

The Handbook of Trade Enforcement

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Overview

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The State Council of China promulgated China's first anti-dumping regulation (Regulations of the People's Republic of China on Anti-dumping and Countervailing) on 25 March 1997. In December of the same year the Ministry of Foreign Trade and Economic Cooperation of China (the predecessor of Ministry of Commerce (MOFCOM)) initiated its first anti-dumping investigation against imported newsprint. On 26 November 2001, just before China became a formal member of the WTO, the State Council split the original regulation to Regulations of the People's Republic of China on Anti-dumping (Anti-dumping Regulations) and Regulations of the People's Republic of China on Countervailing Measures, and made some amendments to assure those regulations' consistency with WTO agreements. The latest amendments to the Anti-dumping Regulations were made on 31 March 2004.

Competent authorities

According to the Anti-dumping Regulations, MOFCOM is the competent authority for an anti-dumping investigation against imported products. Within MOFCOM, the Bureau of Fair Trade for Imports and Exports (BOFT) is responsible for the dumping investigation, the examination of the product exclusion request and the negotiation of price undertakings with foreign respondents, while the Bureau of Industry Injury Investigation (BIII) is responsible for the industry injury investigation and the examination on causal link and public interest. The two bureaus conduct separate investigations, but their reports and conclusions are merged into a single official finding under MOFCOM.

After the conclusion of its finding, MOFCOM make a proposal to the State Council Tariff Commission (SCTC) regarding the implementation of specific anti-dumping measures. The SCTC makes its decision based on MOFCOM's proposal, which is then be published by MOFCOM in the form of an official notification together with its own finding. In previous cases, the SCTC has approved all MOFCOM's proposals.

Customs implements the specific anti-dumping measures from the date set forth in MOFCOM's notification.

Investigation procedures

Initiation

If MOFCOM is satisfied with the complaint filed by the Chinese domestic industry, it must formally initiate the investigation by publishing a notice of initiation within 60 days of receipt of the complaint. As standard practice, MOFCOM informs the relevant exporting countries approximately one week before publishing the notice of initiation (initiation date).

The notice of initiation is available on MOFCOM's website.

Appearance registration

Any interested party, such as a domestic industry, foreign exporter and producer, importer, end user, association or governmental agency, who is willing to participate in the investigation, is required to file an appearance registration with BOFT and BIII within 20 days from the initiation date.

The interested party is required to submit to MOFCOM its preliminary comments on product scope, complainant's standing, subject country and other relevant matters as stated in the notice of initiation within 20 days from the initiation date.

Issuance of questionnaires

BOFT and BIII have two separate questionnaires for dumping and industry injury investigations. The questionnaires shall be issued to the interested parties within 10 working days of the end of appearance registration (usually immediately after the end of appearance registration).

MOFCOM normally grants 37 days to foreign respondents to reply to the questionnaires. This period can be extended by not more than 14 days upon due application.

MOFCOM requires all submissions, including replies to the questionnaires made by foreign respondents, to be in Chinese and submitted through a Chinese-licensed practising lawyer.

Request of product exclusion

The interested party can file the request of product exclusion either within 20 days from the initiation date or within 20 days from the publishing date of the preliminary finding. BOFT is responsible for examining the request of product exclusion.

Preliminary finding

Unlike its US and Canada counterparts, MOFCOM does not establish the investigation schedule for specific cases. In recent years, MOFCOM has usually made the preliminary finding within six to eight months of the initiation date.

In the preliminary finding, MOFCOM normally grants 20 days to all interested parties to present their comments on the preliminary finding.

Price undertakings

Foreign respondents can offer price undertakings to MOFCOM up to 45 days after the publication of the preliminary finding. BOFT is responsible for examining the price undertakings proposal and often consults with domestic industry. Although the relevant regulation requires MOFCOM to take public interest into consideration when examining price undertaking proposals from foreign respondents, in practice the opinions from domestic industry are given more weight in MOFCOM's determination than those of other interested parties, such as downstream users.

Hearing on industry injury

Any interested party can apply for a public hearing on industry injury before BIII. Such hearing request shall be submitted in written form. BIII normally schedules the public hearing after the preliminary finding.

After the introduction of 'public interest' into Anti-dumping Regulations in 2004, BIII is putting more weight on the claims of downstream users. In recent years, as well as the public hearing, BIII also holds a hearing attended by both the petitioners and downstream users with the purpose of achieving balance between Chinese upstream and downstream industries.

On-the-spot verification

After the preliminary finding, BOFT case handlers will visit foreign respondents' offices and factories to verify the accuracy and completeness of reported information and to collect further information and materials needed for the investigation. BOFT carries out on-the-spot verification only on those foreign respondents who have been fully cooperative in the investigation.

Theoretically speaking, the working language in verification is still Chinese; however, in most of MOFCOM's cases, MOFCOM does not engage the independent interpreter to assist the verification, and the case handlers carry out the verification in English directly or ask the foreign respondent's Chinese lawyer to assist the translation.

Final finding

Consistent with the WTO Anti-dumping Agreement, MOFCOM usually announces the final finding within 12 months of the initiation date. This period may be extended under special circumstances, but in no case can the extension be more than 6 months.

Improvement of transparency

On 9 January 2006, MOFCOM announced the withdrawal of its final finding on *Kraft Liner Board*, issued on 30 September 2005, which became the first (and only) time that MOFCOM withdrew its published final finding through administrative reconsideration. Although some interested parties criticised that the withdrawal was due to political pressure, the reason given was that BIII did not make sufficient disclosure to the interested parties before the final finding.

Due to this case, and other criticism from WTO members, MOFCOM has made gradual but not insignificant progress in improving the transparency of its investigations, including:

- On 4 August 2006, MOFCOM promulgated Rules on Information Access and Disclosure in Industry Injury Investigations. The new rules enable the interested party to access the non-confidential version of various case materials during the investigation more conveniently. The new rules also impose more specific and detailed requirements on BIII's disclosure before the final finding.

- MOFCOM's data room, where non-confidential versions of case material are stored, is better organised and more efficient. Public case material is open to the public to view, and the catalogue of non-confidential versions of each case is also available on MOFCOM's website.
- Various case information is available on BIII's website, such as notice of initiation, registration list of interested parties, various questionnaires relating to industry injury investigation, appointment of the case handlers, notice and news of hearing and notice of verification. Such case information is usually published promptly. ■

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Gaopeng & Partners is a law firm based in Beijing, serving Chinese and international clients on all aspects of Chinese law and international business law. Through its branch offices in Shanghai, Tianjin, Taizhou and Yangzhou, it provides full commercial and litigation services in administrative tribunals and courts throughout China.

Members of the firm consist of veteran professionals with extensive experience in their specialties. They have all educated in law schools either in China or in foreign countries, and have previous careers as law professors, chief in-house counsels of large industrial companies, trade diplomats and government officials. Their in-depth understanding of business and insightful knowledge into government policy-making, together with their legal expertise, generate high-quality results for clients.

Since its foundation in 1998, Gaopeng & Partners has rendered a wide range of legal services, assisting clients to successfully navigate the legal labyrinth in China. Its legal practice largely focuses on corporate M&A, securities, real estate, intellectual property rights, international trade law and dispute settlement in arbitral tribunals and courts. Industries involved include manufacturing, agriculture, distribution, banking, media, entertainment and sport, tobacco and infrastructure. The firm has extensively advised on and conducted anti-dumping, countervailing and safeguards cases, and problems concerning the application of the WTO Agreements. *Who's Who Legal*, *Chambers Global* and *Legal 500* have listed the firm and its lawyers as leaders in the trade and customs area in China. Lin Yang and Lei Wang head the firm's trade team.



Lin Yang

Gaopeng & Partner

Lin Yang is a partner of the trade team of Gaopeng & Partner in Beijing. He has been focusing on anti-dumping practice and research since 1998. Mr Yang has extensive experience on advising Chinese clients in the anti-dumping investigations initiated by the investigation authorities of other WTO members such as the US, EU, Korea, Turkey, India, Pakistan, Canada, Indonesia, South Africa, Thailand and Israel. His clients include the leading manufacturers and exporters in numerous exports-oriented industries in China. Mr Yang has advised the Ministry of Commerce of China in the first 'China Safeguard' case initiated by Turkey. Mr Yang also represents multinationals such as Bayer, MeadWestvaco and INVISTA in the anti-dumping investigations initiated by the Ministry of Commerce of China, providing services in connection with response to questionnaires, on-the-spot verification, non-injury defence and price undertaking negotiations. Mr Yang has been recommended by *Legal 500*, *Chambers* and *Who's Who Legal* since 2004 for his outstanding anti-dumping practice in China.

Mr Yang contributes significant time to the research of anti-dumping laws, and regularly publishes articles in many industrial media in China.