

# WORLD TRADE ORGANIZATION

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**Committee on Anti-Dumping Practices  
Ad Hoc Group on Implementation**

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**TOPIC 1\* - ARTICLE 6.5: TREATMENT OF CONFIDENTIAL INFORMATION**  
**TOPIC 6\* - ARTICLE 6.2: HEARINGS**  
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**TOPIC 9\* - ARTICLE 9: CONTENTS OF PRELIMINARY AFFIRMATIVE  
DETERMINATIONS**

Paper by Chinese Taipei

The following communication has been received on 23 April 1999 from the Permanent Mission of the Separate Customs Territory of Taiwan, Penghu, Kinmen and Matsu (Chinese Taipei).

## Introduction

The anti-dumping laws of Chinese Taipei are administered and enforced jointly by the Ministry of Finance (MOF) and the Ministry of Economic Affairs (MOEA). Under this bifurcated system, the MOF carries out dumping (and subsidy) investigations through the Department of Customs Administration<sup>1</sup> and the MOEA conducts injury investigations through its International Trade Commission (ITC) in both anti-dumping and countervailing duty cases.

The principal piece of legislation governing the investigation of anti-dumping and countervailing duties is the Implementing Regulation on the Imposition of Countervailing and Anti-Dumping Duties (hereinafter "Implementing Regulation"), promulgated on 3 July 1984, last amended on 17 November 1994, under Paragraph 3, Article 46-2, of the Customs Duty Law.<sup>2</sup> The Customs Duty Law and Foreign Trade Act both contain a limited number of provisions in regard to the determination of dumping and injury as well as the imposition of anti-dumping duties.<sup>3</sup>

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\* See document G/ADP/W/401 for descriptions of the topics

<sup>1</sup>The Department carries out all major investigation functions including, for example, issuing the investigative questionnaire, conducting on-the-spot verification, holding meetings, examining data and information, and calculating dumping margins. The MOF has set up a supervisory body to oversee the Department and make all important decisions throughout the investigation process based on the Department's proposals. This body is dubbed "Committee on Tariff Rate" and composed of officials of the MOF and other government agencies and experts from private sectors, with the Finance Vice Minister chairing the Committee meetings and the Department taking the role of secretariat.

<sup>2</sup>Further amendment to the Implementing Regulation to incorporate the provisions of the WTO Agreement on Implementation of Article VI of the General Agreement on Tariffs and Trade 1994 ("Anti-Dumping Agreement") is under way. Nevertheless, even the current version of the Implementing Regulation expressly permits reference to international customary practices in making determinations of matters related to an investigation and findings of dumping and subsidy, when the Customs Duty Law or the Implementing Regulation is silent; see Article 31.

<sup>3</sup>See Articles 46, 46-1 and 46-2 of the Customs Duty Law, and Article 19 of the Foreign Trade Law.

As requested in document WTO/AIR/643 of 16 July 1997, a flow chart with timelines of when various events occur in Chinese Taipei's investigative process was prepared, covering the elements of application, initiation, preliminary determination, written submissions from the parties, final determinations, and public notice of determination. A copy of this flow chart is attached to this paper.

An anti-dumping investigation in our system has the following basic milestones:

- Applicant files an application with MOF;
- MOF shall make a proposal to the Committee for a resolution of initiation of an investigation on an orderly application within 45 days;
- After initiation of investigation, MOEA shall make a preliminary determination on injury and inform the MOF of its finding within 45 days;
- MOF shall make a preliminary determination on dumping within 75 days if the MOEA's preliminary determination on injury is affirmative;
- MOF shall impose a preliminary anti-dumping duty if, in its affirmative preliminary determination, it finds there is emergent necessity to protect the domestic industry;
- MOF shall continue the investigation and reach its final determination within 60 days;
- MOEA shall make its final determination on injury and inform MOF of its findings within 45 days if MOF's final determination is affirmative; and
- MOF shall submit a proposal to the Committee for imposition of definitive anti-dumping duty within 10 days if MOEA reaches an affirmative final determination on injury.
- MOF shall report the Committee's affirmative resolution to the Executive Yuan and implement an anti-dumping duty.

The time-limit of each stage may, if necessary, be extended by one-half, after notice to the applicant and interested parties and publication in the relevant government Gazettes.

#### Topic 1 – Article 6.5: "Treatment of Confidential Information"

##### 1. National Legislation and Practice

Under Chinese Taipei's anti-dumping laws, the applicant and other interested parties shall identify separately, in their submissions of information, which information may be disclosed and which may not, and shall provide a public summary of that information for which confidential treatment is requested. Where the request for confidential treatment is found to be without good cause, or where the public summary is not provided, the authorities concerned may reject and disregard such information. The applicant and the interested parties may withdraw such information within seven days after the next day of receiving the notice to disregard. Where the request for confidential treatment is with good cause, the authorities concerned may not disclose such information without the consent of the submitter.<sup>4</sup>

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<sup>4</sup>See Article 18, the Implementing Regulation.

## 2. System of Disclosing Confidential Information

During the investigation proceeding, all interested parties may request to review the information relevant to the investigation, except for that information which is kept in confidence in accordance with pertinent provisions.<sup>5</sup> Chinese Taipei does not adopt the practice, as the United States and Canada do, of permitting access to confidential information during investigation by an independent counsel of an interested party under a protective order or with an undertaking against disclosure.

### Topic 5 – Article 5.5: "Notification to the Exporting Member"

The agency which should be notified of Chinese Taipei is:

The Board of Foreign Trade  
Ministry of Economic Affairs  
1 Hu Kou Street  
Taipei Taiwan 100

<http://www.moeaboft.gov.tw>

### Topic 6 – Article 6.2: "Hearings"

Paragraph 4, Article 16 of the Implementing Regulation provides the legal authority for both the MOF and MOEA to hold presentation meetings during the investigation.<sup>6</sup>

#### MOF

According to the fourth paragraph of Article 16 of the Implementing Regulation, the MOF may hold presentation meetings to collect views and comments or the applicant or the interested parties may request meetings with the MOF to present views during investigation.

#### MOEA (ITC)

ITC is required by Regulation to hold hearings to collect views and comments on the investigation.<sup>7</sup> The purpose of hearings is for the interested parties to have a full opportunity to present their views and comments.

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<sup>5</sup>See Article 17, the Implementing Regulation.

<sup>6</sup>Article 16 reads:

"The investigation of a case by the authority concerned shall be conducted in the manner described below:

1. Request the applicant and the interested parties to respond to the questionnaire, or to provide relevant information, within the specified time-limit;
2. Conduct an appropriate investigation of the relevant evidence and information presented in writing by the applicant and the interested parties;
3. Send personnel, where necessary, to the places of business of the importers, exporters or manufacturers of the subject product for interview or verification; and
4. When necessary, notify the applicant or the interested parties for presenting their views within the specified time-limit."

There are two types of hearing held by ITC during an investigation. In the phase of preliminary determination, ITC will convene a presentation meeting, and a formal hearing in the phase of final determination. The procedures and the effect for the two types of hearing are virtually the same, save for the differences in the periods for notice or request as explained below, which are shorter for a presentation meeting than those for a formal hearing.

Convocation of hearing shall be published in the MOEA Gazette and in the newspapers at least 15 days prior to the date of hearing (or 7 days for a presentation meeting). The ITC is required to notify the applicant to attend the hearing. If necessary, the ITC may notify the interested parties to attend the hearing. In practice, ITC invariably notifies both groups of parties known to it to attend. Other relevant government agencies, including the MOF officials, are customarily invited to attend the hearings or meetings.

These hearings are open to the public. Participants who intend to present views in the hearing should submit a written request at least 7 days before a hearing (or 3 days before a presentation meeting). The chairperson of the hearing may permit, if appropriate, participants without request in advance to speak in the hearing.

The participant is allowed to submit his views and comments in writing prior to the hearing. Such written statements are expected to be a complete and comprehensive description of the views or comments to be delivered in a hearing or a presentation meeting. The participant may also provide supplemental comments in writing within 7 days after a hearing (or 3 days after a presentation meeting). However, post-hearing statements are restricted to documenting or supplementing oral presentation given in the hearing or meeting, or responding to the queries posed therein.

In a hearing or representation meeting, ITC will determine in advance the order of speakers, time allotted to each speaker and each subject or issue. Each registered interested party has the opportunity to deliver its views and comments and, normally when time permits, to respond to the views and comments made by other parties. There is no formal procedure for confrontation. ITC officials are allowed to put questions to the interested parties, but not required to answer questions put to them.

In practice, ITC normally set the date of the presentation meeting (in the preliminary phase) and the date of hearing (in the final phase) around the 20<sup>th</sup> day of the statutory time-frame for completing the investigation, which is 45 days for both the preliminary and final determinations.

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<sup>7</sup>Article 20 of the Implementing Regulation mandates that the relevant provisions under Chapter III of the Rules for Handling Import Relief Cases (i.e. the administrative regulation governing the investigation and imposition of safeguard measures) in respect of investigative procedures be applied *mutatis mutandis* to the injury investigation in anti-dumping and subsidy cases.

Article 11 of the Rules for Handling Import Relief Cases requires ITC to hold public hearings during an investigation.

Topic 8 – Article 12: "Public Notice"

1. MOF

Under Chinese Taipei's Implementation Regulation, MOF is required to notify the applicant in writing if it decides not to initiate an investigation. The decision shall be published in the MOF Gazette as well.

1.1 Initiation of Investigation

MOF is required by law to notify the applicant, known producers, exporters, importers and the exporting countries involved the decision to initiate an investigation. The notice of initiation shall be published in the MOF Gazette.

The public notice will contain the following necessary information:

- (1) name of applicant
- (2) filing date of the application
- (3) summary of the application
  - description of the product concerned, including the name, quality, specification, size, usage, and tariff codes of the product
  - names of exporting countries
  - names of known producers and exporters in the exporting countries
  - names of known importers
  - ports of entry of the product into Chinese Taipei
  - dumping margins alleged by the applicant
  - alleged injury suffered by domestic industry
  - causal link between injury and dumped imports
- (4) investigation agencies
- (5) investigation procedures and time frames of different stages of the proceedings
- (6) parties to be investigated
- (7) methods used for conducting the investigation
- (8) contact information of the investigation agencies
- (9) list of parties to receive the initiation notice
- (10) legal authority to conduct the investigation

1.2 MOF(DOC) – Preliminary and Final Dumping Determination

Under Chinese Taipei's Implementing Regulation, MOF is required to notify the applicant in writing with the reasons of its determination, either affirmative or negative.

1.2.1 A public notice of preliminary dumping determination typically includes the following elements:

- (1) text of determination
- (2) explanatory statements on:
  - legislation authority
  - history of investigation
  - preliminary dumping determination by DOC
  - preliminary injury determination by ITC
  - product concerned
  - parties investigated
  - sources of information used for determination
  - results of preliminary determination
- (3) determination on taking of provisional measures
- (4) procedures of continued dumping and injury investigations
- (5) list of parties to receive the notice

1.2.2 A public notice of final dumping determination typically includes the following elements:

- (1) text of determination
- (2) explanatory statements on:
  - legislation authority
  - history of investigation
  - preliminary dumping determination by DOC
  - preliminary injury determination by ITC
  - product concerned
  - parties investigated
  - sources of information used for determination
  - results of final determination
- (3) procedures of continued injury investigations
- (4) causal link between dumping and injury
- (5) imposition of anti-dumping duty
- (6) list of parties to receive the notice

## 2. ITC (MOEA)

### 2.1 Preliminary and Definitive Injury Determinations

Where ITC's preliminary determination is negative, MOF shall, upon receiving the notification by ITC, publish the termination of investigation proceedings in the MOF Gazette.

Upon receiving the affirmative final determination made by ITC, MOF shall inform the applicant and interested parties the anti-dumping measures imposed on the alleged imports. The notice of anti-dumping measures shall be published in the MOF Gazette.

ITC itself will notify the applicant and interested parties of its injury determination, either preliminary or definitive. ITC will publish the injury determination in the MOEA Gazette as well.

ITC's public notice of injury determination typically contains the following items:

- (1) text of determination
- (2) procedures of continued dumping and injury investigations
- (3) rights of the applicant and interested parties to review the public information
- (4) contact information of investigation agencies
- (5) opportunities for the applicant and interested parties to provide additional information (Preliminary Determination)
- (6) list of parties to receive the notice

3. The web sites of the investigation agencies are:

- (1) DOC

<http://www.mof.gov.tw>, or

<http://www.doc.mof.gov.tw>

- (2) ITC

<http://www.moeaitc.gov.tw>

## Topic 9 – Article 9: "Contents of Preliminary Affirmative Determinations"

### 1. Introduction

Under Chinese Taipei's anti-dumping laws, a positive preliminary determination will be made only upon a positive finding of both injury and dumping after an investigation has been duly initiated, with notice to the applicant and known interested parties as well as publication in the government gazette. If ITC (under MOEA) reaches a negative finding on injury in its preliminary determination, the investigation will be closed at that point. If ITC reaches a positive injury finding in the preliminary determination but the MOF finds no evidence of dumping in its preliminary determination then the investigation will nevertheless move into the phase of final determination.<sup>8</sup>

A distinctive feature of our anti-dumping laws in respect of preliminary determination lies in the exceptional nature of imposition of preliminary anti-dumping duty following a positive preliminary determination. In this regard, reference is first made to sub-paragraph (iii), Article 7.1 of the Anti-dumping Agreement, which provides:

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<sup>8</sup>See Articles 10 and 12 of the Implementing Regulation.

"Provisional measures may be applied only if:

...

- (iii) the authorities concerned judge such measures necessary to prevent injury being caused during the investigation".

Our laws limit to emergency situations the taking of preliminary measures after a positive preliminary determination. Both the anti-dumping laws and the practice show that preliminary measures will be taken only after the authorities are satisfied that there is an emergent necessity to protect the domestic industry from continued dumping and injury. Chinese Taipei notes that some Members have made the granting of provisional measures a matter of routine after an affirmative preliminary determination is made. The period of provisional measures shall not be longer than four months in our system.<sup>9</sup>

## 2. Contents of Affirmative Preliminary Determination

### 2.1 DOC(MOF)-Preliminary Dumping Determination

A preliminary dumping determination typically includes the following elements:

- (1) text of determination
- (2) explanatory statements on:
  - legislation authority
  - history of investigation
  - preliminary injury determination by ITC
  - product concerned
  - parties investigated
  - sources of information used for determination
  - results of preliminary determination
- (3) determination on taking of provisional measures
- (4) procedures of continued dumping and injury investigation

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<sup>9</sup>Paragraph 1, Article 11 of the Implementing Regulation provides:

"Where the Ministry of Finance makes a preliminary determination that there is subsidy or dumping in existence and there is an emergent necessity to provide provisional protection for the domestic industry concerned, the Ministry of Finance may, prior to the completion of the examination and resolution for the imposition of countervailing duty or anti-dumping duty, consult the relevant agencies and submit to the Executive Yuan for approval of the provisional imposition, in which the scope applicable parties and amount of the countervailing duty or anti-dumping duty on the importation of the subject product shall be specified; provided, however, that the period of such provisional imposition shall not be longer than four months." (underline added)



2.2 ITC(MOEA) – Preliminary Injury Determination

ITC's preliminary determination typically contains the following items:

- (1) text of determination
- (2) history and progress of investigation conducted
- (3) legal authority to conduct investigation
- (4) scope of product concerned
- (5) scope of domestic industry
- (6) period of investigation
- (7) finding on material injury
- (8) finding on threat of material injury
- (9) considerations of negligible imports and cumulation
- (10) minutes of presentation meetings
- (11) records of verification visits

