

INTERIM REGULATIONS OF THE MINISTRY OF FOREIGN TRADE AND ECONOMIC COOPERATION
ON PUNISHMENT FOR CONDUCT OF EXPORTING AT LOWER-THAN-NORMAL PRICE

(Issued by the Ministry of Foreign Trade and Economic Cooperation on April 4, 1996)

Article 1 These interim regulations are formulated in accordance with the Foreign Trade Law and the Anti-Unfair Competition Law of the People's Republic of China, to ensure orderly development of the country's export trade, safeguard the legitimate rights and interests of the State and enterprises and prevent conduct of exporting at lower- than-normal price.

Article 2 These regulations apply to the conduct of selling export products at lower-than-normal price by export enterprises.

The export enterprises mentioned in these regulations refer to those in the People's Republic of China who engage in foreign trade with approval from the departments in charge of foreign trade and economic cooperation; the export products mentioned refer to the products for export which are produced, manufactured, processed or assembled in the People's Republic of China, and their original is China according to the Rule on the Origin of Export Goods of the People's Republic of China.

Article 3 The Ministry of Foreign Trade and Economic Cooperation of the People's Republic of China (hereinafter referred to as MOFTEC) is the department which is responsible for punishing the conduct of exporting at lower-than-normal price. The work group set up specially for this work in MOFTEC is in charge of investigations related to the punishment of the conduct of exporting at lower-than-normal price, and makes suggestions to MOFTEC on the settlement of any such case.

Article 4 All export enterprises shall make serious market surveys, enhance business accounting, follow the coordination by various chambers of commerce for import and export trade, and set export prices which are suitable in countries to which the goods are exported.

Article 5 A conduct of exporting at lower-than-normal price means that the export price is lower than the necessary price for the product of the enterprise.

The export price shall be calculated based on the amount of foreign

exchange which should be charged on the product of the export enterprise.

The necessary price shall comprise of the cost for the production of the export product in China, the expenses for storage, transport, insurance and management which are needed in foreign trade, and reasonable profit.

Article 6 The MOFTEC shall mete out the following punishments on enterprises which commit conducts of exporting at lower-than-normal price:

1. Circulating a notice of criticism or giving a warning;
2. Export enterprises which cause losses to the state or related enterprises by exporting at lower-than-normal price shall be fined, the fine shall be not less than 60 percent of the actual amount of income from the conduct of exporting at lower-than-normal price;
3. Export enterprises which have repeatedly committed the conduct of exporting at lower-than-normal price and caused serious losses to the state and related enterprises shall be fined in accordance with Section 2 of this Article. If the export enterprise refuses to accept the punishment within 30 days after the fine notice is received, the enterprise's right to applying and bidding for export quotas of the related products or some part of the products shall be suspended or revoked, or its export license for the related products or some part of the products shall be suspended or revoked, or the enterprise's permit to foreign trade shall be suspended or revoked.
4. Apart from the punishments listed in sections 1, 2 and 3, investigations can also be made to affix the administrative or economic responsibility on the legal representative of the enterprise or any person who is directly responsible for the conduct of exporting at lower-than-normal price.

Article 7 Any unit or individual can, on the basis of facts, make a report directly or via a chamber of commerce for import and export trade

or an association of foreign-funded enterprises to the MOFTEC against an export enterprise which has committed the conduct of exporting at lower-than-normal price. The report can include:

1. The name of the product that has been exported at lower-than-normal price;
2. The name of the enterprise which has committed the conduct of exporting at lower-than-normal price;
3. The amount of the exported product and the amount of money involved;
4. relevant documents and materials that can prove the conduct of exporting at lower-than-normal price.

Article 8 The MOFTEC shall, based on a report or any other tips, make a decision on whether to place a case on file for investigation of the export enterprise which has been charged with committing the conduct of exporting at lower-than-normal price. Such a decision shall be made within 30 days after a report is received.

Article 9 After the case is placed on file, the MOFTEC can entrust the related chamber of commerce for import and export trade, association of foreign-funded enterprises or local department in charge of foreign trade and economic cooperation to make an investigation of the export enterprise which has been charged with committing the conduct of exporting at lower-than-normal price. When the case is serious, the MOFTEC can make the investigation itself. The investigation shall cover any such conduct within one year before the date the case is placed on file.

Article 10 The decision on place a case on file for investigation shall be made in written form, which will include the facts that have been known, the name of the enterprise to be investigated and the name of the institution entrusted to carry out the investigation, and the decision shall be made public.

Article 11 The investigation shall normally end within 90 days from the

date the decision is made public.

The unit entrusted to carry out the investigation shall, within 10 days from the conclusion of the investigation, report the results of the investigation to the MOFTEC and also make suggestions on the settlement of the case.

The MOFTEC shall, based on the results of the investigation and the suggestions, make and publicize a decision in written form on the settlement of the case within 40 days from the conclusion of the investigation. The decision shall take effect on the day it is made public.

Article 12 The MOFTEC shall, in accordance with relevant state laws and regulations, keep confidential the report against the conduct of exporting at lower-than-normal price made by any unit or individual.

The MOFTEC shall award and commend any unit or individual who retrieves a loss for the state or enterprise.

Article 13 In case a punished export enterprise, legal representative or person directly responsible for the conduct of exporting at lower-than-normal price disagrees with the punishment decision, the enterprise, representative or person can apply to the Administrative Appeal Committee of MOFTEC for re-examination of the case in accordance with the Regulations on Administrative Appeal of the People's Republic of China; in case the party still disagrees with the reexamination

decision, it can take legal proceedings against the decision at a people's court in accordance with the Administrative Procedure Law of the People's Republic of China. The original punishment decision shall remain effective during the period of appealing for re-examination or legal proceedings.

Article 14 These regulations apply to any conduct of exporting at lower- than-normal price that occurs after the regulations go into force.

Article 15 The right to interpret these regulations resides in the MOFTEC.

Article 16 These regulations go into force on the date they are made public.

对外贸易经济合作部关于处罚低价出口行为的暂行规定

1996年3月20日对外贸易经济合作部令第1号发布

第一条 为有秩序地发展中华人民共和国的出口贸易，维护国家和企业的合法权益，防止低价出口行为，根据《中华人民共和国对外贸易法》和《中华人民共和国反不正当竞争法》，特制定本规定。

第二条 本规定适用于出口企业的低价出口产品行为。

本规定中出口企业指在中华人民共和国境内的获得对外经济贸易主管部门许可的对外贸易经营者；出口产品指在中华人民共和国境内生产、制造或加工、装配，并根据《中华人民共和国出口货物原产地规则》的规定，原产地为中国的出口产品。

第三条 中华人民共和国对外贸易经济合作部（以下简称外经贸部）是处罚低价出口行为的主管部门。

外经贸部处罚低价出口行为立案调查工作小组，依本规定负责调查低价出口行为，并向外经贸部提出处理建议。

第四条 各出口企业应认真做好市场调研，加强经济核算，服从各进出口商会的协调，制定符合进口国市场水平的出口价格。

第五条 出口价格低于本企业该项产品的应售价格的为低价出口行为。

出口价格应以出口企业对该项产品应收或实收的外汇金额为基础进行计算。

应售价格应由出口产品的境内生产成本，对外贸易所需的储运、保险、管理等费用加上合理利润构成。

第六条 出口企业凡有低价出口行为的，外经贸部视情况给予下列处罚：

一、公开通报批评或警告；

二、因出口企业低价出口行为给国家和有关企业造成经济损失的，处以相应罚款。罚款金额不超过低价出口产品实售金额的60%；

三、出口企业屡次发生低价出口行为并给国家和有关企业造成严重经济损失的，依本条第二款处以罚款，自收到罚款处罚通知之日起30日内拒不执行的，暂停或取消其相关产品或部分产品的出口配额申请权和投标权，暂停或取消其相关产品或部分产品的出口许可，直至暂停或撤销其对外贸易经营许可；

四、除上述一、二、三款规定的处罚外，还可追究或责成有关部门追究该企业法定代表人和直接责任人的行政责任或经济责任。

第七条 任何单位或个人均可依据事实对有关低价出口行为的出口企业直接或通过进

口商会、外商投资企业协会向外经贸部举报。举报内容包括：

- 一、低价出口的产品名称；
- 二、低价出口的企业名称；
- 三、低价出口的金额和数量；
- 四、证明低价出口行为的有关单证。

第八条 外经贸部根据举报或其他线索可决定是否对有低价出口行为的出口企业予以立案调查。是否立案调查的决定应在收到举报之日起 30 日内做出。

第九条 立案后，外经贸部可委托有关进出口商会、外商投资企业协会或地方外经贸主管部门负责调查低价出口行为。遇有重大案件时，外经贸部可自行开展调查。调查期间为立案调查之日起前 1 年内的出口行为。

第十条 立案进行调查的决定应以书面形式做出，包括已知的事实、被调查单位名称和受托调查的相关机构名称，并予以公布。

第十一条 调查一般应在立案进行调查决定公布之日起的 90 日内结束。

被授权调查的单位应在调查结束后 10 日内向外经贸部报告调查结果并可提出处理建议。

外经贸部应根据调查结果及处理建议在调查结束后 45 日做出书面处理决定，并予以公布。决定自公布之日起生效。

第十二条 外经贸部根据国家有关法律、法规的规定对举报单位或个人的举报行为予以保密。

对为国家和企业挽回经济损失的举报单位或个人，外经贸部给予奖励或鼓励。

第十三条 被处罚的出口企业、法定代表人或直接责任人对外经贸部的处罚决定不服的，可依《中华人民共和国行政复议条例》向外经贸部行政复议委员会申请复议；对复议不服的，可依《中华人民共和国行政诉讼法》向人民法院提起诉讼。复议和行政诉讼期间，原处罚决定继续有效。

第十四条 本规定适用于其生效后发生的低价出口行为。

第十五条 本规定由外经贸部负责解释。

第十六条 本规定自公布之日起施行。