THE ANTIDUMPING LAW OF CHINA

According to the Global Antidumping Database, Chinese producers filed 136 antidumping petitions between 1997 and 2005. Of the 126 antidumping determinations by the Chinese government during this time, over 95 percent resulted in the imposition of antidumping duties. As illustrated in Figure 1, the number of petitions filed by Chinese producers has increased significantly since 2001; Chinese producers filed 119 cases between 2001 and 2005 compared to only 16 cases between 1997 and 2000.

Figure 1

![Number of Cases Filed](chart)

Legal Procedures

Any interested party may file an antidumping petition on behalf of the domestic industry. Prior to 2004, the Ministry of Foreign Trade and Economic Cooperation (MOFTEC) received the petition and was responsible for calculating the extent of the dumping margin, while the State Economic and Trade Commission (SETC) was responsible for determining whether the dumping was causing or threatening to cause injury to the domestic industry. If an antidumping investigation involved agricultural products, the injury to a domestic industry was jointly determined by SETC and the Ministry of Agriculture.

In the spring of 2003, MOFTEC and SETC were reorganized into a new agency, the Ministry of Commerce (MOFCOM). Since that time, MOFCOM has been responsible for the investigation and determination of both dumping and injury. If agricultural products are involved, the injury investigation is still conducted by both MOFCOM and the Ministry of Agriculture.

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1 An antidumping investigation may be initiated if domestic producers who support the petition account for more than 25 percent of total production of the like domestic product and have collective output of more than 50 percent of the total production produced by those producers who either support or oppose the petition.
MOFCOM must decide whether or not to initiate an investigation within 60 days of receiving the petition. In exceptional circumstances, MOFCOM may self-initiate an investigation even if it has not received an antidumping petition from the domestic industry if it has sufficient evidence of dumping, injury and a causal link between the two.

MOFCOM calculates the dumping margin by comparing either a weighted average of import prices to a weighted average of “normal values” over the period of investigation, or by comparing the normal values and import prices on a transaction-to-transaction basis. In special circumstances, MOFCOM may compare a weighted average normal value with prices of individual import transactions to calculate the dumping margin. Typically the period of investigation is the 12 months prior to the initiation of the investigation.

Normal value is typically determined by one of the three methods. Whenever possible, the normal value is calculated using the price of sales in the exporting country’s home market, unless the sales are made at prices below the country’s average cost of production. If the prices of such sales are all below the cost of production or the quantity sold is inadequate to calculate the normal value, the normal value can be determined using either the exporting country’s price of sales in an appropriate third-country market or the exporting country’s cost of production plus a reasonable amount for expenses and for profits. If any interested party fails to provide authentic information and relevant evidence within a reasonable time limit, MOFCOM may make its determination on the basis of the “facts already known” or “the best information available,” which includes the information submitted in the petition or submitted by interested parties.

MOFCOM normally determines a separate dumping margin for each individual responding exporter or producer. However, when the number of exporters, producers, types of products or transactions is too large, MOFCOM may select a sample of firms for the investigation by using either a statistical sampling method or by choosing those firms with the largest export volume. For exporters or producers who are not selected in the sample, MOFCOM calculates the dumping margin as the weighted average dumping margin determined for the sampled exporters and producers.

In the determination of injury, MOFCOM considers a number of factors, including the volume of dumped imports, the effects of dumped imports on prices and on other indices of the domestic industry, the production or export capacity of the exporting country, and inventories of the product under investigation.

Following its preliminary investigation, MOFCOM makes a preliminary determination and publishes its findings on dumping and injury, as well as the causal link between the two. After a affirmative preliminary determination of dumping and injury has been made, provisional antidumping measures such as duties, deposits, bonds or other forms of security may be imposed. If an exporting firm chooses to increase its price to a level suggested by MOFCOM, or stop exporting at the “dumped” prices, MOFCOM may decide to suspend or terminate the antidumping investigation without applying provisional antidumping measures. In this case, MOFCOM may resume the antidumping investigation at a later date if necessary.
If the preliminary determination is affirmative, the MOFCOM investigation continues and the Ministry makes a final determination on the margin of dumping and injury. An antidumping investigation usually concludes within 12 months from the publication date of the decision to initiate the investigation.

If the Ministry makes an affirmative final determination, antidumping duties equal to the margin of dumping are imposed on products imported after the date of publication of the final determination. As required by the World Trade Organization (WTO), MOFCOM reviews the need for the continuance of antidumping orders every five years. In addition, during the period that antidumping measures are effective, MOFCOM may initiate an interim review upon application or on its own initiative to review whether to continue these measures under the original form and at the original level. Interested parties need to file an application for an interim review within 30 days from the date after each single year has passed following the antidumping measures entering into force.

*Compliance with the WTO Antidumping Agreement*

China's antidumping procedures have never been challenged at the World Trade Organization.