall an

investigation be initiated where domestic producers expressly supporting the application account for less than twenty-five percent (25%) of total domestic production of the like product.

Article 13 — Like products shall mean products that are identical, i.e., alike in all respects, to the products under investigation, or in the absence of such products, other products that, although not alike in all respects, have characteristics closely resembling those of the products under investigation.

Chapter III — Countervailing Investigation

Article 14 — A domestic industry or a natural person, legal person or relevant organization representing the domestic industry (hereinafter collectively referred to as "applicant") may submit a written application for a countervailing investigation to the MOFCOM in accordance with these Regulations.

Article 15 — The application shall include the following:

- (1) the name and address of the applicant and the relevant information concerning the applicant;
- (2) a complete description of the allegedly subsidized products, the names of the countries or regions of origin or export concerned, the identity of the known exporters or producers, and the known importers of the product concerned;
- (3) a description of the existence, amount and nature of the subsidy in question;
- (4) evidence that the subsidized imports are causing or threatening to cause injury to the domestic industry; and
- (5) other information as required by MOFCOM.

Article 16 — MOFCOM shall, within sixty (60) days from the date of receipt of the application and the relevant evidence submitted by the applicant, examine the application and decide whether to initiate an investigation or not. In special circumstances, the time limit for examination may be extended.

Before a decision on whether to initiate an investigation is made, the government of the country or region of the product concerned shall be invited for consultations concerning the subsidy in question.

Article 17 — If, in special circumstances, MOFCOM has sufficient evidence of the existence of a subsidy and injury caused thereby, and considers that it is necessary to initiate an investigation, it may initiate an investigation on its own initiative without receiving a written application, provided that the requirements of Article 11 of these Regulations are met.

Article 18 — Where a decision to initiate an investigation is made, MOFCOM shall publish a public notice and serve notice upon the applicant, the known exporters and importers, the government of the exporting country or region and other interested organizations or individuals (hereinafter collectively referred to as "interested parties").

The public notice of the decision to initiate an investigation shall contain the following:

- (1) the description of the products subject to the investigation;
- (2) the countries or regions of origin or export subject to the investigation;
- (3) a summary of the subsidy practices to be investigated;
- (4) a summary of the injury factors on which the allegation of injury is based;
- (5) the address to which representations by interested parties should be directed; and
- (6) the time limits allowed to interested parties for making their views known.

Article 19 — MOFCOM may issue questionnaires to interested parties for the purpose of the investigation. Interested parties shall provide information as required by the questionnaires within the prescribed time

limits.

Article 20 — MOFCOM shall provide opportunities for all interested parties to present their views and supporting evidence in writing. MOFCOM may provide opportunities for interested parties with adverse interests to meet and present their views so that the opposing views may be stated.

Article 21 — The investigation may be conducted by means of sending questionnaires, sampling, hearings, on-the-spot verification, or other means as MOFCOM deems appropriate. MOFCOM may, when necessary, dispatch personnel to the relevant country or region to conduct investigations. However, investigations in the relevant country or region shall not be conducted without the consent of the government of the country or region concerned.

Article 22 — MOFCOM may, when necessary, conduct investigations by means of sampling where the number of interested parties, types of products or transactions involved is so large as to make it impracticable to investigate each of them separately. MOFCOM shall select samples based on statistical validity or based on the largest percentage of the volume of exports from the country or region concerned which can reasonably be investigated.

Article 23 — MOFCOM shall provide interested parties with opportunities to review the non-confidential information provided by other interested parties which is relevant to their case, so as to enable them to prepare their presentations on the basis of complete knowledge of the facts.

Article 24 — Where MOFCOM determines that the amount of a subsidy is de minimis, or the volume of subsidized imports, actual or potential, or the injury, is negligible, the countervailing investigation shall be terminated. The amount of a subsidy shall be deemed de minimis if the amount is less than one percent (1%) of the value of the product. The volume of subsidized imports from a particular country shall normally be regarded as negligible if the volume of subsidized imports from that country accounts for less than three percent (3%) of total imports of the like product, unless countries which individually account for less than three percent (3%) of total imports of the like product collectively account for more than seven percent (7%) of total imports of the like product.

Article 25 — When making determinations based on the facts available, MOFCOM may decide to apply the facts available, including the information provided in the application, if any interested party refuses to provide access to, or otherwise does not provide, the necessary information within a reasonable period, or significantly impedes the investigation. Before making a determination based on the facts available, MOFCOM shall inform the interested party of the facts on which the determination is expected to be based.

Article 26 — MOFCOM may decide to suspend or terminate the countervailing investigation if:

- (1) the applicant withdraws the application;
- (2) evidence set out in Articles 10 and 11 supporting the application is insufficient;
- (3) the amount of the subsidy is de minimis;
- (4) the volume of subsidized imports, actual or potential, or the injury, is negligible; or
- (5) MOFCOM considers that it is inappropriate to continue the investigation.

Article 27 — A countervailing investigation shall be completed within twelve (12) months from the date of publication of the decision to initiate the investigation. In special circumstances, the period may be extended, but shall not exceed six (6) months.

Chapter IV — Countervailing Measures

Article 28 — Where a preliminary determination by MOFCOM establishes that a subsidy exists and that it has caused injury to a domestic industry, countervailing measures including provisional countervailing

measures and undertakings may be adopted.

Where a final determination by MOFCOM establishes the existence of a subsidy and injury caused thereby, a countervailing duty may be imposed.

Section 1 — Provisional Countervailing Measures

Article 29 — Provisional countervailing measures shall take the form of provisional countervailing duties paid by way of a cash deposit or bond provided by the exporter, producer or importer.

Article 30 — The amount of the provisional countervailing duty shall be determined on the basis of the amount of the subsidy as preliminarily determined, and shall not exceed the amount of the subsidy as preliminarily determined.

Article 31 — Provisional countervailing measures shall be implemented upon the decision of MOFCOM and published by public notice. Customs shall implement the measures from the effective date specified in the public notice.

Article 32 — The period for which provisional countervailing measures shall be applied shall not exceed four (4) months from the effective date specified in the public notice on provisional countervailing measures. In special circumstances, the period may be extended to nine (9) months.

Article 33 — Where, in the final determination, a decision is made not to impose a countervailing duty, any cash deposit made or bond provided during the period of provisional countervailing measures shall be refunded or released.

Section 2 — Undertakings

Article 34 — During the period of the countervailing investigation, the government of the exporting country or region may propose undertakings to eliminate or limit the subsidy or to take other appropriate measures. Alternatively, the exporter may propose undertakings to revise its prices so that MOFCOM is satisfied that the injurious effect of the subsidy is eliminated.

MOFCOM may propose undertakings to the government of the exporting country or region, or to the exporter, but shall not force any party to enter into undertakings. MOFCOM shall not accept undertakings unless it has made a preliminary affirmative determination of subsidization and injury caused by such subsidization.

Article 35 — Where MOFCOM does not accept undertakings, it shall provide the reasons therefor to the government of the exporting country or region, or to the exporter, and shall provide the government of the exporting country or region, or the exporter, with an opportunity to comment thereon. Undertakings shall not be sought or accepted unless MOFCOM has made a preliminary affirmative determination of subsidization and injury caused by such subsidization. Where the exporter has made the undertaking without obtaining the consent of the government of the exporting country or region, MOFCOM shall not seek or accept such undertakings.

Article 36 — If MOFCOM considers that the undertakings are acceptable, it may decide to suspend or terminate the countervailing investigation without adopting provisional countervailing measures or imposing countervailing duties. The decision to suspend or terminate the countervailing investigation shall be published by MOFCOM.

Where the countervailing investigation is suspended or terminated in accordance with the preceding paragraph, MOFCOM shall, at the request of the government of the exporting country or region, or if it deems necessary, continue the investigation of the subsidy and injury. Based on the findings of such investigation, the undertakings shall automatically lapse where a negative determination of subsidy or injury is made, and shall remain in force consistent with their terms where an affirmative determination of subsidy and injury is made.

Article 37 — MOFCOM may require the government of the exporting country or region, or the exporter from whom an undertaking has been accepted, to periodically provide information and relevant data on the fulfillment of such undertakings, and may verify such information and data.

Article 38 — Where any violation of undertakings occurs, MOFCOM may decide to resume the countervailing investigation and may decide to adopt provisional countervailing measures immediately based on the best information available. MOFCOM may also impose a countervailing duty retroactively on products imported within ninety (90) days prior to the date of application of such provisional measures, except that products imported before the violation of the undertakings shall not be subject to such retroactive levy.

Section 3 — Countervailing Duty

Article 39 — Where, after investigation, the final determination establishes the existence of a subsidy and injury caused thereby, a countervailing duty may be imposed. The imposition of a countervailing duty shall be consistent with the public interest.

Article 40 — The amount of the countervailing duty shall not exceed the amount of the subsidy as finally determined.

Article 41 — Where the final determination affirms the existence of a subsidy and injury caused thereby, and a causal relationship between the subsidized imports and the injury has been established, a countervailing duty shall be imposed. Countervailing duties shall be imposed on imports of the subsidized products from the country or region concerned.

Article 42 — A countervailing duty shall be determined separately for each exporter of the subsidized products. Where it is impracticable to determine a separate countervailing duty for each exporter, a single countervailing duty may be determined for all exporters in the exporting country or region concerned.

Article 43 — The amount of the countervailing duty shall be determined on the basis of the amount of the subsidy as finally determined. The countervailing duty shall be collected by the Customs on an ad valorem or specific basis. The rate of the countervailing duty shall be determined by the Tariff Commission of the State Council on the basis of the recommendation of the MOFCOM, and published by the MOFCOM in a public notice. The Customs shall implement the decision from the effective date specified in the public notice.

Article 44 — Countervailing duties shall be paid by the importer of the subsidized products. Where the provisional countervailing measures consist of a cash deposit and the amount of the cash deposit is greater than the amount of the countervailing duty, the difference shall be refunded.

Article 45 — In exceptional circumstances, a countervailing duty may be imposed retroactively on products imported for consumption not more than ninety (90) days prior to the date of application of provisional measures, where:

- (1) the subsidy is inconsistent with the provisions of the WTO Agreement on Subsidies and Countervailing Measures; and
- (2) imports of the subsidized products have increased massively in a relatively short period, and such circumstances may seriously undermine the remedial effect of the countervailing duty to be imposed.

Chapter V — Duration of Countervailing Duty and Undertaking, and Review

Article 46 — The period for which a countervailing duty shall remain in force shall not exceed five (5) years from the date of the final determination. However, a countervailing duty may remain in force beyond five (5) years upon review where it is determined that the expiry of the duty would be likely to lead to continuation or recurrence of subsidization and injury.

Article 47 — MOFCOM may, upon its own initiative or upon request by any interested party, review the need for the continued imposition of the countervailing duty. Upon such review, MOFCOM shall, within twelve (12)

months from the date of initiation of the review, decide whether the continued imposition of the countervailing duty is necessary, based on the review findings.

During the period of review, the countervailing measures shall remain in force.

Article 48 — If the period for which a countervailing duty is imposed has not expired, MOFCOM may, upon its own initiative or upon request by an interested party, conduct an interim review of the continued imposition of the countervailing duty. MOFCOM shall, within twelve (12) months from the date of initiation of the interim review, decide whether the continued imposition of the countervailing duty is necessary, based on the findings of the interim review.

Article 49 — Where MOFCOM decides, after review, that the continued imposition of the countervailing duty is no longer justified, the MOFCOM shall make a recommendation to the Tariff Commission of the State Council to revoke the countervailing duty, and shall publish a public notice to that effect. Any undertaking accepted shall also be terminated.

Article 50 — The provisions concerning the review of countervailing duties shall apply mutatis mutandis to the review of undertakings.

Chapter VI — Supplementary Provisions

Article 51 — Where any country or region applies discriminatory countervailing measures to the products exported from the People's Republic of China, the People's Republic of China may, according to the actual circumstances, take corresponding measures against that country or region.

Article 52 — MOFCOM may take appropriate measures to prevent circumvention of countervailing measures.

Article 53 — Where any party refuses to accept a determination of subsidy or injury made in accordance with Article 4 of these Regulations, it may apply for administrative reconsideration or file an administrative lawsuit in accordance with the law.

Article 54 — MOFCOM shall be responsible for the interpretation of these Regulations.

Article 55 — The administrative authorities responsible for countervailing investigations may issue operational rules as necessary in accordance with these Regulations.

Article 56 — MOFCOM may consult and negotiate with the governments of the countries or regions concerned on subsidy-related issues in accordance with these Regulations and the relevant rules of the World Trade Organization.

Article 57 — These Regulations shall not apply to countervailing measures adopted against the subsidy provided to the production and export of agricultural products in accordance with the relevant provisions of the Agreement on Agriculture of the World Trade Organization.

Article 58 — These Regulations shall be effective as of January 1, 2002. The Countervailing Regulations of the People's Republic of China promulgated by the State Council on November 10, 2001 shall be repealed simultaneously.

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